Attachment 1

Recent policy research on the association between labour relations arrangements and economic performance released by the World Bank, the International Monetary Fund and the OECD

Recent policy research on the association between different labour relations arrangements and economic performance released by the World Bank, IMF and the OECD

These institutions are widely known for being generally very supportive of free-market or neo-liberal policies. In recent years, especially since the turn of the decade, they have released a number of more reflective studies in which they acknowledged the need for more humility and evidence based research in policy prescriptions in general. It appears this has been driven by at least a de facto recognition that pursuit of hardline free-market policies in South America in the 1980s and 1990s resulted in profound economic dislocation and, ultimately deep political upheaval – often resulting in significant shifts to the left and away from free-market policies altogether (eg. Venezuela) or repudiation of much of the neo-liberal policy mix (eg. Argentina).

These developments do not mean these organisations, especially their senior leaders, have abandoned their commitment to propagating free-market policies. It does mean, however, that they are more prepared to acknowledge that other approaches to economic policy (eg. multi-employer bargaining arrangements) can be compatible with positive output and employment growth. The one thing nearly all studies agree on is that, while there is no direct evidence of the superior output and employment performance of decentralised, more market-based bargaining systems, the equity outcomes are clearly different. More coordinated systems unambiguously deliver greater fairness in wages and working conditions.

A summary of the current state play is provided by the following commentary.

(a) The need for greater humility in policy prescriptions in general

In 2006 leading analysts from the World Bank noted in a key IMF publication that free-market reform prescriptions had serious problems. This conclusion was reached after the completion of a large scale, empirically-based cross-country study which examined the connection between different policy regimes and economic performance. Special attention was paid to the economic reforms commonly associated with prescriptions made by the World Bank and the IMF. In particular, they noted that '... expectations about the impact of reforms on growth were unrealistic ...' and that 'governments should abandon formulaic policymaking in which "any reform goes" ...' (Zagha et al 2006). They concluded:

> our knowledge of economic growth is extremely incomplete. This calls for more humility in the manner in which economic policy advice is given, more recognition that an economic system may not always respond as predicted, and more economic rigor in the formulation of economic policy advice (Zagha et al 2006:10)

(b) The need to recognise the incomplete nature of our understanding on labour issues in particular

The World Bank published an exhaustive study on *Unions and Collective Bargaining: Economic Effects in a Global Environment* by Aidt and Tzannatos in 2002. As they note in the opening page of the study:

> The precise link between labour standards and economic performance is as yet not clear and many controversies remain (Aidt and Tzannatos 2002: 1).
>
> This is partly due to the fact that it is hard to isolate the contribution of ... labour standards from other determinants of economic performance in cross-country studies and partly due [to] the fact that it is hard to measure differences in labour standards across time and space (Aidt and Tzannatos 2002: 4).

(c) In this context, the recent research has noted that free-market solutions are not necessarily best and are only one possible basis for desirable economic development.

The OECD has been increasingly clear in this regard in a series of articles on how industrial relations, labour market and social policies impact upon economic performance. Last year, for example, it noted that a team of economists lead by Nobel Laureate James J Heckman from the University of Chicago had concluded "only rigorously market-oriented economies have managed to sustain employment and productivity growth simultaneously" (OECD 2007: 56 referring to Heckman, Ljunge and Ragan 2006). After reviewing the evidence, OECD researchers directly rejected this conclusion (OECD 2007). Concerning the conclusion by Heckman et al the OECD researchers argued:

> This claim is not supported by the evidence ... Indeed, ... *other successful performers* (which had combined strong work incentives with generous welfare protection and well-designed regulation) *had, on average over the past decade, similar GDP per capita growth* to that recorded in more market-reliant countries (OECD 2007: 57).

(d) There is no clear evidence that any particular form of institutional approach to bargaining delivers superior efficiency economic outcomes.

The debate on the association between bargaining arrangements and economic performance has been growing in scale, depth and sophistication in recent years. Briggs et al (2006: 8 - 15) has drawn on this literature to note the benefits of coordinated flexibility as a basis for wages and IR policy in the future in Australia. In a number of recent studies the OECD has examined this literature at length and concluded that both single and multi-employer bargaining arrangements are compatible with economic efficiency (eg. OECD 2004, 2006). The key findings of relevance here are:

> ... the impact of the organisation of collective bargaining on labour market performance appears to be contingent upon other institutional and policy factors and these interactions need to be clarified in order to provide robust policy advice (OECD 2004: 165).
>
> [the inconclusive nature on the relationship between bargaining structures and performance] suggest[s] that quite different organisational forms may be capable of similar performance. For example, wage flexibility coupled with in-work benefits for low wage workers may be approximately equivalent to a more compressed wage structure combined with fiscal incentives to employers of low-skilled workers (OECD 2004: 166. See also OECD 2006:80-88).

(e) The one agreed relationship between bargaining structures and outcomes is that decentralised, deregulated systems are consistently associated with greater inequality.

The final conclusion of the 2004 *OECD Employment Outlook's* assessment of wage-setting institutions and outcomes was blunt on this point:

> This chapter's analysis confirms one robust relationship between the organisation of collective bargaining and labour market outcomes, namely, that overall earnings dispersion tends to fall as union density and bargaining coverage and centralisation/coordination increases. It follows that equity effects need to be considered carefully when assessing policy guidelines related to wage-setting institutions (OECD 2004: 166).

The reality of this insight has been dramatically demonstrated by recent developments in Germany. In the last three years employers in this country have left coordinated bargaining arrangements in growing numbers in the interest of 'enterprise flexibility'. The implications for labour market structure have been profound. Just on 23 percent Germans are now 'low paid workers', a proportion rapidly approaching that of the USA (currently with 25 percent of its employees at or below two-thirds of median earnings) (Bosch and Mayhew 2008 and Bosch and Weinkopf 2008).

(f) Little work has been done in the policy research of these international organisations on the role of framework agreements. What has been done primarily concerns working time and is positive about them.

In summarising the lessons on recent experiences with working time arrangements OECD researchers recently concluded:

> Workers and employers should be able to negotiate working-time arrangements in a decentralised manner within a framework of general rules, set by working time legislation or another binding framework, on minimum

standards to safeguard workers' health and safety conditions. (OECD2006: 104)

(g) There is also recognition that institutions of coordination can be dismantled quickly, but take a long time to establish

In reflecting on the emergence of low pay in Germany, Bosch and Mayhew (2008) note the asymmetry in the time it takes to establish and dismantle institutions of coordination in the labour market. This is something also tacitly acknowledged in the World Bank study. As it notes:

> In most countries where coordination exists, it evolved gradually through piece-meal legislation over decades rather than as a massive policy intervention at a specific point in time (Aidt and Tzannatos 2002: 14).

Such arrangements need to be treated with care because, as in so many areas of life, it appears to be far easier to destroy than create positive social arrangements.

References

Aidt, T and Tzannatos, Z (2002) *Unions and Collective Bargaining: Economic Effects in a Global Environment* Directions in Development 24730 2002, The World Bank, Washington

Bosch, G and Mayhew, K (2008), Low wage Europe, presentation to Victoria University of Wellington [NZ] Workshop on Developing Human Capability, June 2008 [Reporting on research recently released on low-wage Europe commissioned by the Russel Sage Foundation]

Bosch, G and Weinkopf, C (2008) *Low-wage Work in Germany*, Russell Sage Foundation, New York 2008

Briggs, C, J Buchanan and I Watson (2006), Wages Policy in an Era of Deepening Wage Inequality, *Academy of Social Sciences in Australia Occasional Paper* 1/2006 Policy Paper #4

Heckmann, JJ, M Ljungeand K S Ragan (2006) 'What are the Key Employment Challenges and Policy Priorities for OECD Countries', University of Chicago Department of Economics unpublished manuscript, presented at the 'Boosting Jobs and Incomes' Conference, Toronto, Canada, June

OECD (2004) 'Wage setting Institutions and Outcomes', *OECD Employment Outlook*, 2004: 127 – 181

OECD (2006) 'General Policies to Improve Employment Opportunities for All', *OECD Employment Outlook*, 2006: 47 - 125

OECD(2007) 'More Jobs but Less Productive? The Impact of Labour Market Policies on Productivity', *OECD Employment Outlook*, 2007:55 - 102

Zagha, R. Nankani, G. and Gill, I. (2006) "Rethinking Growth", *Finance & Development*, 43

Attachment 2

John Buchanan and Gillian Considine, 'The significance of minimum wages for the broader wage setting environment: understanding the role and reach of Australian awards' in Australian Fair Pay Commission, *2008 Minimum Wages Research Forum Proceedings, Volume 1*, Research Report No 4a/08, [AFPC, Melbourne] October 2008 pages 47 – 62

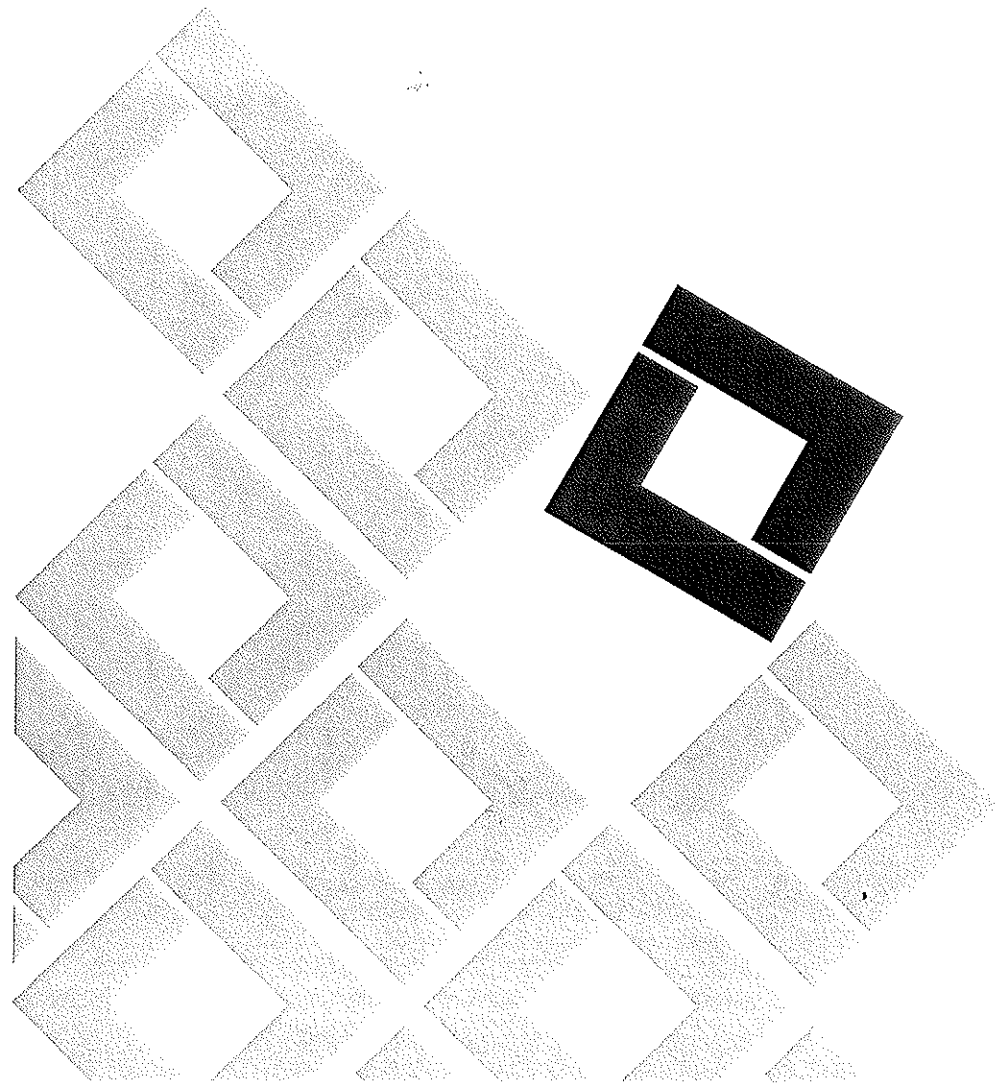
ResearchForum

2008 Minimum Wage Research Forum Proceedings

Volume 1

October 2008

Research Report No. 4a/08



Australian FairPay Commission

The significance of minimum wages for the broader wage-setting environment: understanding the role and reach of Australian awards

John Buchanan and Gillian Considine
Workplace Research Centre, Faculty of Economics and Business, University of Sydney

Abstract

The significance of minimum wages for the broader wage-setting environment depends on many factors. Prime among these are the degree of inclusiveness of the industrial relations (IR) system in which it is embedded. This determines how extensively wage outcomes of 'the strong' are extended to 'the weak'. It is commonly assumed that over the last two decades Australia has moved from a highly centralised and regulated IR system pre-occupied with fairness to one which is now highly decentralised and 'deregulated' concerned primarily with productivity. This narrative both overstates the degree of centralisation in the past and, most importantly, under-states the degree of informal or tacit coordination in the present. The paper presents new and detailed statistics on this latter point. These show that the reach of awards in the wage determination process is far higher (at about 80 per cent of employees) than is commonly recognised. In assessing the significance of minimum wages for the broader environment it is important to recognise that much turns on the level at which minimum award rates are set. While they are taken as a reference point for wage determination for the bulk of employees, their impact varies depending on a range of other factors. The paper concludes by highlighting the priority issues needing further analysis if the significance of minimum wages for the broader wage-setting environment is to be better understood.

1. Introduction

Australia has a long tradition of active involvement by public authorities in the settling of comprehensive standards in the labour market (Isaac and Macintyre, 2004). Notions of the basic wage and margins for skill dominated wages policy for the first half of the last century. National wage cases and a system directed at 'Safety Net Adjustments' continued this tradition (Hancock and Richardson, 2004). In more recent times, responsibility for the wage dimension of our system of labour standards has shifted to the Australian Fair Pay Commission (AFPC) with its responsibilities for the setting wages for Australia's comprehensive system of awards. What is the significance of the decisions of these bodies for the broader wage-setting environment?

This is an important but difficult question to answer. The initial challenge is to make it tractable. Significance can take many forms: economic, political or ideological. In a paper this size I cannot possibly address all these dimensions. Instead I will focus primarily on one: the practical or operational significance of the wage policy decisions of the AFPC and State industrial tribunals for going rates of pay. Even this is a difficult question to answer given the complexity of our wage determination system. Australia's wage-setting institutions do not set just one minimum rate. Rather, rates for award job classifications are periodically varied. Awards cover almost every occupation imaginable. They can also operate with and without other industrial agreements. These can be formal and informal, collective as well as individually based. Our primary question of interest, therefore, becomes:

What is the reach and relevance of awards in the Australian labour market today?

This paper is structured around answering three questions:

1. What is the broader wage-setting environment?
2. What role do minimum rates and the process of their determination play within it?
3. What are the key characteristics of Australia's system of minimum wages and how are they embedded in our broader industrial relations system?

The paper finishes by summarising the key findings about the operational significance of awards for rates set by the AFPC and industrial tribunals. It also provides pointers to other issues that need investigating if a fuller understanding of the prime question of interest is to be achieved.

2. 'The broader wage environment': how do competitive and institutional factors work to determine wage outcomes?

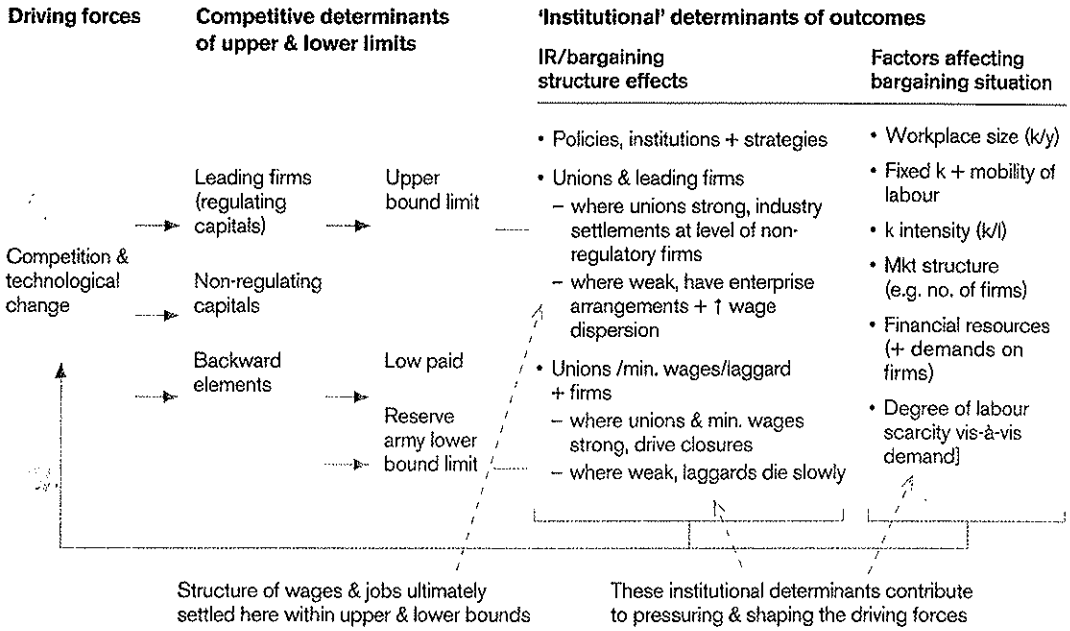
The great bulk of the literature on minimum wages falls into one of two general traditions. One is mainstream economic analysis primarily concerned with how competitive forces are either hindered or helped by minimum wage laws. The other is institutionalist analysis primarily concerned with social and especially institutional aspects of their origins and operation. The conceptual framework that informs this analysis is derived from Botwinick's (1993) theory of how competitive and institutional forces both contribute to the determination of going rates of pay. His primary concern is to transcend the limitations of mainstream economists and institutionalist accounts of wage determination and outcomes. The former have a limiting conception of competition (what he calls the 'quantity theory of competition') coupled with an ad hoc approach to understanding institutions. These are either conceived of as imperfections (e.g. crude marginalist school) or spontaneously useful legacies (e.g. efficiency wage theory). On the other hand institutionalists, while often having a superior account of labour market structures and practices, usually neglect the role of competitive forces in the wage determination process.

Botwinick integrates a concern with both competition and institutional forces by anchoring his analysis in an account of inter-firm (or what he calls inter-capitalist) competition. As a result of ongoing technological change and competition for market share, firms constantly struggle to gain competitive advantage, the metric of success being different rates of profit. Those firms that succeed have the highest rates of profit, those with the lowest ultimately close. The upper limit to wage settlements is set by the prevailing rate of profit in leading firms, the lower bound is set by marginal firms and how they interact with the reserve army of labour. Actual wage outcomes are set within this space. The key players in setting these are employers, unions and public authorities charged with setting wage standards. Their bargaining power is determined by a vast array of factors. Those noted by Botwinick include:

- workplace size (as an indicator of capital-output ratio);
- the degree to labour and capital mobility;
- the capital intensity of production (i.e. often referred to as the capital-labour ratio);
- market structure (especially the number of firms in a sector);
- the financial resources available to the firm; as well as
- the degree of labour scarcity *vis-à-vis* demand.

These structural factors define the immediate bargaining environment in which employers, unions and public authorities ultimately structure wage outcomes. Developments in the upper reaches of the labour market are set by the engagement of organised labour with leading and 'average' firms. Where unions are strong, industry settlements prevail at a level sustainable to most 'average' firms. Where they are weak, enterprise arrangements prevail and wage dispersion rises. In the lower reaches of the labour market the laggard firms set the standards. Where unions and/or minimum wages set decent rates of pay, laggard firms close at a faster rate than if the opposite prevails. Where both are weak or accommodating laggard firms die slowly, and in the process nurture a relatively larger low paid sector. Figure 1 summarises the key features of Botwinick's model.

Figure 1: Botwinick's model linking competitive and institutional factors in wage determination



Source: Derived from Howard Botwinick, *Persistent Inequalities: Wage Disparity under Capitalist Competition*, Princeton University Press, Princeton, New Jersey, 1993.

3. Minimum wages and institutional context: how inclusive is the industrial relations system?

Botwinick's model is pitched at very high level of abstraction. Industrial relations and labour market researchers help provide the empirical detail useful for fleshing out how bargaining structures, strategies and practices shape wage outcomes. Much of this literature has been helpfully summarised by the OECD in a relatively recent meta-analysis of wage-setting institutions and outcomes (OECD, 2004). It argues that in making sense of wage setting arrangement it is important to pay particular attention to two factors: union density and collective bargaining coverage on the one hand and the importance of what it refers to as 'extension mechanisms' on the other. As is well known, union density rates have fallen in many countries in recent decades. The OECD makes the very important point that declining unionisation does not necessarily result in declining collective bargaining coverage. This is ultimately a matter of employer strategy and choice. Most importantly it argues that public authorities, through the process of extension, can

> make a collective agreement generally binding within an industrial sector, covering all employers who are not members of its signatory parties. In several countries, 'enlargement' beyond an agreement's initial domain is also possible. (OECD, 2004: 147)

The OECD also notes that in understanding the broader wage-setting environment it is essential that attention is devoted to the degree of centralisation and especially coordination within any country's labour relations system (OECD, 2004: 149–56).

The significance of these variables has been strongly corroborated by a large-scale study of 'low pay Europe'. Commissioned by the Russell Sage Foundation in the USA it involved comprehensive studies of labour market dynamics in five countries, with special attention devoted to five sectors. The countries were: Germany, the UK, the Netherlands, France and Denmark. The sectors studied were: retail, hotels, hospitals, food processing and call centres (Bosch and Weinkopf [2008], Caroli and Gautie [2008], Lloyd, Mason and Mayhew [2008], Salverda, van Klaveren and van de Merr [2008], and Westergaard-Nielsen [2008]). The key findings of the low wage Europe project of relevance to this paper are:

- 'The most important influence on the level of low-wage work appears to be the degree of "inclusiveness" of a country's labor-market institutions, especially its industrial relations system, broadly defined' (Schmitt *et al.* 2008: 7)
- 'Minimum wage can be an important mechanism for extending the "inclusiveness" of labor-market institutions' (Schmitt *et al.* 2008: 9)
- 'The effectiveness of "inclusiveness" in national labor-market institutions depends crucially on employers' ability to use "exit options" to side-step institutions that would otherwise raise wages for workers at the bottom of the wage distribution' (Schmitt *et al.* 2008: 12)
- 'Much greater wage compression in Europe (outside of the UK) may act as an effective subsidy supporting wage and non-wage benefits of front-line workers in Europe' (Schmitt *et al.* 2008: 15).

In short, one of the key findings arising from this study is that the reach of a minimum wage system is critically determined by the inclusiveness of the industrial relations system in which it is embedded. Policy on relativities is a key part of such arrangements. Where solidaristic principles prevail the claims of higher wage earners are constrained. Where no such policies or institutions supporting them exist there is an associated disconnect between movements at the top and bottom of the labour market. Minimum wages in an inclusive industrial relations system play a different role compared to when they are part of a more fragmented one. In an inclusive system they both constitute and reflect wage norms pervading the system. In a more fragmented system they usually play a less significant role with their relevance and impact confined to the lowest reaches of the labour market.

4. What are the key characteristics of Australia's system of minimum wages and how are they embedded in our broader industrial relations system?

Clearly there are many issues relevant to understanding even the operational significance of minimum wages on the broader wage environment. The most pressing, however, is:

> Who is affected by minimum wages, both directly and indirectly?

As noted in the introduction, the Australian system of labour standards does not just have one or two basic minimum rates. Rates are set in different awards and for different classifications of labour covered by them. As such our key question becomes:

> What is the reach and relevance of awards within workplaces and across the labour market?

The answer to this question provides a powerful basis for understanding the degree of inclusiveness and cohesion on the one hand and the degree of fragmentation and segmentation in the wages system on the other. But answering it is difficult. It requires understanding far more than awards and the formal dimension of industrial relations arrangements. In particular it requires placing awards in the context of agreements: collective and individual, formal and informal.

The common narrative informing much policy and analytical debate in Australia is that the system has moved rapidly from a highly centralised and regulated one to one which is now highly decentralised and 'deregulated'. Table 1 summarises statistics commonly cited to make this point.

Table 1: Readily available summary statistics on the changing relevance of awards

Variable	1990 (%)	2006 (%)
(a) Proportion of workers for whom awards directly determine pay	80	19
	1994 (%)	**2007** (%)
(b) Proportion of agreements that totally replace awards	14	58

Sources: ABS, *Award Coverage*, Australia, Cat No 6315.0 1990, ABS, *Employee Earnings and Hours*, Australia, Cat No 6306.0 May, 2006, Agreements Database And Monitor *(ADAM) Report*, No 4 1994 and No 55, December 2007.
Populations: ABS – all employees derived from samples selected at random within business units ADAM – sample of agreements taken from Federal, NSW, Queensland, South Australian and Western Australian jurisdictions. Data collected and coded at the Workplace Research Centre (formerly acirrt) at the University of Sydney.

On the face of it, awards have shrunk from covering directly four employees in five to now covering less than one in five. Equally over the same period of time, where agreements primarily worked to top awards, over half now appear to totally replace them.

These commonly used indicative statistics are, however, misleading. A number of recent surveys have revealed that awards have a far broader reach than is commonly appreciated. The *Australia at Work* project is tracking the labour contract and labour market transitions of over 8,400 workers employed in March 2006. Table 2 summarises workers' accounts of what is the primary instrument that determines their pay and compares this with ABS estimates.

Table 2: Employee coverage of different types of pay instrument: ABS and *Australia at Work* comparisons, Australia, 2006, 2007 and 2008

Method of setting pay and conditions	ABS 2006 (%)	*Australia at Work* 2006 (n=6479) (%)	*Australia at Work* 2007 (n=5816) (%)	*Australia at Work* 2008 (n=5516) (%)
Award only	20.0	33.4	30.7	29.0
Registered collective agreement	40.1	21.7	21.1	22.9
Unregistered collective agreement	3.2	–	–	–
Registered individual arrangement	3.3	4.7	6.6	5.6
Unregistered individual arrangement	33.4	28.8	30.9	32.2
No agreement	–	4.7	3.3	5.3
Don't know	–	6.6	7.5	5.0
Total	100	100	100	100

Source: Brigid van Wanrooy, et al., *Working Lives: Statistics and Stories* [Report on Wave 2 of the *Australia at Work* project], Workplace Research Centre, University of Sydney, October, 2008, page 22.
Populations: ABS as for Table 2. *Australia at Work*, employees in the labour force as at 27 March 2006.

What is striking about these data is the mismatch between accounts of instrument coverage. ABS accounts are based on employers' reports. They report that under 20 per cent of employees have their wages set only on the basis of awards. *Australia at Work* collects information directly from employees. Around 30 per cent of employees indicate that awards are their primary basis of pay determination. This is almost completely off-set by estimates of agreement coverage. Far fewer workers than employers report these as the primary instrument for pay determination.

While there is no doubt that employers' pay roll clerks (the ABS's survey respondents) have a better understanding of the details of the formal instruments setting wages in their organisation, it is important not to regard the ABS material as 'correct' and dismiss the account based on workers' perceptions. The ABS data are primarily concerned with the formal instrument primarily involved in setting the actual rate paid. *Australia at Work* collects data on how wages are set more generally. The two estimates can be reconciled if it is appreciated that they are capturing information on two slightly different dimensions of the wages system. On the basis of this insight we added a new question to a semi-regular survey of workplace industrial relations that we undertake for some State governments (Considine and Buchanan, 2007). The results are reported in Table 3.

Table 3: Estimates of the incidence of different types of employment instruments and the number of workers covered, Victoria, May 2008

Predominant Instrument	Businesses (%)	Employees (%)	Total Employees	% of businesses with instrument reporting work 'in conjunction' with award	Estimates of workforce at workplaces where awards directly or indirectly operate
Award (>60%)	10	10	227,631		227,631
Overaward (>60%)	31	20	441,974		441,974
Collective agreement (>60%)	11	33	742,045	89	660,420
Individual agreement (>60%)	38	33	730,132	58	423,476
AWA/ITEA		3	74,041	58	42,943
	100	100	2,215,824		1,796,444 (81%)

Source: Victorian Workplace Industrial Relations Survey 2008.
Population: business units as defined by Dunn and Bradstreet and weighted to ABS population estimates of corresponding industries and size bands.
Sample size: n=800.
Unit of analysis of this table: employees as a group within the business surveyed. Predominant instrument defined as that which covers 60 per cent or more employees. Note: those workplaces with any kind of individual instrument (e.g. overaward as well as more formal arrangements) were asked if the instrument operated in conjunction with the award. The number of employees covered by an amalgam of award and individual arrangements was 657,767 or 26.7 per cent.

The basis for reporting estimates is slightly different to that used by the ABS and *Australia at Work*. In surveys of this type the business organisation is taken as the unit of analysis. As a result, workplaces are classified as having a 'predominant' basis for wage determination. This is defined on the basis of the instrument that covers 60 per cent or more of a business's workforce. This reveals that while just under a third (31 per cent) of businesses report that they have a system based primarily on awards and overawards, such workplaces only account for 20 per cent of the workforce. This is because they are mainly employed at smaller workplaces. Conversely, while only 11 per cent of businesses report collective agreements being predominant they cover nearly one worker in three (33 per cent). What is most revealing about this table, however, is the proportion of businesses with agreements reporting that these are read in conjunction with the award. Amongst those with collective agreements, 89 per cent read them in conjunction with awards. And amongst those with individual arrangements, 58 per cent read these in conjunction with awards.

Given these numbers it appears that employers' accounts help make sense of the ABS and *Australia at Work* differences. Whereas the ABS only reports on awards separately where workers are paid at precisely the award rate, many workers and employers report awards are integral to the determination of pay in their businesses. Indeed, depending on how it is calculated the proportion of employees reporting that they are affected directly or indirectly by awards in the determination of their pay could be as high as 81 per cent.

The significance of awards in the wage determination process was explored very sensitively for the Award Review Taskforce in 2006 (ART, 2006). One of the many initiatives associated with the *Work Choices* revolution was a full-scale review of award coverage and classification arrangements. As part of this process a large-scale study of the 'Use and Relevance of State and Federal Awards' was undertaken. This involved telephone interviews with 2,408 workplace managers. One of its major insights is neatly captured in the following quote:

> ... there is no single indicator of the level of award 'relevance'. Even where businesses may not set pay and conditions exactly according to an award, in many cases awards are used to inform the setting of wages and conditions. (ART, 2006: 154)

The report provides over 50 tables of very detailed breakdowns documenting the reach and relevance of awards. The key findings have been consolidated into the following three tables.

Table 4 summarises the survey's findings about how many business have at least one employee covered by any of the major instruments used for determining pay. This shows that nearly all business (96 per cent) have at least one employee on either an award or agreement. Over two in five (43 per cent) have at least one paid exactly the award rate.

Table 4: Broadest measure of the incidence of different employment instruments, business unit size, Australia, May 2006

Businesses where any employee is covered by ...	Business unit size		
	<20	20+	All
... either an award or an agreement	92	98	96
... an award + overaward	65	74	68
... exactly the award rate	43	55	47
... a certified agreement	6	36	17
... an AWA	6	17	10

Source: Award Review Taskforce, Use and Relevance of State and Federal Awards, Final Report, 1 August 2006.
Population: all businesses in ACT, Northern Territory and Victoria and incorporated businesses in all other States. Sample size: n=2,408.
Respondent: workplace manager.

This table begs the question: but how many employees within each workplace are covered by such arrangements? The answer is provided in Table 5.

Table 5: Extent of workforce coverage of different instruments, by business size, Australia, May 2006

Instrument type	% of businesses reporting this instrument	% of business reporting instrument replaces award	Average proportion of employees within the business covered by this instrument where it applies in the workplace, by business unit size (%)		
			<20	20+	All
Awards	83	0	75	74	75
Certified Agreement	17	77	68	40	45
AWA	10	33	69	37	49
Unregistered arrangement	65	0			

Source: Award Review Taskforce, *Use and Relevance of State and Federal Awards*, Final Report, 1 August 2006.
Population: all businesses in ACT, Northern Territory and Victoria and incorporated businesses in all other States. Sample size: n=2,408.
Respondent: workplace manager.

It reveals that awards operate in 83 per cent of businesses and where they operate they cover around three quarters of the business's workforce. The coverage of registered collective and individual agreements is not nearly as extensive, especially in businesses with 20 or more employees.

Finally, there is the issue of what the different instruments are used for. Are awards dealing with some matters and leaving others to agreements? The answer is summarised in Table 6.

Table 6: Matters on which different instruments are referred to when determining enforceable rights.

Subject matter of enforceable rights	Incidence among instruments reported by businesses in the survey			Incidence among businesses involved in the survey	
	Awards	Unregistered arrangements	Certified agreements	Award	Certified agreements
Pay	90	88	94	78	90
Leave	88	54	85	76	82
Hours	84	68	91	74	87
Classifications	80	57	87	68	82
Overtime and penalities	80	56	85	69	79
Incentives and bonuses	33	57	52	31	51

Source: Award Review Taskforce, *Use and Relevance of State and Federal Awards*, Final Report, 1 August 2006.
Populations: for columns 2, 3 and 4: All instruments referred to by any business involved in the study. Sample - n=3,704 awards and agreements.
For columns 5 and 6: All businesses in ACT, Northern Territory and Victoria and incorporated businesses in all other States. Sample - n=2,408businesses.

Assessing what is covered in industrial instruments is very difficult. This table reports on this matter in two ways. Columns 2, 3 and 4 report on the content of instruments reported by each business. Many businesses had more than one instrument, so the sample here is bigger than for businesses. The last two columns summarise the incidence per business of what the instruments are used for. So taking the first row of data concerning pay, it reveals the following: around 90 per cent of awards, unregistered arrangements and certified agreements are referred to when determining pay. Among businesses, however, 78 per cent refer to awards when determining pay. Where the business has a certified agreement, 90 per cent of them refer to it when determining pay. Generally speaking, awards and certified agreements are very important where enforceable rights dealing pay and hours are concerned. On matters like incentives and bonuses, all instruments are less commonly referred to. Unregistered agreements are significantly more concerned with

pay than any other issue: where they exist they are referred to 88 per cent of the time on matters of pay. The next most common issue for which they are referred to is hours of work.

The previous sections have provided quite detailed information about award and agreement coverage. How can we integrate this information to capture change over time? Table 7 summarises how labour market coverage by different legal instruments has changed since 1990. The first six columns provide estimates of coverage of the different instruments. These fall into two categories: registered and unregistered arrangements. The former is comprised of awards and agreements. These can be defined with a fairly high degree of precision because, by definition, they are governed by registration requirements that result in them having legal force. Unregistered arrangements cannot be so precisely defined, but they remain a major part of the system. They are commonly classified as: unregistered collective agreements; over-award arrangements; and individual common law contracts. To identify the relative extent to which the different regulatory structures are utilised, two summary measures are provided in the last two columns. The first concerns the reach of the award system. Given most agreements up to 2006 were still based on awards, these figures encompass workers wholly reliant on awards; those on registered collective and individual agreements; and those on over-award arrangements. The last column estimates the proportion of employees whose employment arrangements are governed, at least in part, by unregistered arrangements. Many of these arrangements operate in conjunction with awards and registered agreements, counted already in the 'award coverage' column, resulting in the last two columns totalling more than 100 per cent.

Table 7: Indicative estimates of the change in employee coverage of different instruments defining enforceable rights concerning work, estimates based on a meta-analysis of employer surveys, Australia, 1990–2006

	Type of instrument						Summary measures	
	Registered			Unregistered				
Year	Awards only (1)	Collective agreements (2)	Individual agreements (3)	Collective agreements (4)	Over-awards (5)	Individual common law contracts (6)	Underlying award coverage (1+2+3+5)	Coverage of unregistered arrangements (4+5+6)
1990	45	20	–	11	15	20	80	45
1995	40	30	–	3	15–20	10–15	85–90	30
2000	25	35	2	2	20	15	80	35
2006	20	40	3	3	15–20	15–20	80	35

Source: Full details of estimates summarised in this table are provided in Appendix A.
Note: Because these are indicative estimates only most per centages have been rounded to the nearest 5 per cent to show it conveys an indication of order of magnitude as opposed to precise estimate of actual coverage.

The key issues identified from the trends summarised in this table are as follows:

- over the last 15 years the proportion of workers covered by awards and registered agreements has been stable, as has the proportion of those covered by some kind of unregistered arrangement. This stability should not blind us to significant changes occurring within these domains.
- within the registered domain there has been a dramatic decrease in the percentage of employees relying solely on awards – from around 45 to around 20 per cent. Most of this change has been associated with more workers being covered by registered collective agreements. Registered individual agreements account for only a small proportion of the change, and until 2006 the overwhelming bulk of these registered agreements operated in conjunction with an award.

- data on the unregistered domain is less clear. The available data indicate that there has been a dramatic fall in the proportion of employees covered by unregistered collective agreements. These have probably been formalised into registered enterprise agreements or have disappeared as a result of economic restructuring. From the evidence available, the balance between over-award arrangements and individual common law contracts appears to have been relatively stable, with both arrangements covering between 15 and 20 per cent of employees.

To date, most of the policy debate has focussed on awards and registered agreements. This table highlights the importance of other elements of the system of wage determination, especially relating to unregistered arrangements. It is possible that many new agreements may simply represent the codification of long-standing unregistered agreements or over-award arrangements. In addition, it is important to appreciate the continuing reach of awards. While they may not be as directly relevant as they were once, they still remain a significant reference point for the determination of wages and working conditions. Moreover, it is reasonable to expect that, as awards diminish in influence, the regulatory gap is as likely to be filled by increased scope for managerial prerogative as it is to be filled by formally registered agreements.

5. Conclusion

Wage determination is a complex process involving competitive and institutional forces – the later of which are both formal and informal in nature. The impact of particular institutions, such as minimum wage arrangements, depends very much on the broader systems within which they are embedded. As the OECD and recent work in Europe have shown, the degree of inclusiveness of the industrial relations system is very important.

The data reported here reveal that the Australian system was not as 'centralised' and 'regulated' as is commonly believed. Equally it is not as decentralised and deregulated now as is commonly assumed. Awards are not just relevant to the 20 per cent or so totally dependent on them. They are integrally embedded in wage determination for many, many workers. Employee derived estimates put it at at least 40 per cent. Those derived from employers range up to 80 per cent depending on how the question asked.

This paper has only answered the first and most basic question about the significance of minimum wages for the broader wage-setting environment. To be precise it has helped quantify its reach as a reference point in the system. What impact that reference point has will be determined by how other factors – primarily the level of movement decided upon and the broader economic conditions prevailing at the time the decision is made (Briggs *et al.* 2006). This paper has revealed, however, that in any future work on this issue the role of awards should not be regarded as affecting only those 'totally dependent' on awards. To focus on this group to the relative neglect of those indirectly but intimately connected to it will result in poor analytical understandings and poorly informed and formulated policy prescription and decisions. Given the preoccupation with collective bargaining in the current IR reform debate it is time closer attention was devoted to not just 'rationalising' awards but, in addition, to thinking more carefully about the role they could and should perform in our IR system in the future. They are more than just a safety net for the 'losers' who cannot access the bargaining regime. They are rather an integral reference point with the potential to make Australia's system one of inclusion and not exclusion. Whether this potential is realised remains to be seen.

References

ART (Award Review Taskforce) (2006), *Use and Relevance of State and Federal Awards (final report), Appendix 1 of Award Relevance Study*, Department of Employment and Workplace Relations, Canberra August.

Bosch, G. and Weinkopf, C. (2008), *Low-Wage Work in Germany*, Russell Sage Foundation, New York.

Botwinick, H. (1993), *Persistent Inequalities: Wage Disparity under Capitalist Competition*, Princeton University Press, Princeton.

Briggs, C., Buchanan, J. and Watson, I. (2006), *Wages Policy in an Era of Deepening Wage Inequality*, Academy of Social Sciences in Australia Policy Paper No. 4, 1/2006, Canberra.

Caroli, E. and Gautie, J. (2008), *Low-Wage work in France*, Russell Sage Foundation, New York.

Considine, G. and Buchanan, J (2007), *Workplace Industrial Relations on the Eve of Work Choices: A report on a survey of employers in Queensland, NSW and Victoria*. Report prepared for the Queensland Department of Employment and Industrial Relations, NSW Office of Industrial Relations and Industrial Relations Victoria. Workplace Research Centre, Sydney. http://www.deir.qld.gov.au/pdf/ir/conference/workplace-industrial-relations-on-the-eve-of-work-choices-workplace-research-centre.pdf.

Hancock, K. and Richardson, S. (2004), 'Economic and social effects', in J. Isaac and S. Macintrye (eds) *The New Province for Law and Order, 100 Years of Australian Industrial Conciliation and Arbitration*, Cambridge University Press, Cambridge, pp. 139–206.

Isaac, J. and Macintrye, S. (eds) *The New Province for Law and Order: 100 years of Australian Industrial Conciliation and Arbitration*, Cambridge University Press, Cambridge.

Lloyd, C., Mason, G. and Mayhew, K. (EDS) (2008), *Low-Wage Work in the United Kingdom*, Russell Sage Foundation, New York.

OECD (2004) 'Wage setting institutions and outcomes', *OECD Employment Outlook, 2004*: 127–81.

Salverda, W., van Klaueren, M. and van der Meer, M. (EDS) (2008), *Low-Wage Work in the Netherlands*, Russell Sage Foundation, New York.

Schmitt, J., Bosch G., Gautie J., Mason, G., Mayhew, K., Wiemer, S. and Westergard-Nielsen, N. (2008), Chapter 1: Some Lessons for the United States from low wage work in Europe, pages 1–23 http://www.cepa.newschool.edu/events/papers/schmitt_RSF_LWE_Intro.pdf.

van Wanrooy, B., Jakubauskas, M., Buchanan, J., Wilson, S. and Scalmer, S. (2008), Working Lives – *Statistics and Stories*, Australia at Work website, http://www.australiaatwork.org.au/assets/Australia at Work W2 Working Lives.pdf.

Westergaard-Nielsen, N (ed.) (2008), *Low-Wage Work in Denmark*, Russell Sage Foundation, New York.

Appendix A: Summary data on labour market coverage of awards and agreements 1990, 1995, 2000 and 2005/6

There has been no consistent time series of statistics summarising trends in agreement and award coverage in Australia. The material summarised in Table B1 consolidates material collected from a variety of sources. These have been as follows:

- *ABS material collected as a by-product of its annual and sometimes biennial collection of detailed data on the distribution of hours and earners.* Data on award coverage was collected in 1990, 2000 and subsequent years. Earlier versions of this survey (i.e. in the 1980s) also collected data on over-award payments.
- *Data collected by the Federal Department of Workplace Relations, previously known as Industrial Relations.* This material was collected as part of the first two AWIRS surveys (Callus *et al.*, 1990 & Morehead *et al.*, 1997). The Department also commissioned occasional surveys to monitor workplace bargaining in 1995, and the incidence of Safety Net Adjustments in 1999/2000.
- *Data collected by State Governments as part of their State Workplace Industrial Relations Surveys* (SWIRS).

Each of these sources used different units of analysis and reporting.

- The ABS material collects data from a random sample of all employers paying pay roll tax, primarily from their pay roll clerks. It is collected to gather data on pay rates for particular occupations. Aggregated estimates of coverage of different modes of pay determination are collected as an adjunct to this primary purpose.
- The AWIRS surveys were collected from random sample of workplaces (i.e. not enterprises) generated by the ABS with five (and sometimes only twenty) or more employees. The data was gathered from the person with the most responsibility for human resources and industrial relations within the workplace.
- The other surveys collected samples of employers from registers like Dunn and Bradstreet, as well as Telstra's *Yellow Pages* directory. The size of the organisations varied between surveys. The WPB survey gathered data from workplaces with ten or more employees. The state WIRS gathered data from workplaces with five or more employees, and the respondent was similar to that for the AWIRS study (i.e. the person with the most responsibility for human resources and industrial relations within the workplace).

No matter what the unit of analysis or who responded, the data collected allowed estimates of employee coverage of different modes of wage determination to be generated. Surveys that were not strictly comparable were also examined. Prime among these was the award and agreement coverage data collected as part of the Business Longitudinal Survey conducted by the Bureau of Industry Economics/Industry Commission/Productivity Commission in the late 1990s. Details on where the findings of these surveys were published are provided in the reference list at the end of this attachment.

A factor that renders the construction of a time series particularly difficult is the fact that different surveys have used different categories when reporting their findings. The key problem here has been the different conventions followed in reporting on workers covered by over-awards and individual common law contracts. The ABS, the most widely quoted source of information on this topic, used to gather data on over-awards but no longer does so. Rather, it uses the catch all term 'individual arrangements'. This combines

the number of employees free of awards and registered agreements, along with those on over-awards – a highly heterogeneous combination of approaches to wage determination. In contrast, the surveys conducted by the Federal Industrial Relations and Workplace Relations Department and by State Government agencies have always tried to capture and report separately on information about over-awards. A consolidation of all the relevant data is provided in Appendix Table B1 (page 60). This has been laid out so that the reader can easily compare data from a cross section perspective, as well as over time. Additional material on the spread of registered agreements over a more irregular period is provided in Table B2 (page 61).

Table B1: Incidence of different industrial instruments, estimates from different sources, Australia 1990, 1995, 2000, 2006

	Type of instrument						Other				Summary Measures			
	Award only (1)		Enterprise agreements (2)		Over-award (3)		Individual agreements (unregistered) (4)		Registered individual agreements (5)		Underlying award coverage (1 +2 +3)*		'Individualised' arrangements (3+4+5)	
Year	ABS	OTHER	ABS	OTHER	ABS	OTHER	ABS	OTHER	ABS	OTHER	ABS	OTHER	ABS	OTHER
1990			–											
ABS	66.6			–	13.4		20.0		NA		80		34.4	
AWIRS		45		23		31		1		NA		99		32
1995														
ABS	–				–		–			NA			–	
AWIRS		33		44								100		
WBS				35		13–23		9				81		32(37?)
														22
2000														
ABS	23.2		36.7		–		30.6		1.8		59.9		32.4	
DEWR (SNA)		22		42		22		14		–		86		36
2006														
ABS	19.0		41.1		–		31.7		3.1		54.1		34.8	
SWIRS		15		29		24		30		3.4		64		57.4

Sources: ABS, Incidence of Awards Survey; ABS, [May survey for over-award data] Employee Earnings and Hours; AWIRS: Callus *et al.*, 1990 and Morehead *et al.*, 1997; WBS (Workplace Bargaining Survey) as reported in DIR, Report on Enterprise Bargaining, 1995; DEWR (Department of Employment and Workplace Relations) Joint (Coalition) Governments' Submission, Safety Net Review – Wages, 1999-2000, Commonwealth Department of Employment, Workplace Relations and Small Business, Canberra, 2000 p. 96.

1 Excludes owner managers of incorporated entities.

Table B2: The spread of enterprise agreements: 1989, 1992, 1994, 1995

Year	% of employees covered
1989	23(a)
1992	**28(b)**
1994	35(c)
1995	35(d)
2000	35-40(e)

Notes:

a) This estimate is derived from unpublished information available in the Australian Workplace Industrial Relations Survey (AWIRS). That survey collected data on the situation prevalent in Australian workplaces in late 1989. The statistic refers to the proportion of employees covered by what were then known as 'Certified or Registered Agreements'. Data on unregistered agreements have been excluded because at that time they generally did not contain wage increases. The population for this estimate consists of all employees working in locations with 20 or more workers, in all industries other than agriculture and defence. The sample size was 2004 workplaces. For more details on AWIRS see Callus *et al.*, 1991.

b) This statistic has been taken from Short *et al.*, 1993, Table 6. It refers to the proportion of employees covered by local written agreements, both ratified and unratified, in late 1992. The population for this survey was the same as for AWIRS. The sample was 700 workplaces.

c) This statistic is taken from data collected from the Department of Industrial Relations' (DIR) 1994 workplace bargaining survey. It refers to the proportion of employees covered by registered and written unregistered agreements. The population consisted of employees working in workplaces with 10 or more employees. The sample size was 1060 workplaces. More details about this source can be obtained from DIR. See also *Agreements and Data-base Monitor (ADAM) Report* No. 7, December 1995: 10 and ADAM Report No. 9, July 1996: 20.

d) Details similar to those for note (c) above. See especially DIR's report on enterprise bargaining for 1995. A summary of all relevant material is provided in Buchanan *et al.*, 1997.

e) Estimates derived from splicing information from ABS, *Employee Earnings and Hours*, Australia, May 2000 Cat No 6305.0 and *Joint (Coalition) Governments' Submission, Safety Net Review – Wages, 1999-2000*, Commonwealth Department of Employment, Workplace Relations and Small Business, Canberra, 2000 p. 96.

The material summarised in Table B1 has been used to generate indicative estimates of agreement and award coverage based on a blend of information from the best available sources. The reasoning behind the blending for each year can be summarised as follows:

1990: Start with the ABS estimate of award coverage of 80 per cent and award free coverage at 20 per cent. From the estimate of award coverage, subtract the number of employees getting over-awards. According to unpublished ABS data released for a Human Rights and Equal Opportunity Study into over-awards, these arrangements covered 13.4 per cent of employees in 1990. According to AWIRS 1990 data reported in Morehead *et al*, in workplaces with five or more employees 31 per cent of these employees were reported by managers as being on over-awards. Based on this, we propose raising the estimates of those on over-awards to 15 per cent. It is then necessary to separate out the number of employees in 1990 covered by collective agreements. While the ABS noted that in very few cases these collective agreements operated independently of awards, it is worth separating these figures in order to generate an estimate of those totally reliant on awards. In the AWIRS 20+ sample, those on certified or registered agreements numbered 23 per cent. Given that such agreements rarely existed in smaller workplaces, and this is probably an over-estimate for the entire population of employees, we rounded this estimate down to 20 per cent. Subtracting over-award (15 per cent) and registered/certified agreement (20 per cent) employees results in a total of 45 per cent of employees most likely to be totally dependent on awards. From AWIRS 90 data it appears that workplaces on unregistered collective agreements also had either over-awards or registered agreements as well. These have, therefore, not been separately deducted from the aggregate award coverage number.

1995: There are no ABS estimates to work with in this year. We started our calculation with the AWIRS 95 sample, particularly in relation to the coverage of enterprise agreements. The AWIRS 20+ estimates put employee coverage at 44 per cent, but the Workplace Bargaining Survey of the same year with a 10+ population put the estimate at 35 per cent. For the population of employees as whole we set designated certified agreement coverage at 30 per cent. The AWIRS 20+ sample estimated award coverage at 33 per cent. Given the size effect we increased this proportion to 40 per cent because the

smaller the workplace the greater the likelihood of reliance primarily on awards. This left a residual of 30 per cent encompassing over-awards and common law contracts. AWIRS reported 13 per cent of employees covered by over-awards in 20+ workplaces and 23 per cent coverage in 5+ workplaces. In 20+ workplaces individual contracts were reported as covering 9 per cent of employees. We then estimated over-awards at 15–20 per cent and individual contracts at 10–15 per cent.

2000: Start with the ABS estimates. Award only employees equalled 23.2 per cent, those on registered enterprise agreements at 36.7 per cent and on AWAs at 1.8 per cent. We subtracted OMIE results in 66.7 per cent of covered formal arrangements. This left 33.3 per cent of employees on awards and common law arrangements. We then took the DEWR estimates for determining the ratio of over-awards to common law contracts. That ratio was 22:14. Applying this to ABS residuals gave an estimate of over-awards at 21 per cent and common law contracts at 13 per cent. These estimates should be checked against Iain Campbell's work in Labour and Industry which applies a different mode of reasoning.

2005/06: Start with the ABS data for estimates of award only, registered enterprise agreements and registered individual agreements. Then take ESWIRS to apportion ABS 'individual arrangements' between over-awards and individual common law contracts. This means 60 per cent on awards and certified agreements. From ESWIRS get the ratio of 24:30, assuming OMIE are in other individual arrangements. We simplified and made the ratio 1:1 and therefore split the ABS residual evenly at between 15 and 20 per cent each for over-awards and individual common law contracts.

Forum discussion

General discussion following the presentation focussed on:

- the lack of clarity in the available data concerning the influence of minimum wages; and
- the role of norms in shaping the effects of minimum wages.

Findings from existing research concerning the relevance of awards were considered to be uncertain and at times inconsistent, with many employers and employees not clear about the terms of their employment arrangements.

Some discussants suggested that there was a need for further research to bridge the gap in knowledge between the TNS paper presented at the Forum and the Buchanan research. A case study approach, such as that taken in the UK in relation to aged care workers, might be an effective way of examining the influence of awards.

Some participants emphasised the importance of norms for actual wages and conditions. For instance, the TNS research suggested that employers who pay above award rates are resistant to absorbing minimum wage increases into existing actual wages.

New Zealand was cited as an example of a country that deregulated wages and working conditions. However, in practice, norms continued to provide reference points for employers and employees, and an element of stability in the labour market.

It was suggested that some employers use the public information sources for minimum wages not necessarily to ensure compliance but to find out what the norm is for a particular industry or occupation. However, some participants observed that regulations are still very influential, with employers responding quickly to changes in regulatory minima.

Attachment 3

John Buchanan, Brigid van Wanrooy, Sarah Oxenbridge and Michelle Jakubauskas, 'Industrial Relations and Labour Market Reform: Time to Build on Proven Legacies', *Economic Analysis and Policy* (Journal of the Economic Society of Australia (Queensland), Vol 38 No 1 March 2008: 9 - 17

Industrial Relations and Labour Market Reform: Time to build on Proven Legacies

John Buchanan, Brigid van Wanrooy, Sarah Oxenbridge and Michelle Jakubauskas
University of Sydney, Australia
(email: j.buchanan@econ.usyd.edu.au, b.vanwanrooy@econ.usyd.edu.au)

I. INTRODUCTION

Australia is one of the few countries within the OECD where labour law reform is a matter of intense political controversy. Where else in the Western World has industrial relations been one of the central issues contributing to a government losing office? This paper considers what the new Federal Government's priorities should be in moving 'forward with fairness'.

Our argument is simple. Effective, lasting change in labour law requires a break with the intellectual rigidities that define the current reform debate. It is especially important to move beyond binary modes of reasoning such as: 'enterprise bargaining good, multi-employer arrangements bad'. Researchers at places like the World Bank and IMF have moved beyond such 1980s shibboleths. It is time Australian policy makers did the same. The problems policy needs to address are not the classic industrial relations concerns of strikes and union militancy. Rather, coordination failures in the labour market are the key challenges. Current market and state modes of regulating wages, hours, skill formation and reproduction of the workforce are producing sub-optimal outcomes. A growing literature has established that *standards for flexibility* is a more effective design principle for managing challenges such these. How this principle can be applied is outlined by reflecting on the findings of recent Australian empirical research. The ultimate conclusion is that the best way to engage with emerging realities is to renovate Australia's pre-existing legacy of conciliation and arbitration working as it has always done in conjunction with appropriate bargaining arrangements. The defining feature of this approach is power sharing between employers and collective representative bodies of workforce (i.e. unions) mediated by independent statutory tribunals. The current policy and political conjuncture gives the new Government a chance to build on long standing institutional arrangements that have the potential to provide the optimal setting for promoting productivity and fairness for decades to come.

II. THE PROBLEM OF INTELLECTUAL RIGIDITES

When the ALP released its original *Forward with Fairness* policy in April 2007 it met with overwhelming employer hostility (Rudd and Gillard 2007a). This hostility was supported by nearly all established press commentators. This reaction represented a remarkable display of

collective ignorance. The original policy was extremely mild in terms of mainstream OECD labour law. Indeed, its proposed limitations on pattern bargaining put it at the more extreme (i.e. pro-employer) end of this policy community. What drew most attention was the alleged 'assault' on the assumed dynamic efficiencies arising from the impending erosion of collective bargaining and enforceable labour market standards, especially by means of statutory individual contracts or Australian Workplace Agreements (AWAs). The mining industry in particular reported this change could scare off billions of dollars of future investment. Clearly intimidated by this response, the ALP significantly diluted its policy by the time it released its *Forward with Fairness Policy Implementation Plan* last August (Rudd and Gillard 2007b). While this continued the ban on AWAs, it retained most of the Coalition Government's constraints on union operations. It also contemplated significant sidestepping of the award system. This is to be achieved by employees earning more than $100,000 or more becoming award free and allowing those earning less to replace award conditions with individual written, unregistered arrangements. The transition arrangements also mean AWAs or their equivalents will last for up to five years after Labor ascension to power.

This reaction to the ALP's original policy stance and the party's subsequent accommodation to it is indicative of how myopic the debate on Australian labour market reform has become. No other country in the OECD has arrangements where statutory individual contracts can undermine collective agreements and publicly defined labour standards. The mantra of employers and the press commentators supporting them is indicative of the 'enterprise bargaining' mindset – an intellectual straight-jacket that has dominated industrial relations (IR) policy in this country since the late 1980s (Briggs et al 9-12). What is particularly remarkable about this state of affairs is that overseas, former supporters of 'deregulation' have become far less strident in their adherence to this creed. In 2006, for example, leading analysts from the World Bank noted in a key IMF publication that free market reform prescriptions had serious problems. In particular, they noted that '... expectations about the impact of reforms on growth were unrealistic ...' and that 'governments should abandon formulaic policymaking in which 'any reform goes' ...' (Zagha et al. 2006). They concluded:

> our knowledge of economic growth is extremely incomplete. This calls for more humility in the manner in which economic policy advice is given, more recognition that an economic system may not always respond as predicted, and more economic rigor in the formulation of economic policy advice (p. 10)

Institutions like the World Bank and IMF now recognise that policies of 'deregulation' are not the key to economic development. More consideration needs to be given to nuances of economic practice. Given this insight, the key issue becomes: What are the key problems Australian labour law needs to address today and in the future?

III. PROBLEMS IN THE LABOUR MARKET: INDUSTRIAL TURMOIL OR COORDINATION FAILURES?

A close reading of the *Work Choices* legislation (and to a lesser extent *Forward with FairnessMk I and II)* reveals that much IR policy is pre-occupied with classical industrial concerns such as disputes and union militancy. The reality, however, is that such matters are now virtually

non-issues. Data collected from surveys of workplace industrial relations in the first half of the 1990s and in 2006 clearly shows this (Considine and Buchanan 2007). In 1990 12 percent of workplace had had industrial action in the previous 12 months. In 2006 only 3 percent reported such action (Buchanan and Considine 2007, p. 19). In 1990 about 57 percent managers reported that workplaces were completely union free, with only 19 percent having active delegates. By 2006 82 percent of workplaces were union free and only 8 percent had active delegates (Considine and Buchanan 2007, p. 19).

Over the last decade and a half our Centre has undertaken research for nearly all players in the IR system. We have summarised the findings in two monographs (ACIRRT 1999, and Watson et al. 2003). The issues that constantly emerge in our research as matter affecting both efficiency and fairness are deepening wage inequality, increasingly fragmented hours of work and the proliferation of non-standard forms of employment. These matters in turn are affecting skill formation and carers' capacity to provide labour to the economy. Pervading all of these developments has been a step change in work intensification since the 1980s, occurring side by side with changing demographics and declining fertility rates. These problems, especially those of skill formation and declining labour supply are not isolated to particular enterprises. They reflect deep-seated problems in our systems of social reproduction – of both skilled workers and labour power in general. They are classic coordination failures which current market and state arrangements are making worse not better (Watson et al. 2003, chapters 9 and 10).

IV. LESSONS FROM RECENT POLICY RESEARCH

What does our most recent research reveal about how policy helps to solve or deepen these problems? One of the few positive benefits the *Work Choices* was that it spawned a new 'golden age' in IR research. This research generated significant controversy over the course of 2007 (Buchanan 2008). This should not distract us from the fact that many important insights were generated by it. A full account of these cannot be provided here, but the key findings can be briefly summarised.

1. Employer Preferences, not Problems, are Driving Policy

The time series data on workplace industrial relations revealed declining levels of strikes and union activism at establishment level. It revealed also, however, a significant hardening of employer attitudes towards unions. For example, when asked would they prefer to deal direct with employees or with unions 58 of managers in 1995 indicated they would strongly prefer to deal with employees. By 2006 this proportion had increased to 83 percent (Considine and Buchanan 2007, p. 20).

2. The Reality of Enterprise Bargaining has not been increased Customisation of Employment Arrangements, but rather a Redefining of Labour Market Standards

The most empirically novel studies undertaken last year involved detailed, comprehensive studies of agreements registered under *Work Choices* (Evesson et al 2007, Gahan et al 2007). Traditionally agreement analysis has been based on samples and rarely makes reference back to the relevant awards. Both these studies undertook full enumerations of agreements

(one covered all agreements in retail and hospitality in 2006, the other all employer green field agreements). The major conclusion of these studies was the instruments could not be regarded as 'agreements' in any meaningful sense of the term. Rather they were means that enabled employers to move their workers off award standards and onto the lower statutory entitlements. What was particularly stark was the level of 'template' agreements. Amongst all retail and hospitality non-union collective agreement registered in the first nine months of *Work Choices*, just under one in four (24%) were identical and had been 'brokered' by the one consultant – Enterprise Initiatives. A Evesson et al conclude:

> In understanding the decline of enforceable rights at work under Work Choices in sectors where workers have limited bargaining power the key dynamic at work appears to involve policy induced, consultant facilitated employer determination of collective contracts (page 47 emphasis in original).

3. The Inequality of Bargaining Power is neither Uniform nor Non-Existent[1]

The *Australia at work* study examined the employment contract, wages and working conditions of 8,143 workers in March (van Wanrooy 2007). One the key findings noted in the first, benchmark report was that there needs to be a more nuanced understanding of unequal bargaining power in the labour market. The study occurred at a time of strong labour demand. However, the recent surges in demand have not been uniform. To understand the impact of changes in economic and industrial relations policies the study confirmed the need to pay close attention to the different realities of power for different groups of workers. While strong economic growth and skill shortages have strengthened many workers' bargaining power, for many others a lack of power in negotiation remains a grim reality. An increase in labour demand has not overcome deep-seated inequalities of bargaining power that are still a defining feature of the Australian labour market. Researchers and policy makers who focus primarily on the aggregates miss this simple, but profound reality. But equally an undifferentiated view of the inequality of bargaining power needs to be reconsidered. The issue that needs to be grasped is not just that there is inequality of bargaining power between employers and employees – there are also significant differences in the form this inequality takes among different groups of workers (van Wanrooy 2007, pp. 92-93).

4. Individual and Collective Arrangements are Complements, not Substitutes

The *Australia at work* study also found that Australians' working arrangements are governed by a subtle blend of collective and individual arrangements. Too often in public debate it is asserted that workers' individualistic outlook is incompatible with allegedly outdated collectivist arrangements. *WorkChoices* went further than any other set of labour laws in the western world to allow individual agreements to override collectively determined and publicly enforceable labour standards. This conflict between individualism and collectivism was, however, an artefact of the legislation – not modern life. The key finding by the researchers about the nature of

[1] This and the following four sections reproduce parts of the conclusion to the Australia at work study of which I was one of the joint authors, especially pages 92 – 95.

different legal instruments governing life at work was clear. In understanding pay determination we need to distinguish between the formal instruments codifying enforceable rights and the processes involved in setting and improving pay and conditions. The formal instruments are defined on an individual or collective basis, but the formalities should not be assumed to reflect the actual process involved in setting wages and conditions. Pay and conditions for employees on AWAs were often determined on a group or collective basis involving commonality across the workplace. Equally, many of those on collective agreements and awards have individual factors shape the final level of their pay and conditions. In short, elements of individual and collectively based arrangements co-exist and work as complements, not rivals, in shaping structures, practices and outcomes in working life (van Wanrooy 2007, p. 94).

5. Employees are Generally Satisfied with Working Life, but Underlying Frustration Remains

It has long been recognised in the employee attitudes literature that most workers are satisfied with their jobs most of the time. The *Australia at work* findings are consistent with this literature. Satisfaction was not, however, universally shared on all issues. For example, opinions differed between managerial and non-managerial workers, new and longer tenured employees, unionists and non-unionists. More importantly, a majority of employees reported that more and more is expected of them for the same amount of pay. More than any other issue, work intensity appears to be a matter of significant concern to workers (van Wanrooy 2007, p. 94).

6. Unions Weakened but Prospects for Growth Remain

It is commonly asserted that unions are relics of a by-gone era: declining membership levels are assumed to be terminal. Fewer workers, we are regularly told, are interested in joining unions. There is no denying that unionisation of the workforce is at historically low levels. This is especially the case among young employees and those working in the private sector. Our findings do not, however, portray a movement without strengths and opportunities for growth. At various points in our analysis we found that union members are, almost universally, better off than their non-union counterparts. This was especially the case with hourly wage rates. Potential benefits such as these are likely to be the reason for our finding that there are major opportunities for union growth. Over 800,000 employees are non-members who are interested in joining. If they were all signed up membership levels would increase by 50 percent and the movement would represent just under one-third of employees (van Wanrooy 2007, p. 95).

V. IMPLICATIONS FOR LABOUR LAW: BUILD ON POSITIVE INSTITUTIONAL LEGACIES

Our analysis of labour market restructuring since the late 1970s has highlighted the need for fresh thinking about reform options. In particular we believe it is important to move beyond both what we call the *Harvester Man* (Australia's version of 'breadwinning') model of employment and the neoliberal assertion that 'there is no alternative' (TINA) to a 'free market' future. In formulating new directions the limitations of both the traditional 'uniform standards' and 'free

market flexibility' approaches to labour market regulation need to be recognised. In moving beyond such binary thinking we draw on the debate about coordinated flexibility (Briggs et al 2006). This provides a useful way for thinking through new priorities for labour market reform. When it comes to labour law, this means being guided by an interest in *standards for flexibility* (Buchanan et al. 2006).

This provides a sound foundation for rethinking all the key features making a system of labour law. For example, when thinking about the key parties involved in employment we need more open categories of 'employer' and 'worker'. Much recent IR policy is tacitly underpinned by an outdated notion of employers being confined to legal entities called *enterprises*. A growing literature, however, has documented the greater significance of networks of production, for example, supply chains (eg Harrison 1994, OECD 1999, Smith-Doerr 2003, Smith-Doerr and Powell 2004). Structuring policy as if the enterprise is a privileged organisational unit misses this key point. Many 'enterprises' have limited autonomy. It is just plain silly to stipulate that they are the appropriate unit around which bargaining should occur. If bargaining is to engage with reality, those with power should be accountable to all those they control – and that may well require coordination across a number of production units in a production network (Buchanan et al. 2006, p. 189).

Equally, as noted earlier workers are neither traditional breadwinners as assumed in the 'Harverster Man' model, nor are the 'free agent' of neoliberal discourse. It is, rather, more appropriate to define them as citizens who navigate common life course transitions that are both rarely unique but equally rarely uniform. The reality of such transitional labour markets has been documented exhaustively by European researchers such as Gunter Schmid (e.g. 2002a and 2002b). It is important Australian policy recognises these realities if policy is to engage with the real issues affecting efficiency and fairness at work (Buchanan et al 2006, p. 189-191).

The *standards for flexibility* approach also allows for a more effective way to manage the complexities associated with wages, hours of work, skill formation and work-life balance. At the core of such an approach is having different aspects of particular issues managed at the level best suited for achieving desirable outcomes. For example, on the question of working time there are often benefits in having:

- national standards about the length of working life, year and working week
- sector or occupational standards concerning penalities for working anti-social hours
- enterprise level standards on hours of operation
- workplace level determination of actual staff rosters and/or allocation of staff to ensure enough personnel are at work to produce the relevant good or service.

Further details on how the notion of standards for flexibility can work as a guiding principle in IR law, policy and practice are provided in Buchanan et al. 2006 and Briggs et al. 2006.

VI. WHAT DOES THIS MEAN FOR INSTITUTIONAL DESIGN?

To date much of the debate on 'workplace reform' has focussed on the assumed need for more 'flexibility' to be promoted by our regime of labour law. This has been behind calls to modify unfair dismissal rights and 'modernise' awards. It is time Australian policy makers recognised a more complex reality. It simply was not the case that past arrangements were outdated, collective and rigid. Equally, the emerging ones are not necessarily new, more individually based and

flexible. Rather, our industrial relations system was built around awards, collective agreements, over-awards and common law contracts. This system evolved in response to changing realities over the last 100 years. Individual arrangements involving common law contracts and over-award arrangements have evolved as an integral part of that system and have not been stifled or over-shadowed by it. They have, however, had to respect the standards contained within them. As such the core features of Australia's distinctive industrial relations system have a natural affinity with what overseas researchers of 'coordinated flexibility' have been arguing for.

When thinking about our approach to labour reform it essential this dynamism and the relevance of our system of conciliation and arbitration is not forgotten. As Ron McCallum (2008) has noted, this system provided a very effective counter weight to the power of private capital for the last 100 years and Australian workers and society have benefited greatly as a result. And Keith Hancock (2008) and John Niland (2008) have noted, the distinctive form of having specialist tribunals make the ultimate determination on labour standards has ensured operational issues concerning enforceable rights at work have been kept of the highly partisan political domain. And Margaret Gardner has noted these same arrangements have kept the judiciary. In short, Australia has a unique institutional framework that keeps labour standards out of partisan politics and the courts. Gardener concludes by noting

> 'No system where interests collide can proceed without a means to break deadlocks in negotiations or redress major asymmetr[ies] of market power. Here an independent tribunal has form and reason and there is a need to ensure the ability of workers to organise collectively and have effective representation is protected' (Gardner 2008: last page).

We need s system that can simultaneous respect diversity but ensure the benefits of coordination for both fairness (i.e. consistency) and efficiency (i.e. economies of scale) are captured. Sometimes this is best achieved by having matters settled at enterprise level, sometimes on a multi-employer basis. It is vital we maintain and nurture such adaptive capacity into the future. This is not a call for restoration of what was. It is, rather, a call to take the best of previous arrangements and ensure they modernised to allow our labour market to both anticipate and respond to changing circumstances.

VII. CONCLUSION

Thomas Hobbes, the famous seventeenth century liberal theorist once observed: the greatest power a sovereign could have was to define the term of debate. The debate on Australian labour law reform has been too confined for too long. It is important we recognise that the rigidities we have to fear most are those of the mind. When we do so we will recognise that in the labour market we have much positive history to reflect and build upon. Far from being a dead hand, our institutional arrangements involving awards working in conjunction with collective agreements offer major strengths and dynamism necessary for flourishing in the future.

REFERENCES

ACIRRT (1999). *Australia at Work: Just Managing?* Prentice Hall, Sydney.

Briggs, C. J. Buchanan and I. Watson (2006). Wages Policy in an Era of Deepening Wage Inequality, Academy of the Social Sciences in Australia Policy, No. 4.

Buchanan, J. (forthcoming). Values, Research and Industrial Relations Policy: Recent Controversies and Implications for the Future, Dialogue Journal of the Academy of Social Science of Australia, 27.
Buchanan, J. B., C. Briggs and C. Wright (2002). A Critique of the Productivity Commission's Review of Automotive Assistance, ACIRRT research report, Sydney.
Buchanan, J., I. Watson, C. Briggs, and I. Campbell (2006). Beyond Voodoo Economics and Backlash Social Policy: Where Next for Working Life Research and Policy, *Australian Bulletin of Labour*. 32: 183-2001.
Considine, G. and J. Buchanan (2007). Workplace Industrial Relations on the Eve of WorkChoices: A Report on a Survey of Employers in Queensland, NSW and Victoria. Report prepared for the Queensland Department of Employment and Industrial Relations, NSW Office of Industrial Relations and Industrial Relations Victoria. Workplace Research Centre, Sydney.
Elton, J., J. Bailey, M. Baird, S. Charlesworth, R. Cooper, B. Ellem, T. Jefferson, F. Macdonald, D. Oliver, B. Pocock, A. Preston, and G. Whitehouse (2007) Women and WorkChoices: Impacts on the Low Pay Sector: Summary Report. Centre for Work and Life, Adelaide.
Evesson, J., J. Buchanan, L. Bamberry, B. Frino, and D. Oliver (2007.) Lowering the standards: From Awards to WorkChoices in Retail and Hospitality Collective Agreements: Synthesis Report. Report prepared for the Queensland, New South Wales, and Victorian Governments. Workplace Research Centre, Sydney.
Gahan, P. (2007). Employer Greenfields Agreements under WorkChoices: Interim Report. Office of the Workplace Rights Advocate, Melbourne.
Gardner, M. (forthcoming). Beyond Work Choices: Negotiating a Moment. *Economics and Labour Relations Review*, June 2008.
Hancock, K. (forthcoming), The Future of Industrial Relations in Australia, *Economics and Labour Relations Review*, June 2008.
Harrison, B (1994). *Lean and Mean. The Changing Landscape of Corporate Power in the Age of Flexibility*, New York: Basic Books.
McCallum, R. (forthcoming). Australian Labour Law and the Rudd Vision: Some Observations, *Economics and Labour Relations Review*. June 2008.
Morehead, A., M. Steele. M. Alexander, K. Stephen, and L. Duffin (1997). *Change at Work: The 1995 Australian Workplace Industrial Relations Survey*. Melbourne: Longman .
Niland, J. (forthcoming). The NSW Green Paper Twenty Years On, *Economics and Labour Relations Review*, June 2008.
OECD (1999) *Boosting Innovation: The Cluster Approach*. Paris: OECD – Organisation for Economic Co-operation and Development.
Rudd, K. and J. Gillard (2007a). Forward with Fairness. Labor's plan for fairer and more productive Australian workplaces, Canberra, April.
Rudd, K. and J. Gillard (2007b). Forward with Fairness, Policy Implementation Plan, Canberra, August.
Smith-Doerr, L. (2003). Network Analysis in: J Beckert and M. Zafirovski (eds.), *International Encyclopedia of Economic Sociology*. London: Routledge.
Smith-Doerr, L. and W. Powell (2004), Networks and Economic Life in: N. Smelser and R. Swedberg (eds.), *The Handbook of Economic Sociology*. New York: Russell Sage Foundation and Princeton: Princeton University Press.
Watson, I., J. Buchanan, I. Campbell, and C. Briggs (2003). *Fragmented Futures – New Challenges in Australian Working Life*. Sydney: The Federation Press.
Wooden, M. (2002). The changing labour market and its impact on work and employment relations in: R. Callus and R. D. Lansbury (eds.), *Working Futures: The Changing Nature of Work and Employment Relations in Australia*. Sydney: The Federation Press.
Zagha, R., G. Nankani, and I. Gill (2006). Rethinking Growth, *Finance and Development*. 43: 7-11.

The Case for Minimal Regulation of the Labour Market

Des Moore
Institute for Private Enterprise
6/112 Millswyn Street, South Yarra 3141 VIC, Australia
(email: ipe@ozemail.com.au)

I. INTRODUCTION

At the time of writing the newly elected Labor government is about to commence the implementation of a policy establishing what will likely be the most extensive legislative regulation of relations between employers and employees ever applied by the federal government. My emphasis here is of course on *legislated* regulation: prior to the rather tentative moves towards legislated *deregulation* from the late-1980s[1], Australian labour markets were subjected to extensive federal regulation through the judicial and quasi-judicial systems in addition to the post-federation legislative regulation. In effect Labor is now putting much of the judicial-type regulation, plus some more, into black letter law and is reversing the moves started under its predecessor towards a less regulated labour market. Thus, although Labor claims the basis of its current approach is for enterprise agreements to be the basis of employer/employee relations, in reality the conclusion of such agreements will be subject to extensive legislated regulation as to wages and conditions, to judicial and administrative interpretation of such regulation and to an increased role for unions in bargaining.

Based on its two *Forward With Fairness* policy statements, one in April 2007 and the other in August 2007, Labor's legislation is to be implemented over a period and will not come into full effect until January 2010. The initial step will be to stop the negotiation of new statutory individual contracts directly between employers and employees[2] and require all individual employment contracts under common law[3] and enterprise agreements to conform to ten minimum employment standards. At some stage legislation will also provide for a possible

1 The 1995 Australian Workplace Industrial Relations Survey by the Department of Workplace Relations and Small Business (published in 1997) concluded that, by the time the Workplace Relations Act 1996 came into effect in December 1996, around 65% of employees under federal jurisdiction and about 35% under state jurisdiction were being paid under enterprise agreements and that individual contracts had also become 'an established part of the wages determination system', involving about 10% of employees. However, the reductions in regulation reflected in these agreements appear to have been relatively small up to that time.

2 Except for the about 1 per cent of employees earning over $100,000 a year. An existing Australian Workplace Agreement (AWA) will be able to continue up to 31 December 2012 and, if an expiry occurred prior to 1. January 2010, a new form of temporary individual contract would be permitted until then.

3 Except for employees 'historically award free, such as managerial employees'.

Attachment 4

John Buchanan, ‘Labour market efficiency and fairness: Agreements and the independent resolution of difference’, in Joellen Riley and Peter Sheldon (eds), *Remaking Australian Industrial Relations*, CCH Sydney, 2008 pp:175 - 188

Disclaimer

No person should rely on the contents of this publication without first obtaining advice from a qualified professional person. This publication is sold on the terms and understanding that (1) the authors, consultants and editors are not responsible for the results of any actions taken on the basis of information in this publication, nor for any error in or omission from this publication; and (2) the publisher is not engaged in rendering legal, accounting, professional or other advice or services. The publisher, and the authors, consultants and editors, expressly disclaim all and any liability and responsibility to any person, whether a purchaser or reader of this publication or not, in respect of anything, and of the consequences of anything, done or omitted to be done by any such person in reliance, whether wholly or partially, upon the whole or any part of the contents of this publication. Without limiting the generality of the above, no author, consultant or editor shall have any responsibility for any act or omission of any other author, consultant or editor.

CCH
a Wolters Kluwer business

Remaking Australian Industrial Relations

Joellen Riley and
Peter Sheldon

CCH AUSTRALIA LIMITED
GPO Box 4072, Sydney, NSW 2001
Head Office North Ryde
Phone: (02) 9857 1300 Fax: (02) 9857 1600
Customer Support
Phone: 1 300 300 224 Fax: 1 300 306 224
www.cch.com.au
Book Code: 34269A

ABOUT CCH AUSTRALIA LIMITED

CCH Australia is a leading provider of accurate, authoritative and timely information services for professionals. Our position as the "professional's first choice" is built on the delivery of expert information that is relevant, comprehensive and easy to use.

We are a member of the Wolters Kluwer group, a leading global information services provider with a presence in more than 25 countries in Europe, North America and Asia-Pacific.

CCH — *The Professional's First Choice.*

Enquiries are welcome on **1300 300 224.**

National Library of Australia Cataloguing-in-Publication Data

Title:	Remaking Australian Industrial Relations.
Edition:	1st ed.
ISBN:	9781921485190 (pbk.)
Notes:	Includes index.
Subjects:	Workplace Relations Amendment (Work Choices) Act 2005.
	Industrial relations — Australia.
	Industrial laws and legislation — Australia.
	Labour contract — Australia.
	Labour laws and legislation — Australia.
Other Authors/Contributors:	CCH Australia Limited.
Dewey Number:	344.9401

Printed in Australia by McPherson's Printing Group

FOREWORD

Russell Lansbury, Professor of Work and Organisational Studies, Faculty of Economics and Business, University of Sydney and President, International Industrial Relations Association

This is an important book which draws together the views of leading scholars and practitioners on the significant changes which have occurred in Australian industrial relations in recent years. While the election of the Rudd Labor government in November 2007 may result in further reshaping the system of industrial relations, there has been a continuing process of change over the past two decades. The most radical attempt to transform the system was undertaken by the Howard Liberal-National Coalition government with its *Workplace Relations Amendment (Work Choices) Act 2005*, but the foundations for change were laid by previous governments from both sides of the political divide. The book begins with interesting contributions by scholars who conducted influential reviews of industrial relations, at both the federal and state levels, from the mid-1980s to the present and their reflections on how their recommendations influenced changes in the system.

Arguably the most significant change which the Howard government achieved with its Work Choices legislation was to shift the constitutional basis of the federal government's powers over industrial relations from the conciliation and arbitration powers in s 51 (xxxv) of the Constitution to the much wider "corporations power". This was upheld by the High Court in 2006 when it found that the corporations power could be used to regulate the industrial conditions of people working for a corporation. In Part 2 of the book, several leading legal experts debate whether the High Court's ruling is likely to achieve a truly national system of industrial relations or if there will be further complications, particularly relating to employees of state governments who fall outside the federal jurisdiction.

While legal and economic concerns tend to dominate the debate over industrial relations, it is often unclear how individual workers and citizens view issues in the workplace and what is important to them. Insights into "what workers want" are provided in Part 3 of the book in which community and workers' attitudes are explored by means of surveys and focus groups. It is revealed that Australians have a strong level of attachment to the award system, despite successive governments seeking to reduce the significance of awards. Work Choices was widely regarded as threatening basic rights by stripping back awards, dismantling unfair dismissal laws and undermining the powers of the industrial relations tribunals. Contributors to the book also demonstrate that changes in the composition of the workforce, particularly as more women return to work after having families, have resulted in issues such as paid maternity leave and wage equity assuming greater importance in the industrial relations arena.

References:

Astor, H and Chinkin, C (2002) *Dispute Resolution in Australia*, 2nd edn, LexisNexis Butterworths, Sydney.

Charlesworth, S and Campbell, I (2008) "Right to Request Regulation: Two New Australian Models", *Australian Journal of Labour Law*, vol 21(2), pp 116–36.

Deery, S, Plowman J, Walsh J and Brown M (2001) *Industrial Relations: A Contemporary Analysis*, 2nd edn, Irwin/McGraw-Hill, Sydney.

Gibbons, M (2007) *Better Dispute Resolution: A Review of Employment Dispute Resolution in Great Britain*, Department of Trade and Industry.

Hepple, B and Morris, G (2002) "The Employment Act 2002 and the Crisis of Individual Employment Rights", *Industrial Law Journal*, vol 31, pp 245–69.

Mitchell, R and Fetter, J (2003) "Human Resources Management and Individualisation in Australian Labour Law", *Journal of Industrial Relations*, vol 45, p 292–325.

Piper, F and Smith, L (2006) " 'Family' or savages? Enhancing relationships at work: an approach to conflict resolution of bullying", *Australian Dispute Resolution Journal*, 17(1), pp 12–9.

Van Wanrooy, B, Oxenbridge, S, Buchanan, J and Jakubauskas, M (2007), *Australia at Work: The Benchmark Report*, University of Sydney, October.

Chapter 17

LABOUR MARKET EFFICIENCY AND FAIRNESS: AGREEMENTS AND THE INDEPENDENT RESOLUTION OF DIFFERENCE

John Buchanan, Director, Workplace Relations Centre, University of Sydney[1]

Introduction

Since the late 1970s it has been conventional wisdom that superior economic outcomes are only possible by promoting "free market" inspired reforms. This discourse has had popular and official dimensions. Widespread promotion of "choice" and "freedom" have been invoked in public campaigns against things like labour standards and unions. Policy programs of "deregulation" and "decentralisation" gave these ideas a sharp edge in the hands of both "conservative" and "social democratic" governments.

When first proposed, this agenda encountered significant resistance. Indeed, George Bush Senior attacked Ronald Reagan's espousal of such views as "Voodoo Economics" (Wheen 2004: 9–39). These policy prescriptions went on to become part of the current economic policy orthodoxy. The increasingly deep series of financial crises that have rocked the world economy in the last 10 years have revealed, however, the accuracy of Bush Senior's initial characterisation.

The "deregulatory/decentralist" creed was introduced and implemented most thoroughly in capital markets. The initial positive experiences of these changes contributed to a campaign to "unleash market forces" in product and labour markets. But the wheel has now come full circle. Finance markets are now recoiling from the chaos they have created. Desperate to avoid financial ruin they have turned to the public sector for leadership. Alan Greenspan was Governor of the US Federal Reserve and handmaiden of the recent "golden age". Prior to becoming Governor of the Fed he was well known as a devout supporter of free

1 This article draws on insights into the nature of current working life uncovered in research I have undertaken jointly in recent times with Gillian Considine, Brigid van Wanrooy, Sarah Oxenbridge, Michelle Jakubauskas and Justine Evesson. Justine, in particular, played a crucial role in clarifying the key issue needing attention examined in this article — the status of awards and industrial tribunals in the emerging system. I have also gained very useful observations about the importance of this through discussions with John Robertson and Matthew Thistlethwaite. All errors of presentation, fact and judgment are mine alone.

markets. He has observed that the recent financial market meltdown is the worst he has ever seen and probably the worst in a century. He has openly advocated the nationalisation of large parts of the US finance sector as the prerequisite for financial renewal (ABC News 2008; Quinn 2008).[2] Clearly within the finance sector there is some soul searching about desirable ends and means in public policy.

From the beginning, problems with the modern free market creed were noted by empirically based researchers. The legacies of "deregulation" and "decentralisation" in the labour market were starkly evident in places like the USA and UK. It is ironic that as the finance sector turns to the public sector for leadership, we in Australia are still tinkering around at the edges of what is clearly a policy regime with profound design faults. Recent experience in world capital markets in particular highlights the need to question such policy complacency. In the realm of working life we should be questioning — not buttressing — evidence-free assertions associated with the "Voodoo Economics" policy orthodoxy. In particular the alleged "superiority of enterprise-based bargaining" or the assumed "inefficiencies" of independent industrial tribunals need to be questioned, not entrenched in law. It is in this spirit — a spirit of questioning current policy complacency in the interests of engaging with reality — that this Chapter is written.

The matter of prime interest is the connection between industrial relations policy and economic performance. It is now settled that we need to get beyond Work Choices by *Moving Forward with Fairness*. But what does this mean? In particular, what does it mean if we are interested in improving efficiency, effectiveness and equity in the Australian labour market? As an election manifesto, the ALP's policy on labour law was, understandably, strong on rhetoric and light on detail. A chapter this length cannot overcome the "details" problem. Instead, it clarifies the key issue of institutional design that should guide the impending legislative changes. This is:

> facilitating dynamic agreement making supported by a strong system of independent resolution of difference where agreement cannot be reached and which also sets national labour market standards.

The argument is straightforward. Any effective system of labour law must engage with the two asymmetries at the heart of the employment relationship: inequality of *bargaining* power before a worker is hired and *uncertainty* of performance once they are engaged. The former favours the employer, the latter the worker. These inequalities change over time. Differences arising from these asymmetries underpin the need for ongoing agreement making. Not infrequently, however, agreement cannot be reached. While each of the plenary

2 It should be noted Greenspan has not become a new convert to socialism. Rather, he argued the Fed should have nationalised Fannie Mae and Freddie Mac when it had the chance in the middle of 2008. According to him the organisations could then have been broken up and auctioned off at some unspecified date.

papers differed, all four agreed that, over the last century, Australia has devised a dynamic system for independently resolving such "deadlock" situations. These tribunals have succeeded because they have kept most industrial or workplace relations issues out of parliament and the courts.

This argument is developed by answering the following connected questions:

- What are the fundamental problems any system of labour law must deal with?
- What does the latest research on labour market arrangements and economic performance say about institutional design?
- What guidance do the plenary papers offer in moving the debate on labour law reform forward?
- What do recent experiences with enterprise bargaining reveal about problems to avoid?

The fundamental problem: Labour as a factor of production

Labour law was once regarded as an arcane area of interest to only a small group of specialists. In recent times, however, it has become a matter of intense public interest. If policy debate is to mature we must move beyond rhetorical claim and counter-claim. Instead, analysis must be built on clear conceptual foundations. These can be traced back to the distinctive nature of labour as a factor of production. As Brown and Nolan have noted, what underlies industrial or workplace relations "is the inherently controversial nature of the employment transaction" (Brown and Nolan 1988: 340). This arises from two asymmetries (Fox 1974: 190). The first arises from the *inequality of bargaining power* between the parties before the contract is made. While many employees have few options to them other than to sell their labour, employers are, generally speaking, not so constrained (Fox 1974: 190). The second asymmetry arises from the peculiar nature of labour as a commodity (Biernacki 1994). An employer hires a worker's potential to perform, not the actual performance of work itself. This *inequality of uncertainty* means that while workers are sure of their wages once hired, the output an employer receives is open-ended because only workers know how diligently they apply themselves on the job (Braverman 1974: 52–8; Fox 1974: 183–9; Brown and Nolan 1988: 340). For the sake of brevity, the first inequality will be referred to as the "external inequality", and the second the "internal inequality". While the first tends to disadvantage the employee, the latter creates major problems for the employer.

Labour law as a distinct realm of jurisprudence primarily emerged to redress the inequality of bargaining inherent in the open labour market. Initially this took the form of limited recognition for unions by granting them immunity from suit for civil and criminal conspiracy (Deakin and Wilkinson 2004: Chapter 4). In Australia, this evolved into a more elaborate system of conciliation and

arbitration. All systems of labour relations, however, grapple with both internal as well as external inequalities. For example, in dealing with employers in the late 19th century, leading British unionists conceded management's right to manage as it saw fit in the workplace in return for management's recognition of unions for the purposes of bargaining minimum wage standards that operated across an industry (Sisson 1988; Gospel 1992: 79–103). In Australia, recognition rights for unions under conciliation and arbitration were closely associated with industrial tribunals which actively supported management prerogatives in the workplace (Wright 1994). Interestingly, in more recent times, labour law has devoted greater attention to issues of enterprise level activity — that is, issues concerning the internal inequality. This push has, however, been accompanied with a concern over labour standards. Understanding the reality of these connections is important. Much recent debate on labour law reform is couched in terms of "regulation" versus "deregulation", and "centralisation" versus "decentralisation". The reality has always been — and remains — more nuanced. Levels of bargaining are connected, and how they are connected is shaped intimately by the regulatory environment. It is impossible to have "regulation"-free bargaining — someone, somewhere, has to set the rules (Buchanan and Callus 1993). What does the latest literature tell us about which types of rules are best for promoting desirable economic performance?

Leads from the literature: A new openness about policies concerning work[3]

In the 1980s and 1990s, labour law reforms inspired by "free market" doctrines of decentralisation and deregulation were introduced in several advanced market economies, especially in the English-speaking world. Places like the United Kingdom now provide over two decades of experience to reflect on. Studies of the impact of these policies have found that they often delivered less than originally claimed. Institutions which once actively propagated such doctrines have, in recent years, become far more circumspect. In 2006, for example, leading analysts from the World Bank noted in a key IMF publication that free-market reform prescriptions had serious problems. In particular, they noted that "expectations about the impact of reforms on growth were unrealistic" and that "governments should abandon formulaic policy-making in which 'any reform goes' " (Zagha et al 2006). They concluded:

> "[O]ur knowledge of economic growth is extremely incomplete. This calls for more humility in the manner in which economic policy advice is given, more recognition that an economic system may not always respond as predicted, and more economic rigor in the formulation of economic policy advice."

3 This section draws heavily on insights I have gained by working with Brigid van Wanrooy et al 2007 and Chris Briggs (2004) on the safety net adjustment submission.

OECD researchers have reached similar conclusions about labour market regulation in particular. For example, several studies have examined the association between levels of employment protection and employment/population ratios (OECD 2003, 2004 cited in Browne 2005). These data revealed that countries with amongst the highest levels of employment protection, such as Denmark, Norway, Sweden and The Netherlands, also had the highest employment rates. OECD researchers have also examined the connection between high minimum wages and unemployment rates for unskilled workers. This work has been based on their own econometric analyses and a literature view of studies using micro-level data. Their findings were clear:

> "It appears that the majority of international studies using micro data to test whether the relative employment performance of low-skilled workers was worse in countries where the wage premium for skill was more rigid have not verified this." (OECD 2004: 142)

The OECD has also examined studies and undertaken its own work on the macro-economic performance of so-called "liberal market economies" (with, inter alia, weak labour market standards and fragmented bargaining) and compared this with "coordinated market economies" (with, inter alia, multi-employer industrial arrangements and strong labour standards). The OECD has noted that a "considerable" number of studies found that "intermediate" systems of "coordinated flexibility" have delivered superior outcomes. Its own original work found no strong relationship between type of economy and macroeconomic performance. It did, however, find "one robust relationship": uncoordinated, deregulated labour markets are associated with high levels of inequality and "equity effects need to be carefully considered when assessing policy guidelines related to wage-setting institutions" (OECD 2004).[4]

What about research on the impact of different labour arrangements internal to the workplace and their impact on firm performance? Seeking an answer to this question has become something of the holy grail amongst some labour researchers. The most recent comprehensive Australian study to generate data and analyse how firm performance was associated with workplace industrial relations found no conclusive relationship (Wooden 2000: 173–6). An even more comprehensive study has recently been released in the United Kingdom (Kersley et al 2006). The British Workplace Employment Relations Survey (WERS) examined the connection between workplace practices and firm performance. Its consideration of robust data provided by workplace-level accountants as well as subjective perceptions of workplace managers makes it one of the most comprehensive studies of its kind. Its primary findings on how workplace relations variables such as union recognition affected productivity were modest. Where unions were recognised there was a weak negative association with managers' subjective ratings of labour productivity. When more robust measures

4 I am indebted to Chris Briggs for his assistance in drawing my attention to this literature and assisting with the drafting of this and the previous paragraph.

were examined (eg value added per worker relative to industry average), no statistically significant relations could be found at the 10 per cent level (Kersley et al 2006: 286–303).

Like all good research, definitive leads for policy are scarce. What is clear, however, is that assumed certainties about the superiority of free market structures and non-union arrangements have not been validated. Indeed, the one factor that has been highlighted by the research is that while systems of labour standards are not necessarily associated with either superior or inferior economic performance, systems based on lower standards and weaker unions are associated with significantly inferior outcomes in terms of equity.

Where does this leave us in the current debate on the reshaping of Australian labour law?

The current Australian policy situation: Plenary paper insights and the Kirby Doctrine[5]

It is clear that recent research on labour relations and economic performance provides, on the most general of findings, especially negative protocols on what *not* to do. On matters of the detail of institutional design — the crucial issue for labour law — we must turn to other forms of knowledge for guidance. Prime among these are qualitative understandings of how labour markets work and how institutions of labour law both shape and are shaped by them. The four plenary papers prepared for this book are very helpful in this context. These authors are outstanding researchers. More importantly, they have also had years of experience in endeavouring to change reality by advising reform of industrial relations systems at both state and federal levels.

Despite coming from different disciplinary backgrounds and policy preferences, what is striking about these papers is the degree of consensus about the key issues. All argue that we are, potentially, on the verge of a new labour law settlement. The essence of this will be one in which employers enjoy considerably more power than has, historically, been the case in Australia. This point is made most strongly by Ron McCallum (2008). And as Keith Hancock argues: "[t]he questions now confronting policy makers are whether and how these enhancements of employer power should be reversed" (Hancock 2008: 8). Employer ascendancy has come at a price. The rise in inequality and labour market fragmentation has been documented elsewhere (acirrt 1999, Watson et al 2003). Procedurally, too, there has been a cost — an unstable industrial relations

5 This paper is primarily concerned with the priority matters to consider when reforming Australian labour law in a post-Work Choices environment and within the general ideas spelt out in the ALP's *Forward with Fairness* policies, Versions I and Mark II. I recognise that the Australian labour market suffers from a host of other challenges. I have summarised my assessment of what these are and how they could be more effectively addressed elsewhere (Buchanan and Pocock 2002; Buchanan et al 2006; Buchanan et al 2008).

policy environment. After a decade and a half of major legislative change, all players are coalescing around a new consensus on the fundamental features of our industrial or workplace relations system. As all the plenary writers note, the core elements of this looming settlement are:

(a) collective agreement making, not arbitration, will be at the centre of the system, and

(b) a safety net of publicly-defined standards will provide the context for bargaining and protection for those unable to reach agreements.

What the papers also highlight is the key issue on which agreement is yet to be reached — namely how these two elements of the system will coexist. In concrete terms, it is still unclear what role the new public agency — to be known as Fair Work Australia — will play in both parts of the system. What is remarkable about the plenary papers is the extraordinary consensus among them about the need to keep a core part of the old system — strong, independent industrial tribunals — within the new arrangements. The spectre of politicians or bureaucrats setting labour standards holds no joy for any of the contributors. In reflecting on impending changes, Keith Hancock (2008: 13–4) concludes his paper by noting that his:

> "principal regret is the risk of politicisation of the process of determining the safety net. Governments come and go, and it will be a pity if minimum standards become a subject of political contest (as they have in some European countries and, in respect of the minimum wage, in the United States).

Even the elder statesman of the anti-arbitration school, John Niland (2008: 19), notes:

> "The experience in the United States suggests that minima set and varied through legislation is a fraught process and should be avoided in Australia. Just how the role is best assigned between tribunals and special agencies is an important design feature."

Margaret Gardner has given thoughtful consideration to what these design features might be. Her paper lucidly outlines how our system has moved from one centred on arbitration to one where agreements now occupy centre stage. While not questioning the primacy of agreement making, she notes that industrial tribunals still have a vital role to play. As she argues, if labour standards are to keep pace with rapidly changing circumstances there is a need for their determination "to be at one remove from government" (Gardner 2008: 39). More than any of the other plenary contributors, she also sees them having a role in bargaining as well, resolving problems where negotiations breakdown. As she concludes (Gardner 2008: 40):

> "No system where interests collide can proceed without a means to break deadlocks in negotiations or redress major asymmetr[ies] of market power. Here an independent tribunal has form and reason . . ."

The profound nature of these basic insights requires emphasis. All these writers argue that, in moving forward, it is vital that Australia nurtures its unique institutional framework which keeps the determination of labour standards out of parliament, and differences arising at work away from the courts.

Space constraints clearly limited the ability of the plenary contributors to elaborate much more on this fundamental issue of system design. Further elucidation of the key issues at stake, however, have been provided by Justice Michael Kirby in his dissenting judgment in the High Court's *Work Choices Case* (2006). While much of this decision was concerned with technical questions of constitutional law, Justice Kirby provided many powerful insights into the Australian tradition of "independent resolution" where differences at work become intractable. Until 2006, industrial relations had been governed in a distinctive way as prescribed in the Australian Constitution. Section 51 (xxxv) limited the federal parliament to making laws concerning only interstate disputes, and only by means of independent resolution. There was no general power to regulate work as such. This nurtured a century of practice that meant, in matters concerning work, where differences between the parties emerged, they could rely on "the intervention of independent decision-makers who hear[d] both sides" (*Work Choices Case*, per Kirby at [647]). Thus according to Kirby (at [565]), these independent decision-makers:

> "were obliged to take into account not only economic considerations but also considerations of fairness and reasonableness to all concerned and the consistent application of principles of industrial relations in Australia. [This] ... imposed a "guarantee" for employer and employee alike that their respective arguments would be considered and given due weight in a just and transparent process, decided in a public procedure that could be subjected to appeal and review, reasoned criticism and continuous evolution."

Kirby noted that this approach to industrial law was compatible with people taking responsibility for their own affairs at work. Indeed, he showed that bargaining and Australia's long-standing system of independent resolution of differences at work are compatible. As he observed (at [562]), that system:

> "obliges the persons affected, usually through representative organisations, to take responsibility for negotiating, settling or resolving their own disputes in a collective way. This was a much more decentralised procedure than a federal legislative fiat would be. By the facility of conciliation and through the procedures of arbitration, workplace agreements have come, in recent years, to play an increasing role. They have done so without removing the protective machinery of conciliation and arbitration which the Constitution contemplates."

As he concluded (at [649]) on the issue of *"preserving industrial fairness"* (emphasis in original):

> "As history has repeatedly shown, there are reasons of principle for preserving the approach of our predecessors. The requirement to decide industrial relations issues through the independent process of conciliation and arbitration has made a profound contribution to progress and fairness in Australian law on industrial disputes, particularly for the relatively powerless and vulnerable. [To move away from this principle by basing laws on the corporations power] inevitably alters the focus and subject matter of such laws. The imperative to ensure a 'fair go all round', which lay at the heart of federal industrial law (and the State systems that grew up by analogy), is destroyed in a single stroke. This change has the potential to effect a significant alteration to some of the core values that have shaped the evolution of the distinctive features of the Australian Commonwealth, its economy and its society."

The issues identified by Justice Kirby are crucial. While his opinion about constitutional authority for federal labour law was in the minority, his insights about the nature, operation and legacy of the tradition of independent resolution of differences are still profoundly important. Clearly the federal government can rely on more than s 51 (xxxv) in its reformulation of Australia's industrial relations framework. In doing so, however, it would be well advised to build on the legacy of previous industrial law. This is not an argument for "going back", an option that is clearly neither possible nor necessarily desirable. It is, however, an argument for constructive engagement with our institutional labour market inheritance. Thus, while Keith Hancock (2008: 11) notes in his plenary contribution that "[t]he pre-eminent weight traditionally given to *dispute resolution* no longer accords with the realities of industrial relations", the fact that disputes no longer figure as much as an issue does not mean that *differences* at and about work have disappeared. The need for independent resolution of differences will therefore continue. Ideally, parties to an employment relationship should be able to work through their differences and reach agreement. But it is important that labour law recognises this will not always be the case. Legislative decrees that the parties must bargain in "good faith" will not solve this problem. The experiences of the United States, United Kingdom and especially New Zealand are unambiguous in this regard (Briggs 2007). Unless there is an effective mechanism of enforcement, such "rights" are not worth the paper they are written on. Australia's tradition of having specialised bodies capable of "independent resolution" of irreconcilable differences at work has a vital role to play in improving and maintaining the integrity of the bargaining system.

There is also much to be learnt from the state systems. Gardner's (2008: 37) suggestion that we learn from the Queensland experience is particularly useful:

> "The legislation that became the *Industrial Relations Act 1999* (Qld) accepted the premise established in the 1990s that negotiation of agreements by employers and unions or employees, rather than variation of awards through a tribunal, was at the core of industrial relations. Although bargaining arrangements were its centre, it retained a clear role for the arbitral tribunal in updating minimum conditions and resolving disputes where negotiations had broken down and for arbitration as a last resort."

Beyond arbitral and bargaining mindsets: Having the capacity to engage with reality

For too long industrial relations policy debate has been characterised by unhelpful, binary modes of reasoning: "enterprise bargaining good/arbitration and industry bargaining bad". It is important that we learn from the strengths and weaknesses of all potentially relevant arrangements. The ascendancy of the arbitral model was broken in 1993 and agreement making entrenched in 1996. But that does not mean "agreement making" is the only show in town. We now have two decades of enterprise bargaining to reflect on. The outcomes have been less than inspiring. The clearest example concerns working time. Despite the strongest economic growth in a generation, with many labour market segments experiencing labour shortages, hours of work remain a problem for around a third of the workforce (van Wanrooy et al 2007: 81–3). Despite having had over 20 years to work out solutions at enterprise level, none of any note has emerged. The reality has been that "enterprise bargaining" has not customised employment conditions nor nurtured workplace dynamism in the ways that its proponents envisioned in the late 1980s. If anything, as "bargaining" has matured, the "bargaining agenda" has narrowed and become more uniform — especially in its assault on working time standards (Bretherton et al 2002; Buchanan et al 2006; Evesson et al 2007). Interestingly too, assumed protections such as the "no-disadvantage test" appear to have been of little substantive help for workers (Mitchell et al 2005). Clearly the problem of working time is systemic — not just individually — and enterprise-based.

Returning to the classical arbitral tools will not work either. The Australian working time problem commenced under the Accord when centralised wage fixation was at its height (acirrt 1999: Chapter 5). In designing a new industrial relations framework, we will need to have the institutional capability to engage with an increasingly complex reality. Certainly agreement making will be important, but this need not necessarily be at the enterprise level (Gardner 2008: 39). Equally, some advanced institutional capability for independently resolving differences at enterprise level and beyond will also be important. For that to be

effective, such tribunals should have significant (indeed quasi-judicial) independence. This will be vital to signify their relevance as a source of authority, such that recourse to parliament and the courts on most employment matters would be a rarity. Equally, their capacity to arbitrate should be for them to decide. Any notion of "voluntary" arbitration is really code for leaving it up to the strongest party in an employment situation to determine whether arbitration is the preferred option. Moreover, endeavouring to restrict the ability of tribunals to intervene as needed will merely increase not reduce rigidities as lawyers endeavour to read down and/or enlarge the tribunal's powers through test cases. We either trust independent tribunals or we do not. Attempts to shackle their realm of action will merely generate inefficiencies from which lawyers and those with structural power in the workplace (usually employers) will be the only beneficiaries.

Conclusion

It is now very clear that the deregulatory orthodoxy of our time provides a poor basis for structuring capital markets. But despite this evident failure, the slow adoption of "deregulatory" and "decentralist" mantras in labour law continues. This policy approach has created profound problems in capital markets. It is important that we avoid the same outcomes in the labour market. Labour law reform needs to break with the trajectory it has been on in recent times. Instead it should engage with very real substantive working life problems currently afflicting Australia — things like inequality, work overload and working time fragmentation.

Labour is a distinctive factor of production. The asymmetries of power and uncertainty associated with its use mean that differences are an ever-present possibility between workers and those hiring them. Ideally, and most of the time, differences can be managed by agreement. But, some of the time, and on the key issue of prevailing national standards, there will be a need for the independent resolution of differences. Australia is lucky in having a set of institutional arrangements for performing this function. This has kept most problems arising from work out of the courts and parliaments. These institutional arrangements could, ironically, ensure Australia develops a system of agreement making that avoids the problems of other bargaining-based systems — abuse of bargaining power by those who outwardly display "good faith". It remains to be seen whether Australia's leaders have the courage and imagination to build on the best of our past traditions, or whether they merely accommodate to the new employer, ascendancy that is now so overwhelming that it is just taken for granted.

References

ABC News (2008) "Greenspan to Stephanopoulos: This is 'By Far' the Worst Economic Crisis He's Seen in His Career", 14 September 2008, http://blogs.abcnews.com/politicalradar/2008/09/greenspan-to-st.html.

acirrt (1999) *Australia at Work: Just Managing?*, Prentice Hall, Sydney.

Biernacki, R (1995) *The Fabrication of Labor: Germany and Britain, 1640–1914*, University of California Press, Berkeley.

Braverman, H (1974) *Labor and Monopoly Capital: The Degradation of Work in the Twentieth Century*, Monthly Review Press, New York.

Briggs, C (2007) "After the Storm: Union Renewal and Good Faith Bargaining in New Zealand in Comparative Perspective" (under review).

Brown, P (2005) "Government IR figures only tell half the story", *Australian Policy Online*, November 3, available online: www.apo.org.au/.

Brown, W and Nolan, P (1988) "Wages and Labour Productivity: The Contribution of Industrial Relations Research to the Understanding of Pay Determination", *British Journal of Industrial Relations*, 26(3), pp 339–61.

Buchanan, J, Bretherton, T, Considine, G and van Wanrooy, B (2006) "Longer and Irregular Hours: Employers, Decentralised Bargaining and Working Time Standards in Australia since the late 1970s", Paper presented at *Conference on New Standards for New Times: The Eight Hour Day and Beyond*, Centre for Social Research, RMIT University, Melbourne, 22–23 June.

Buchanan, J and Callus, R (1993) "Efficiency and Equity at Work: The Need for Labour Market Regulation in Australia", *Journal of Industrial Relations*, 35(4), pp 515–37.

Buchanan, J and Pocock, B (2002) "Responding to Inequality Today: Eleven Theses Concerning the Redesign of Policies and Agents for Reform", *Journal of Industrial Relations*, 44(1), pp 108–35.

Buchanan, J, van Wanrooy, B, Oxenbridge, S and Jakubauskas, M (2008) "Industrial relations and labour market reform: time to build on proven legacies", *Economic Analysis and Policy (Journal of the Economics Society of Queensland)* [forthcoming].

Buchanan, J, Watson, I, Briggs, C and Campbell, I (2006) "Beyond Voodoo Economics and Backlash Social Policy: Where Next for Working Life Research and Policy", *Australian Bulletin of Labour*, 32(2), pp 183–201.

Deakin, S and Wilkinson, F (2005) *The Law of the Labour Market: Industrialization, Employment and Legal Evolution*, Oxford University Press, Oxford.

Evesson, J, Buchanan, J, Bamberry, L, Frino, B and Oliver, D (2007) "Lowering the Standards: From Awards to Work Choices in Retail and Hospitality Collective Agreements: Synthesis Report", Report prepared for the Queensland, New South Wales and Victorian governments, Workplace Research Centre, Sydney.

Fox, A (1974) *Beyond Contract: Power, Trust and Work Relations*, Faber and Faber, London.

Gardner, M (2008) "Beyond Work Choices: Negotiating a Moment", *Economics and Labour Relations Review*, 18(2), pp 33–40.

Gospel, H (1992) *Markets, Firms and the Management of Labour in Modern Britain*, Cambridge University Press, Cambridge.

Hancock, K (2008) "The Future of Industrial Relations in Australia", *Economics and Labour Relations Review*, 18(2), pp 7–14.

Kersely, B, Alpin, C, Forth, J, Bryson, A, Bewley, H, Dix, G and Oxenbridge, S (2006) *Inside the Workplace: Findings from the 2004 Workplace Employment Relations Survey*, Routledge, London.

McCallum, R (2008) "Australian Labour Law and the Rudd Vision: Some Observations", *Economics and Labour Relations Review*, 18(2), pp 23–32.

Mitchell, R, Campbell, R, Barnes, A, Bicknell, E, Creighton, K, Fetter, J and Korman, S (2005) "What's Going on with the 'No Disadvantage Test'? An Analysis of Outcomes and Processes under the *Workplace Relations Act 1996* (Cwlth)", *Journal of Industrial Relations*, 47(4), pp 393–423.

Niland, J (2008) "The NSW Green Paper Twenty Years On", *Economics and Labour Relations Review*, 18(2), pp 15–22.

OECD (1999) *Boosting Innovation: The Cluster Approach*, Paris.

OECD (2003) *Employment Outlook*, OECD, Paris.

OECD (2004) *Employment Outlook*, OECD, Paris.

Polanyi, K (1957) [1944] *The Great Transformation: The Political and Economic Origins of Our Time*, Beacon Paperback , Boston.

Quinn, J (2008) "Ex-Fed Chief Alan Greenspan attacks Fannie and Freddie bail-out", *[British] Daily Telegraph*, 15 August 2008, www.telegraph.co.uk/money/main.jhtml?xml=/money/2008/08/15/cngreen115.xml.

Rudd, K and Gillard, J (2007a) *Forward with Fairness: Labor's plan for fairer and more productive Australian workplaces*, Canberra, April.

Rudd, K and Gillard, J (2007b) *Forward with Fairness: Policy Implementation Plan*, Canberra, August.

Sisson, K (1987) *The Management of Collective Bargaining: An International Comparison*, Blackwell, Oxford.

van Wanrooy, B, Oxenbridge, S, Buchanan, J and Jakubauskas, M (2007) *Australia at Work: The Benchmark Report*, University of Sydney, October, available online: www.wrc.org.au/documents/Australia@Work_The_Benchmark_Report.pdf [accessed 06 April 2008].

Watson, I, Buchanan, J, Campbell, I and Briggs, C (2003) *Fragmented Futures — New Challenges in Australian Working Life*, Federation Press, Sydney.

Wheen, F (2004) *How Mumbo Jumbo Conquered the World: A Short History of Modern Delusions*, Harper Perennial, London.

Wooden, M (2000) *The Transformation of Australian Industrial Relations*, Federation Press, Sydney.

Work Choices Case (2006) *New South Wales v Commonwealth* [2006] HCA 52.

Wright, C (1995) *The Management of Labour: A History of Australian Employers*, Oxford University Press, Melbourne.

Zagha, R, Nankani, G and Gill, I (2006) "Rethinking Growth", *Finance & Development*, 43(1), available online: www.imf.org/external/pubs/ft/fandd/2006/03/zagha.htm [accessed 07 April 2008].

Chapter 18

AN EMPLOYER PERSPECTIVE ON THE PLENARY CHAPTERS

Ron Baragry, LLB, MLLR (Syd), Australian Legal Practitioner

I will attempt to put forward some personal views from the perspective of employers in response to some of the themes taken up by the very eminent panel of industrial intellectuals who have provided the first four Chapters of this book.

In trying to put forward representative approaches I am falling into the trap of appearing to treat employers as a homogeneous group. This is quite contrary to my own experience that employers come in all shapes and sizes and can have disparate views conditioned by specific industries, economic circumstances, geographic location, objectives, and myriad other considerations. What one does at all times in representing employers is to attempt to distil opinions and aims into a strategy that accommodates as much as possible of the stated requirements of those employers you represent. I will bear this in mind in this paper but without doubt there will be employers who would not agree with all of what I have to say.

Professor Ron McCallum is a man of soaring intelligence and unique ability to analyse and anticipate the human condition in his chosen field of industrial law. He has probably contributed more to the understanding and teaching of industrial law than any previous Australian. It is therefore ironic that I must take him to task in respect of his primary statement (in Chapter 3) of the ground rules of industrial law.

His first substantive statement is that he has always regarded the purpose of labour law to be to ensure that working men and women receive fair entitlements and conditions in return for their labour.

This is a statement that one could accept in respect of earlier years of industrial law when many employers may have been all powerful and self serving. In modern times and in particular in the 21st century, it has become necessary to qualify the purpose of labour law as stated by Professor McCallum by adding that the consideration for fair employment entitlements should not only be the labour provided by employees, but also it should require them to be fair in their treatment of their employer.

Attachment 5

Chris Briggs, John Buchanan and Ian Watson, *Wages Policy in an Era of Deepening Wage Inequality*, Academy of the Social Sciences in Australia Policy Paper No 4, 1/2006, Canberra
[http://www.assa.edu.au/Publications/op/op12006.pdfhttp://www.assa.edu.au/Publications/op/op12006.pdf]

Wages Policy in an Era of Deepening Wage Inequality

Chris Briggs, John Buchanan

and Ian Watson

This is the fourth in a series of Policy Papers, commissioned by the Academy, to encourage public debate on issues of national concern.

Occasional Paper 1/2006
Policy Paper # 4

The Academy of the Social Sciences in Australia
Canberra 2006

ISSN 1323-7136

All articles appearing in the *Occasional Paper Policy Series* are peer reviewed.

Contents

List of Figures

List of Tables

Acknowledgements

The authors would like to thank the Academy of the Social Sciences in Australia for their generous support in producing this paper. A number of people also provided helpful feedback and assistance. Thanks to two anonymous referees, Megan Blaxland, Peter Saunders, Jerold Waltman and John Robertson.

Wages Policy in an Era of Deepening Wage Inequality

Chris Briggs, John Buchanan and Ian Watson

1 Introduction

As this paper goes to press, Australia's industrial relations system stands on the brink of a major overhaul, an 'industrial revolution' in the words of the *Sydney Morning Herald.*[1] The Howard government's control of the Senate from July 2005 is leading to sweeping changes in the legislative framework governing industrial relations in Australia, both at a Federal and State level.[2] Not only will these changes see attempts made to wind back collective bargaining and union influence at workplaces, but those workers outside the bargaining sector will see major changes in how their wages are set. For those currently dependent on the Safety Net Adjustment (SNA) Review conducted annually by the Australian Industrial Relations Commission (AIRC), the prospects are grim.

The government proposes establishing a 'Fair Pay Commission' which will comprise five members, including two academic economists, a business representative and a union or employee representative. Such a commission is likely to be dominated by neo-liberal thinking, an outlook which sees pay increases automatically costing jobs. It is unlikely that low paid workers can expect the kinds of wage increases they have gained in recent years to continue under such a regime. For those workers outside the bargaining sector and dependent on individual contracts (either formal or informal), the growing reach of commercial law principles, rather than labour law principles, will also see them further disadvantaged in the future.

In this paper we set out a framework for wages policy in an era of deepening wage inequality - the situation Australia faces at the start of the twenty first century. Ironically, it was at the turn of the last century that many of the industrial relations institutions and principles which now stand on the edge of dissolution were first established. We have argued elsewhere that these institutions have generally served Australia well, despite much unevenness in their outcomes.[3] However, the economic and labour market realities which these institutions sought to regulate have changed profoundly, particularly during the last twenty years. We would argue that in reacting to the sweeping changes which the Howard government will unleash, we should not look nostalgically backward. Rather, we need to develop a framework which grapples with these new realities, which recognises the true worth of current and past institutions, and which highlights the policy gaps that must still be plugged.

We do not provide here a comprehensive overview of wage determination in Australia, nor an overview of economic policy more generally. Rather, we aim to integrate a number of disparate threads whose logic is often seen in isolation. We draw the connections between developments in commercial law and the wages system, between the welfare-to-work debate and low wages, and between life-cycle issues and wage setting. Moreover, we also engage in a modest amount of (philosophical) 'under-labouring' by clearing the terrain of some of its confusing terminology and its anachronistic dualisms - unhelpful dichotomies like 'centralised versus decentralised' and 'regulated versus unregulated'. We propose a new concept - coordinated flexibility - as one way of moving forward in this area.

1.1 The dilemmas

Historically, policy makers in Australia have grappled with a number of problems related to incomes policy. These have included:

1. how to curtail wage explosions and their inflationary effects.
2. how to incorporate non-wage incomes into a coherent policy framework. This had dimensions at the top of the labour market (executive salaries) and at the bottom (social security transfers).
3. how to maintain fair relativities across the wages structure, so that skills margins and incentives for training were protected from erosion.
4. how to enshrine egalitarian principles in the process of income determination.
5. how to ensure flexibility in the engagement of labour.
6. how to accommodate market fluctuations in the supply and demand for labour.

In most respects, Australia's system of awards was effective in dealing with the latter items, specifically (3), (4), (5) and (6), but not with the first two. For example, while egalitarian principles were violated by gender, race, ethnic and skill inequalities in the distribution of incomes, the system had the capacity to address some of these - such as the Arbitration Commission's Equal Pay decisions of the late 1960s and early 1970s. Over-award payments helped employers cope with labour shortages, while flexibility provisions in awards met the more reasonable demands of employers. On the other hand, the reach of the award system - even when supplemented with an official incomes policy during the 1980s - was inadequate in dealing with non-wage incomes. From the perspective of managing the macro-economy, the 'flow-on' provisions within the award system fuelled wage explosions, something evident in the mid-1970s and again in the early 1980s.[4]

Despite this unevenness, the award system worked reasonably well for nearly a century, with its successes ensuring reasonable living standards for most of the working population and preventing the emergence of a significant number of working poor. However, over time it also spawned many detractors. Among some economists and business spokespeople, the award system encouraged a particular mindset, typified by terms like 'inflexible', 'ossified', 'archaic', 'inflationary' and so forth. The strong link between effective award coverage and trade union influence, and the pivotal role of the Arbitration Commission in sustaining the system, were particularly galling for many of these commentators, who complained throughout the 1980s about 'third party' meddling in workplace relations.[5]

By 2006, these criticisms have become largely obsolete (they still surface in current polemics about the future of industrial relations). Inflation has been effectively squeezed out of the economy, 'third parties' like Industrial Commissions and unions have been largely marginalised, and the pursuit of flexibility has been largely won by employers, using either enterprise agreements or individual contracts to gain almost complete discretion over the deployment of labour. The development of labour is a different matter, and the neglect of skills formation for the good part of a decade has come back to haunt both employers and governments.[6]

The new realities are ones of fragmentation, evident in the polarisation of many aspects of working life:

- large numbers of workers with long hours of work and substantial numbers with inadequate hours, or no work at all;[7]
- growing inequality in the distribution of wages, only moderated by government

transfer payments and a progressive taxation system;[8]
- secure employment for one segment of the workforce, insecurity for the rest;[9] and
- access to bargaining rights for one segment of the workforce, an absence of 'voice' for many of the rest.

Where the hallmark of the award system was its anchorage in a network of relativities, with many aspects interconnected, the current industrial relations system is based on this growing fragmentation in the labour market. From the perspective of earnings, fragmentation is evident in the setting of wages. Figure 1.1 shows, for example, at least eight categories of worker. This typology is based on the relative earnings of those workers (high and low) and the formal arrangements which determine their earnings.

The 6 categories of worker within the contract of service framework experienced quite disparate outcomes during the 1990s. Categories 5 and 3, in particular, enjoyed high wage growth, while category 2 was dependent on the IRC for its belated increase in real wages towards the end of the decade (we will return to these developments below).

Figure 1.1: Fragmentation in the setting of wages

		BASIS OF EARNINGS			
		CONTRACT OF SERVICE			CONTRACT FOR SERVICE
RELATIVE LEVEL OF WORK-RELATED EARNINGS		AWARD	COLLECTIVE AGREEMENT	INDIVIDUAL CONTRACT	
	HIGH	1. OVERAWARDS	3. CERTIFIED AGREEMENTS (HIGH WAGE)	5. EXECUTIVE-PROFESSIONAL CONTRACTS	7. INDEPENDENT CONTRACTORS
	LOW	2. SAFETY NET ADJUSTMENT	4. CERTIFIED AGREEMENTS (INCL NON UNION) (LOW WAGE)	6. MINIMALIST INDIVIDUAL CONTRACTS	8. DEPENDENT CONTRACTORS

Source: ACIRRT (1999: 85)

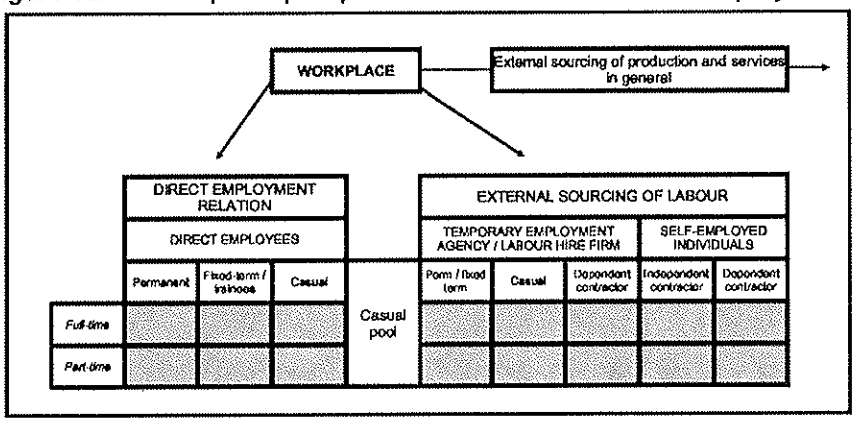
From the perspective of forms of employment, there has been a reconfiguration of employment relationships which has also brought about increased fragmentation in the labour market. As Figure 1.2 shows, the forms of employment common in the contemporary Australian labour market are quite diverse. This reconfiguration has affected how workers are engaged by employers, and by the agents of employers. The changes which have been most dramatic have included:

- an increase in fixed-term and casual contracts of employment and their spread into many industries (such as manufacturing) which have not traditionally had big numbers of such workers;
- a greater role by labour hire agencies in the provision of workers; and
- an increase in outsourcing, both in the public and private sectors, and more influences on employment conditions as a result of development in supply chains.

An era of growing inequality

One of the most disturbing developments during recent decades has been the growing polarisation of wages, something US and UK labour markets have also experienced.[10]

Figure 1.2: A workplace perspective on different forms of employment



Source: Watson et al. (2003: 65)

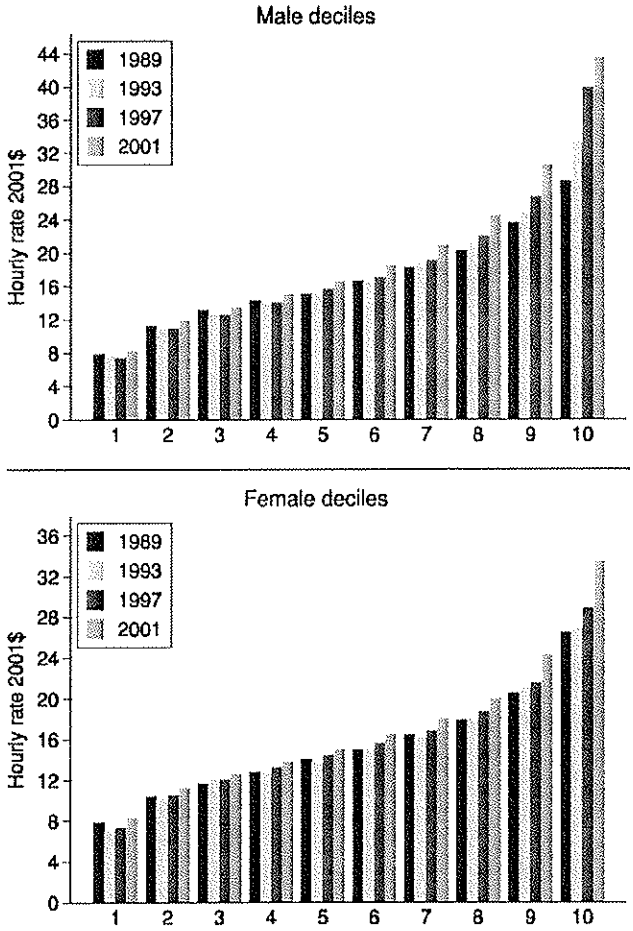
This wages inequality was driven largely by changes at the top of the labour market, though stagnant or declining earnings at the bottom of the labour market also contributed. Male employees in the bottom 10 per cent of the distribution fell behind those on the median for most of the decade, with the biggest drop occurring at the start of the decade. In 1989 a person on the 10th percentile earned about 62 per cent of someone on the median; by 2001 they earned less than 60 per cent. Among women in the bottom 10 per cent, the story was more volatile. The drop between 1989 and 1993 was much steeper - from 65 per cent to 61 per cent - but the rest of the decade saw steady improvement. Nevertheless, both men and women at the bottom of the labour market ended the decade in a worse position, relative to the median, than they had been at the start of the decade.

Turning to the top of the labour market wage inequality increased considerably from 1989 to 1997 before tapering off. In 1989, a man on the 90th percentile earned 1.6 times that of someone on the median. By 2001 the ratio was over 1.9. Women at the top of the labour market followed this pattern, but in a much more muted fashion. They began the decade earning just under 1.6 times that of someone on the median and ended it earning over 1.7 times. Neither in terms of growth, nor in absolute terms, did women at the top of the labour market come close to the experience of men at the top.

Comparing both the top and bottom of the labour market, women's earnings were much more compressed than were men's. The bottom decile among women did not fall as far below the median as was the case for men; and the top decile did not rise as far above the median as was the case with men.

While this picture is one of changes in relativities, it also appears that the real earnings of low wage workers fell during part of the 1990s. As Figure 1.3 shows, among men in the bottom four deciles, real earnings declined from 1989 to 1997. In the period 1997 to 2001 earnings improved, and real wages finally passed their 1989 level. The impact of the series of Safety Net Adjustments (the 'Living Wage' cases) during the late 1990s is the most likely reason for this improvement in real earnings among the low paid workforce.

Figure 1.3: Changes in median earnings by deciles, Australia, 1989 to 2001
(absolute amounts in 2001 dollars)



Source: Unpublished data from ABS (1989, 1993, 1997, 2001). Population: Employees.

Note: The numbers on the y-axis show the median earnings for people in that decile. The actual boundaries of the decile are above and below that median. For example, for men in 2001 the bottom decile is composed of those workers earning were below $9.80 an hour, while the second decile were composed of those workers earnings between $9.80 and $12.15 per hour.

The top deciles are also illuminating and reinforce the picture of a 'wages breakout' at the top of the labour market. Among men, deciles 9 and 10 showed strong growth in real earnings throughout the 1990s, with the absolute size of the increases in the 10th decile quite remarkable. Men in this decile[11] saw their average hourly earnings increase from about $28 an hour (in 1989) to $33 an hour (in 1993) then to $40 an hour (in 1997) and then finally to $43 an

hour (in 2001). Women in the top two deciles also saw increases in real earnings during this period, but the magnitude of these was not comparable to that among the men.

Research on wage inequality suggested that part of the reason for the growth in wages inequality during the 1990s was compositional change in the make-up of these deciles, particularly on an industry basis.[12] A pronounced decline in manufacturing jobs occurred among workers in the bottom decile, both for men and women. This partly reflected a long term trend, but it also included the consequence of the 1991 recession, which marked a major shakeout in manufacturing, and the export of the lowest paid jobs to Asia and the Pacific. The gap in the bottom decile left by the decline in manufacturing jobs was filled by jobs in hospitality, recreation, personal services (for men), and wholesale and retail trade (for women). While this pattern is consistent with overall industry restructuring - the decline of manufacturing and the growth of the service sector - the extent of the changes among the lowest decile was much greater than it was across the distribution as a whole.

Changes in the composition of the lowest decile explain part of the decline in hourly earnings. Amongst men, manufacturing jobs were worth about 8 per cent more than jobs in recreation and personal services. Among women, they were worth 12 per cent more. Thus, while it is true that manufacturing jobs for women are low paid jobs (compared with the situation for men), they are, nevertheless, better paying jobs for the bottom decile than service sector jobs. From an hours perspective, these changes represent a loss of jobs in those industries which have traditionally provided full-time employment, alongside growth in the classic 'underemployment industries' - retail, recreation and personal services. As long ago as 1993, Gregory highlighted this trend as one of the factors behind the 'disappearing middle'.[13]

While *income* inequality (in distinction to wage inequality) abated during this decade, this was largely due to Australia's progressive taxation system and some of its social security transfer payments (particularly family payments to low wage workers).[14] The polarisation of wages which we have just outlined was also offset towards the end of the decade by a combination of Safety Net Adjustments and an improvement in the business cycle. Nevertheless, the 1990s demonstrated the extent to which the labour market, and the new industrial relations landscape, had become the motor for wage inequality in the Australian economy.

1.2 Why policy matters

At the end of the 1980s a system of enterprise bargaining was being promoted as a solution to some of the dilemmas outlined earlier.[15] It was envisaged that inflationary pressures would be curtailed once wage increases were linked to productivity improvements at the workplace level. It was also intended that greater flexibility in the deployment of labour would be achieved once enterprises were allowed to bargain with their own workforce, largely 'free' of outside 'interference'. The issue of inequality was not part of the agenda during the late 1980s, so the likelihood that enterprise bargaining would contribute to the polarisation of earnings was either ignored, or welcomed (by those who viewed such outcomes as evidence of an 'efficient' labour market).

In practice, after a flurry of activity in the early and mid-1990s, enterprise bargaining reached a plateau by the late 1990s and has increased only marginally in the subsequent decade. From a policy perspective, this has left a major hiatus in industrial relations thinking, summed up in the observation that collective bargaining remains the flywheel of

the industrial relations system, but is a system which has been stagnating in terms of coverage for at least the last half decade (see Table 1.1). Moreover, while enterprise bargaining privileged workplaces as the appropriate bargaining units - and indeed, legislation restricted bargaining to this particular unit - economic realities have moved on. Many new developments in the engagement and deployment of labour - encapsulated in the growing diversity evident in Figure 1.2 - have cast serious doubt on the ability of bargaining units, when restricted to workplaces, to ensure adequate outcomes for the various categories of worker who make up the contemporary workforce in Australia. The policy challenge which arises is how to revitalise bargaining in a way that deals with these new economic realities. Our argument is that bargaining units should follow the 'grain' of the labour market, in the same way that the award system did historically, and grapple with the new economic realities of increased casualisation, outsourcing, reconfigured supply chains and so forth.

Table 1.1: The Spread of Enterprise Agreements: 1989, 1992, 1994, 1995, 2000, 2002, 2004

Year	% of employees covered
1989	23[a]
1992	28[b]
1994	35[c]
1995	35[d]
2000	37
2002	38
2004	41[e]

Notes:

a) *This estimate is derived from unpublished information available in the Australian Workplace Industrial Relations Survey (AWIRS). That survey collected data on the situation prevailing in Australia workplaces in late 1989. The statistic refers to the proportion of employees covered by what were then known as 'Certified or Registered Agreements'. Data on unregistered agreements have been excluded because at that time they generally did not contain wage increases. The population for this estimate is all employees working in locations with 20 or more workers in all industries other than agriculture and defence. The sample was 2004 locations.*[16]

b) *This statistic*[17] *refers to the proportion of employees covered by local written agreements, both ratified and unratified in late 1992. The population for this survey was the same as for AWIRS. The sample was 700 workplaces.*

c) *This statistic is taken from data collected from DIR's 1994 workplace bargaining survey. It refers to the proportion of employees covered by registered and written unregistered agreements. The population was employees working in locations with 10 or more employees. The sample size was 1060 workplaces.*[18]

d) *Details similar to those for note (c) above.*[19]

e) *ABS, Employee Earnings and Hours, Australia, May 2000, 2002 & 2004, Cat No 6306.0. These data refer to the percentage of workers covered by registered, collective enterprise agreements.*

Why does this matter? As well as responding to labour market changes, industrial relations policy also shapes the labour market. At any one point in time, the prevailing industrial relations landscape is a major factor in the constitution of work. It shapes what types of work emerge, and what types of work are not allowed to emerge. For example,

are Australian women to enjoy the security and *pro-rata* benefits of permanent part-time employment, along the lines of their Scandinavian sisters, or is their fate to be found in the low paid, high-turnover jobs common in the US service sector? Industrial relations policy, and wages policy in particular, makes a difference to the direction in which the labour market heads.

In the rest of this paper we consider some of the major issues which need to be addressed if an effective wages policy is to be developed in coming years. Prime among these is the need to engage with the changed formal institutional arrangements that determine work related earnings. Traditionally wage determination in Australia has involved a dynamic between a bargaining sector, based on industrial agreements, and a non-bargaining sector, based on awards set by industrial tribunals. We consider how these sectors currently operate - and how they could operate better - in Sections 2 and 3.

Not all workers, however, have been covered by this system. Those working as contractors - that is contracts for service - have gained their work related earnings as a by-product of business activity. In the past, their rights have been governed by commercial law. In Section 4 we consider how principles of labour law have made inroads into the determination of earnings for this group. More importantly we also consider how principles of commercial law have made major incursions into the domain of labour law and dramatically changed the nature and reach of the bargaining sector. It has long been recognised that wages policy both influences, and is influenced by, tax and income support policies. In Section 5 we consider the recent initiatives directed at shifting people from welfare to work and their implications for work related earnings.

Finally, in Section 6 we consider the question: where next? This draws the strands of the argument together by highlighting how a more comprehensive and coherent approach to wages can be crafted out of the fragmented arrangements examined in the previous four sections. Any new approach to wages policy needs to build on the simple reality that no worker or workplace today is an island. The key challenge is to capture the benefits of both solidarity and autonomy. This is best achieved if policy aims to transcend the limits of the distant and more recent past by promoting coordinated flexibility in the labour market.

2 Bargaining sector

Too often is it assumed in Australian public debates that there is only 'one way' to economic development and global competitiveness. A voluminous literature has emerged over the last decade illustrating that the Anglo-Saxon 'liberal market economies' and 'coordinated market economies' of West and Northern Europe have similar long-run economic performances, albeit with different levels of social equity.[20] While Australian debate continues to be proceed as though the choice is markets vs regulation, or centralised regulation vs decentralised flexibility, this literature has illustrated policies can be directed at simultaneously achieving coordination and flexibility. Framework agreements and coordinated minimum wage standards can be combined effectively with workplace bargaining and flexibility for firms and their stakeholders. Dovetailing with comparative analyses of bargaining systems, and micro-analysis of the relationships between minimum wages and economic outcomes referred to throughout this paper, the 'coordinated flexibility' literature provides a sound analytical foundation for the retention of award standards on the grounds of productivity and fairness.

2.1 Centralised or decentralised? the old mindset

Much analysis of wages bargaining in Australia still occurs through the prism of the debate around 'pattern bargaining'. The elimination of 'pattern bargaining' has been a central policy objective of the Federal Government which it claims is incompatible with a 'genuine' bargaining system. From this perspective, Australia currently has an 'intermediate' system, combining elements of centralised and decentralised wage-setting, characterised by excessive multi-employer regulation considered to be 'rigidities'. We would argue that this portrait of wage-bargaining in Australia is false. More importantly, the terms of the debate are anachronistic and represent a mindset which we need to transcend if we are to ask the right questions about wages policy.

The use of multi-employer coordination mechanisms in concert with decentralised bargaining is so widespread that the OECD notes one of the central preoccupations of contemporary research is developing and testing more precise measures of 'coordination'.[21] Whilst the Federal Government, and other like-minded bodies such as the Productivity Commission, continue to rehearse old polemics about centralised versus decentralised bargaining, international bargaining practices and policy debates have moved on.

The Department of Employment and Workplace Relations (DEWR) defines pattern bargaining as follows:

> The process of pattern bargaining occurs where a party seeks common outcomes on an all or none basis from agreements across a number of enterprises or workplaces, usually within the same industry or for multiple enterprises at a particular project or site.[22]

Critics argue that pattern bargaining undermines the object of the Workplace Relations Act to promote 'genuine' workplace bargaining. Tony Abbott claims: 'Unions use pattern bargaining to conduct their negotiations across a range of employers or an industry and do not genuinely negotiate at an enterprise level. Pattern bargaining ignores the needs of employees and employers at the workplace level.'[23] The DEWR and Productivity Commission claimed pattern bargaining was especially prevalent in construction and automotive manufacturing.

Conceptually, the key theorem cited in favour of 'fully' decentralised bargaining is the hump-shaped thesis of Calmfors and Driffil, which posits that 'intermediate' wage systems produce the worst outcomes, and 'extremes work best'.[24] In a seminal study which stimulated further research into the relationship between wage-setting processes and macroeconomic performance, Calmfors and Driffil suggested that highly decentralised bargaining arrangements and highly centralised bargaining arrangements were capable of delivering favourable macroeconomic outcomes relative to the intermediate or hybrid case (neither highly centralised nor decentralised). In a simple plot of unemployment outcomes of countries cross ranked along a bargaining structure continuum (with highly centralised at one end and highly decentralised at the other), Calmfors and Driffil found a hump shaped relationship in which unemployment tended to be lowest in countries with highly decentralised or centralised wage-setting. The hump-shaped thesis has also been used by some Australian scholars to advocate reforms to move to a 'fully' decentralised bargaining system.[25]

The characterisation of the Australian wage-setting system as 'intermediate' is false. ACIRRT completed studies of enterprise agreements in Construction (1182 agreements) and

automotive manufacturing (173 federally registered agreements) the two industries in which DEWR claimed pattern bargaining is especially rife. Evidence from these two studies challenges many of the assumptions, assertions and policy reforms advanced by the Commonwealth Government in relation to pattern bargaining.[26] Firstly, the occurrence of common or even identical provisions in agreements in an industry is not necessarily evidence of pattern bargaining. As Justice Munro noted in a major case on pattern bargaining during the AMWU's Campaign 2000, it is not a set of common demands but the absence of an 'opportunity to concede' or 'modify' these demands in enterprise negotiations that constitutes pattern bargaining.[27]

Secondly, pattern bargaining is often initiated by employers. Pattern agreements flow down supply-chains. Enterprise agreements amongst assemblers commonly refer to the requirements of 'Toyota Production System', 'Ford Production System' or 'Holden Production System'. Within the construction industry, identical agreements are crafted by employer associations and passed down from head-contractors to sub-contractors. Pattern agreements were also found in non-union agreements within the construction industry, especially amongst non-residential building and construction, painting and carpentry.

Thirdly, DWER, the Productivity Commission and the Commonwealth Government overstate the level of uniformity between agreements. Within construction and automotive manufacturing, pattern agreements can quite commonly be identified but usually it's more accurate to say the agreements exhibit variations on a pattern.[28]

The case presented for 'fully' decentralised wage-setting in Australia is conceptually and empirically flawed. There is not a single bargaining system in the OECD which corresponds to these fictitious notions of a 'real' enterprise-bargaining system. All bargaining systems combine elements of multi-employer regulation and workplace bargaining. Even in the United States and the United Kingdom (universally considered the purest national cases of decentralised bargaining and deregulated labour markets) there is considerable pattern-bargaining and multi-employer regulation.[29] Most international observers, including the OECD, consider Australia already has a highly decentralised wage-setting system, grouping Australia with New Zealand, the United Kingdom and United States as decentralised bargaining systems.[30]

Empirical studies have generally failed to validate the hump-shaped thesis. In a generally accepted critique, Soskice demonstrated that Calmfors and Driffil failed to differentiate between the formal level of bargaining and the level of wage coordination.[31] Centralised bargaining is the most obvious way to coordinate outcomes but even if bargaining is decentralised, some or all bargaining rules and outcomes may be coordinated across workplaces through informal or formal pattern-setting mechanisms, social pacts and framework agreements. The combination of coordination mechanisms with decentralised bargaining is the hallmark of 'intermediate' systems variously referred to as 'coordinated flexibility', 'coordinated decentralisation' or 'organised decentralisation'.[32] The hump-shaped thesis was consequently flawed as many nations were mis-classified, including high-performance economies such as Japan and Switzerland which were classified as decentralised but in which wage-setting is highly coordinated. As the OECD concludes: 'Some subsequent studies have reported evidence in support of the "hump-shaped" hypothesis, but most other studies have not found such a relationship.'[33]

International research and debate has moved beyond the centralised-decentralised polemic and begun to explore how mechanisms of coordination interface with decentralised bargaining. As the OECD notes, there has been 'considerable progress' in conceptually

unpacking the different forms of coordination and the 'proliferation' of different indicators to measure their effects.[34] 'Coordinated flexibility' is an umbrella term used to describe bargaining systems in which decentralised workplace bargaining is accompanied by various types of social pacts or multi-employer framework agreements and informal wage coordination across enterprises. These framework agreements set bargaining rules, sometimes determine some bargaining outcomes while still allowing considerable flexibility and discretion at lower levels.

What would coordinated flexibility mean in an Australian context and why would it be superior to the current system? Firstly, it would mean relaxing the monopoly of enterprise bargaining in the Workplace Relations Act - which will be strengthened by the Work Choices Bill - to provide genuine choice and flexibility for the parties to shape their bargaining arrangements according to their needs. The focus upon enterprise-bargaining was designed to enhance choice but has itself achieved a rigidity which doesn't reflect the diversity of modern business and workplace arrangements. Coordinated flexibility would allow for agreement-making across sectors, occupations, supply-chains and regions - not just within the enterprise. Secondly, there are 'public goods' associated with multi-employer coordination in particular contexts (such as industrial stability, workplace trust and enhanced skill formation) which could be harnessed whilst retaining workplace flexibility. Thirdly, the evidence on the relationship between coordinated flexibility and macro-economic outcomes is still being debated - some studies find superior outcomes, the OECD more cautiously says the jury is still out - but there is consensus that coordinated flexibility delivers superior equity outcomes.

2.2 Genuine choice? Enterprise bargaining vs coordinated flexibility

The Workplace Relations Act is constructed around an enterprise-oriented system of agreement-making guided by the principle this enables the parties to develop work arrangements which best suit their needs. Only single-employer agreements are legally recognised, industrial action must relate to a single-employer and so on. Consequently, the bargaining model of the WRA is actually a very rigid, one-size-fits-all model because the Workplace Relations Act superimposes one type of bargaining structure (enterprise-level, single-employer bargaining) across the entire labour market. The object of designing a system around enterprise-based bargaining was to maximise the choice and flexibility of the workplace parties. However, where it has found parties not bargaining in accordance with its pre-conceived notions, the response of the Federal Government has repeatedly been to try to legislate and regulate the parties to make them comply - instead of designing a bargaining regime which recognises and accommodates diversity.

A system of coordinated flexibility would allow the parties to genuinely choose the bargaining structure and agreement coverage which best suits their needs. The organisation of economic activities has become increasingly diverse and complex: sub-contracting, vertical disintegration and outsourcing have led to the creation of complex supply-chains. Distinctive regional labour markets exist outside metropolitan areas. Some types of work are structured as occupations, others are structured as sectors. Many economic activities have multiple layers of organisation which ideally would be regulated by different types of agreements depending on the circumstances. A system which only recognises enterprise-level agreements inhibits the capacity of the parties to choose and develop bargaining arrangements and agreements appropriate to their circumstances. Coordinated flexibility would allow the parties to develop multi-employer agreements across occupations, regions, supply chains or industries to set bargaining rules and outcomes whilst retaining scope for

workplace bargaining. If the monopoly of enterprise bargaining was relaxed, the bargaining system would be much more diverse and flexible as the parties could choose the type of agreement which genuinely suited their needs.

The 'public goods' of coordinated flexibility

There are a number of public goods associated with systems of coordinated flexibility:

1. *Industrial stability, continuity of supply and workplace trust*

An uncoordinated bargaining system can leave isolated enterprises and sectors with complex supply chain arrangements and just-in-time production systems vulnerable to disruption. Disconnected bargaining disperses and scatters bargaining periods across the calendar year, each potentially able to create severe dislocation across the sector or competitive difficulties. Deconstructing the industry into small bargaining units creates incentives for rational, self-interested market agents to exploit the bargaining power which flows from the organisation of production and supply-chains.

It is precisely for these reasons that other major automotive industries prefer coordinated bargaining to meet the challenges of globalisation - as is explained below in terms which will be instantly familiar to an Australian audience:

> there is another face to globalization ... in a context in which competition has become more intense, and in fact increasingly so between 'high-end' Japanese and German competitors - as in the automobile industry - and where success in the market increasingly depends on tightly coupled production networks (just-in-time production, highly coordinated supplier links), many employers find themselves more dependent than ever on a high degree of predictability on the shop floor and on the active cooperation of their workforces to produce at high quality and on a just-in-time basis ... centralized bargaining guarantees a degree of predictability by concentrating industrial conflict and providing a uniform timetable for negotiations that protects individual companies from isolated, disruptive wage disputes, something that has if anything become more dear to firms in an era of just-in-time production.[35]

Cost savings associated with lower levels of disputation and security in fully deploying just-in-time techniques, competitive advantages flowing from enhanced reliability in meeting customer orders and improved capacity for planning accrue from the stability and predictability of coordinated wage bargaining.[36]

It has been argued that the stability of coordinated bargaining flows through to shop-floor relations:

> ... the question is how trust relations emerge and last ... Trust between management and the workforce is likely to develop only if there are rules that make shop-floor industrial relations so predictable that short-run self interest can be replaced by long-term views of common interest. Because the actors at the shop-floor are directly involved in this collective action problem, there is good reason to assume that such rules can be established only by external actors, namely, higher level associations and the state.[37]

By settling some of the more contentious issues, liable to be played out workplace by workplace in the absence of a coordinated solution, the opportunities for constructive bargaining is improved. Coordinated bargaining systems also appear to encourage more consultation and consensus-decision making than fragmented bargaining systems which are

typically characterised by high levels of managerial prerogative and unilateral decision-making.[38]

2. Skill formation and labour market flexibility

Uncoordinated wage systems exacerbate emergent skill deficits and shortages associated with an enterprise-based training system under conditions of excess capacity and global competition. Excess capacity, intense competition and pressures on margins are leading to reduced intakes of apprentices and reliance on an ageing workforce for skills, on the one hand, and new forms of business organisation and non-standard labour on the other. Labour intensification and a preoccupation with ensuring labour is fully deployed on-the-job has undermined the capacity of workplaces to conduct skill development. Declining skill formation capacity is linked to new forms of business organisation and rising usage of non-standard employment. Labour hoarding in the 1960s and 70s to enable firms to respond quickly to market upturns has been replaced by lean workforces topped up by casual, contractors and labour hire workers as required. Training levels for these types of employment are notoriously poor.[39]

Fragmented, enterprise-specific approaches within such competitive markets will lead firms to rationally offer skills training to the extent that it is compatible with the short-term needs of the firm. Otherwise there is a serious risk they will not recoup their investment either because employees leave or are poached by other firms who have not invested money in training. Organisational and work restructuring, especially downsizing, has reduced employment security, job tenure and employee attachment to their employers thereby increasing these risks.

Uncoordinated wage systems increase the opportunities for firms to poach skilled labour by offering wage inducements to selected employees as an alternative to training. The rational response of firms in this environment is not only to reduce training levels but also to offer increasingly narrow, firm-specific skills training. The pool of skilled labour with transferable skills is therefore likely to diminish over time: enterprise flexibility creates industry-level rigidities inhibiting the capacity of the industry to adjust to volatility.[40]

3. The wage-productivity nexus

The Productivity Commission assumes that enterprise-specific wage-setting yields the most efficient outcome by creating incentives for productivity improvements and aligning wages with the marginal productivity of labour in the firm.[41] However, an increasing body of industrial relations researchers have concluded the popular link between enterprise bargaining and productivity improvements during the 1990s are empirically unproven and over-estimated.[42] Additionally, coordinated wage-setting offers rewards for firms with above-average productivity. Coordinated wage bargaining relates wage increases to the average level of productivity and profitability across firms. Firms with higher productivity, profitability and capacity-to-pay are therefore likely to pay higher wages under an uncoordinated system - eroding the premium from higher-performance for reinvestment - than they would under a coordinated wage system. Uncoordinated systems can also lead to a higher average wage across an industry if the wage settlements of these lead firms then become an informal pattern-setter which flow-on through the industry.

Coordinated flexibility and macro-economic performance

As the OECD (2004)[43] has observed, a 'considerable' number of studies have found 'intermediate' systems of coordinated flexibility deliver superior macro-economic outcomes.

In the biggest-scale study of its type, using nominal labour costs and real unit labour costs to assess the performance of 18 OECD nations across six different time periods from 1970-1990, it was found that coordinated bargaining systems with 'medium' and 'high' degrees of centralisation delivered superior results compared to decentralised bargaining systems with little wage coordination.[44]

The OECD is more cautious in its assessment. Whilst noting a 'considerable' number of studies have found intermediate systems deliver superior outcomes, their own calculations found little significant impact on four indicators of macro-economic performance (unemployment, employment, inflation and real earnings growth). After classifying nations as 'low', 'intermediate' or 'high' on measures of coordination and centralisation, the *Employment Outlook* report concluded:

> The overall impression that emerges from these comparisons is that partitioning countries according to centralisation/coordination, on its own, is not very informative for predicting aggregate economic performance. This impression is reinforced by the observation that there is a lot of variation in aggregate outcomes within each of the three CC (coordination/centralisation) groupings in all three periods (70s, 80s, 90-02). A closely related implication is that little support emerges for intermediate CC countries generally having the worst performance.[45]

This, the OECD further notes, may be because the effects of wage-setting institutions are contingent on interactions with other economic and social institutions and/or because of the complexity of isolating linkages between wage-setting and macro-economic performance. Results are far from conclusive but research findings on the macro-economic performance of intermediate systems generally range from 'no worse' - including notably a study by the World Bank[46] - through to superior outcomes.

The bargaining literature and the OECD review complements an existing body of literature which has found broadly similar macro-economic performance between the English-speaking 'liberal market economies' and the North and Western Europe 'coordinated market economies'. Hall and Soskice, summarising this literature, note that a comparison of headline indicators (GDP, growth rates, unemployment) lead to the conclusion:

> Despite some variation over specific periods, both liberal and coordinated market economies seem capable of providing satisfactory levels of long-run economic performance.[47]

The notion that United States has a superior employment record to 'Europe', and therefore decentralised and deregulated systems perform best, is commonplace in public debate. However, closer examination by scholars working in this tradition challenges this conventional wisdom. Firstly, Europe comprises a diverse group of economies with variable performance over the past 20 years. United States unemployment is 'sometimes lower, sometimes higher' than that of various European nations.[48] In particular, prototype coordinated market economies (CMEs) have lower or comparable levels of unemployment than that in the United States:

> The argument that CMEs have poor unemployment records is belied by the success of many CMES, the Netherlands is at 2.1% on the latest OECD standardized unemployment rates for 2001, Denmark 4.3%, Austria 3.6%, Switzerland 2.5% (2000), Sweden 4.9% and Norway 3.6%.[49]

Similarly, the OECD (2004) has constructed an index of 'job protection' which illustrates the nations with the highest levels of protective employment regulation have the highest

employment-population ratios. Secondly, there are other factors which appear to explain differences between the United States and some of the less flattering comparisons made, especially Germany. Higher unemployment rates in Germany principally reflect the shock of absorbing the post-Communism East German economy and differences in criminal justice policy between the United States and European nations such as Germany. Western and Beckett (1999), United States labour market economists, indicate that in Europe unemployed males outnumber prison inmates by a factor 20-50:1 compared to less than 3:1 in the United States.[50] Once the incarcerated population is incorporated into calculations of the size of the labour market - or what the labour market would be if their criminal justice approaches were the same - a very different picture emerges. Labour utilisation in Europe is higher for 15-19 year olds between 1976 and 1994 and the unemployment rate for the United States is just above that of Germany in the mid-1990s. Put simply, the official rate of unemployment in the United States is deflated because they gaol more of those who would otherwise be unemployed.[51] Thirdly, unemployment rates amongst low-skill workers in the United States were higher relative to skilled workers than in Europe,[52] '... so one can hardly blame European unemployment on rigidities in low-skill labour markets since no such rigidities applied to unemployed low-skilled Americans'.[53] The OECD further notes in the *Employment Outlook Report* that studies using micro-level data have 'not verified' theoretical claims that 'the relative employment performance of low-skilled workers was worse in countries where the wage premium for skill was more rigid.'[54]

However, there is one striking difference between these types of economies and bargaining systems - coordinated bargaining systems deliver more equitable patterns of wage dispersion. The OECD concluded that its econometric analysis and review of the literature:

> Confirms one robust relationship between the organisation of collective bargaining and labour market outcomes, namely, that overall earnings dispersion tends to fall as union density and bargaining coverage and centralisation/coordination increases. It follows that equity effects need to be considered carefully when assessing policy guidelines related to wage-setting institutions.[55]

The social costs associated with the different approaches are most dramatically captured in the studies of the use of the penal system as a labour market institution - the US gaols its unemployed, Europe places them on welfare - and there is no question that coordinated bargaining maintains a more cohesive and equitable labour market.

The Commonwealth Government continues to rehearse an old polemic about centralised versus decentralised bargaining but international bargaining practices and policy debates have moved on. A uniform trend towards more decentralised bargaining and increased labour market flexibility can be observed throughout the OECD but whereas Australia has followed English-speaking nations down the path of 'disorganised decentralisation', the coordinated market economies of Europe have more fruitfully combined decentralised bargaining with multi-employer coordination.

Just as the debate on bargaining has been erroneously preoccupied with a binary conception of the level at which it can occur - that is, 'centralised' or 'decentralised' - so the debate about publicly defined standards has been preoccupied with an even more unhelpful binary notion of choice; that is, whether minimum wages should be regulated or deregulated. It is to this issue that we now turn.

3 Non-bargaining sector

When it comes to the non-bargaining sector there are at least two broad directions in which policy might go. One is a 'low wage sector' strategy in which minimum wages are allowed to fall to very low levels, and government transfers are then used to lift some people out of poverty. The other direction is a 'living wage' strategy, in which minimum wages are kept at a level which allows wage earners to be self-reliant and not dependent on government transfers to protect them from poverty. The first strategy is characteristic of the US labour market, the second describes, in part, the situation prevailing in Australia in 2006.

3.1 The 'low wage sector' strategy

The US labour market is characterised by a large sector of low wage, low productivity jobs in which receipt of a full-time wage is not sufficient to keep a worker from living in poverty. Table 3.1 shows both the incidence and distribution of low-paid employment for Australia, the UK and the US during the mid-1990s.

Table 3.1: Incidence of low-paid employment by occupation, age and sex(%)

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

Source: OECD (1996): 72–73.

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

Some of the most interesting differences between the three countries are apparent when low-paid workers are compared by occupational group. The figures for the US and the UK are significantly higher across all occupations than for Australia. One of the most significant differences is the proportion of low-paid personal service and sales workers in Australia (20 per cent) compared to the US where more than half the personal service workers are low-paid. The Australian figures for these occupations are also half those of the UK. Further, there are notable differences between the incidence of low-paid labourers

in Australia (19 per cent), the US (36 per cent) and the UK (28 per cent). In Australia there is a clustering of low-paid employment in three occupational groups (sales and personal service workers, trade and crafts persons and labourers). In both the US and the UK clerical workers also have a high incidence of low-paid employment. Interestingly twice the proportion of professional and technical workers in the US are considered low-paid compared with Australia where only 4 per cent are low-paid. The data suggests that the arbitration system, as a safety net for low-paid workers in Australia, has prevented the extremes evident in the US and to a lesser extent the UK.

Barbara Ehrenreich's sobering experience of low paid service work - *Nickel and Dimed, On (Not) Getting by in America* - highlighted one of the reasons there are so many job openings for those women being jettisoned from welfare.[56] Ehrenreich suggests that job turnover is high in the US partly because the pay and conditions are so bad that management is able to leave their job vacancy signs permanently on display. Despite the high turnover, these kinds of jobs are not 'stepping stones' into better paid jobs. Research by the OECD found that seven out of ten American low-paid workers in 1986 were either still in low paid jobs or were not working full-time five years later. The comparable figure for Denmark was just one-third.[57] Research by the Urban Institute on employment in health care, child care and hospitality found dramatic differences in industry mobility between low-paid workers and non-low-paid workers. Whereas about 68 per cent of non-low-paid workers were still in the same industry after 32 months, only 14 per cent of low-paid workers were. A larger proportion of low-paid workers - over 18 per cent - had actually passed through three industries during that time period, all within the low-paid sector.[58]

Changes to the Earned Income Tax Credit (EITC) scheme and harsher State welfare regulations have resulted in large numbers of single parents returning to the US labour force during the mid to late 1990s. Follow-up studies on these EITC outcomes have been revealing. In Wisconsin, for example, the 18,000 welfare recipients who found work after December 1995 held more than 42,000 jobs in total - an average of 2.3 jobs each. Half of the new jobs came from temporary help agencies or from the retail sector. As Garry Burtless summed up the experience: 'Wisconsin welfare recipients certainly found jobs. Few landed good ones, however, and many exited quickly from the jobs they found.'[59]

With minimal access to training, high job turnover and negligible prospects for career advancement, it is not surprising that low wage sectors have very low productivity. Again, the USA is instructive. The emergence of a large pool of low-wage jobs in the service sector has had a serious and adverse impact on productivity growth. In the US manufacturing productivity growth between 1979 and 1990 was 2.9 per cent and between 1990 and 1996 it was 4.2 per cent. In non-manufacturing, it was 0.3 percent and 0.2 percent respectively. These latter growth rates were a tenth of those prevailing in German non-manufacturing over the same period.[60] As Robert Brenner concluded:

> The upshot has been a truly vicious circle, in which low wages have made for low labour productivity growth which has in turn rendered 'unrealistic' any significant growth of wages and thereby provided the basis for continued low productivity growth.[61]

The US experience also provides important insights into the nexus between hours of work and wage inequality. Researchers such as Bell and Freeman (1994) and Bosch (1999)[62] have noted that as earnings inequality increases, so the quality of hours worked decreases. Amongst full-time workers, hours worked are amongst the longest in the advanced industrial world, while amongst part-time workers, hours worked are amongst

the most fragmented and erratic. It is clear that the issue of low wage employment involves more than just issues of income; it affects the whole nature of work and the quality of life associated with it.

3.2 The 'living wage' strategy

Much of the overseas formulation of wages policy operates within the framework of 'minimum wages', legislated minimums below which wages (in certain sectors) should not be allowed to fall. In the case of the United States, the level of the minimum wage was allowed to stagnate for nearly two decades, leaving many low wage workers trapped in poverty. The consequences of this stagnation has been sketched above. Similarly, in the UK, the abolition of the wages councils during the 1980s left most low wage workers there bereft of any protection. The creation of a Low Pay Commission (LPC) which has significantly increased the minimum wage in recent years has attempted to remedy these years of neglect.[63]

Jerold Waltman suggests that there are a number of terms which have been used in debates about earnings: minimum wages, fair wages, just wages and living wages. His own preference is for the notion of a 'living wage', one which looks to the 'needs of the employee' as its basis.[64] This means that the living wage should be set at a level which would:

> *provide someone who works full-time year-round with a decent standard of living as measured by the criteria of the society in which he/she lives.* It would be calculated as an hourly figure and apply to those who work part-time as well as those employed full-time. (Emphasis in original)[65]

For Waltman such a level is necessary for social inclusion, but not in the narrow sense that Blair's 'Social Exclusion' Unit might use the term. Rather, for Waltman a living wage is needed to provide the foundation for living standards in an advanced, market economy and to ensure inclusion in the political culture which 'civic republicanism' requires:

> Civic republicanism's aim is a society of self-governing citizens. Poverty and vast inequality are both antithetical to a viable civic republican polity for they undermine the capacity of people to function as citizens. At the same time, civic republicanism legitimates public action - subject to certain limiting conditions - to address social maladies of various descriptions. It does not separate the polity and the economy into watertight spheres subject to different standards of evaluation.[66]

From the perspective of egalitarianism, a living wage can underpin a society of self-reliant individuals in a way in which government subsidies to low wage employment can never do. Such subsidies, often in the form of supplementary welfare payments, are both fragile and arbitrary, liable to be modified or withdrawn to suit political fashion or necessity. The recipient, despite a partial income from paid employment, remains 'dependent' on welfare. A secure livelihood, based on a living wage, earned in the workplace, remains a far preferable basis for citizenship and political inclusiveness.

Ensuring that living wages prevail at the bottom of the labour market is one of the best ways in which public policy can promote a society based on self reliant individuals. Similar concerns in other nations have 'led to the revitalisation of living wage movements across the globe'.[67] Australia is fortunate in having the infrastructure for establishing and maintaining a living wage. Minimum award rates have long been recognised as central to enabling the workforce to be self-reliant. The balance has already shifted in Australia

towards greater reliance on the tax-transfer system but further shifting the balance would have negative equity and social consequences.

The 'case for the living wage' is not just about quantity. Indeed, it is primarily about job quality. Much of the economic modelling carried out to establish the 'job-destroying' impact of minimum wages focuses solely on the elasticity of labour demand, and how many jobs are likely to disappear (or fail to be created) if an increase occurs in the minimum wage. Not only is the evidence for this argument inconclusive,[68] but it totally ignores the issue of job quality. Jobs which are based on living wage principles are more likely to be jobs with decent working conditions, reasonable prospects for job security and job advancement, and jobs which produce higher morale, commitment, and productivity. By way of contrast, if the floor at the bottom of the labour market is allowed to fall this allows product market competition to drive down labour market standards. The 'race to the bottom' which is bound to eventuate won't just drag down hourly rates. Also falling will be safety standards, working time arrangements, working conditions, morale and productivity.

Australia's own 'living wage' case

Waltman sees Australia as one country where labour market institutions have been largely successful at protecting the low paid workforce from poverty. And indeed, the name given to the strategy pursued by the unions in recent years is the 'living wage campaign'. It is worth examining this strategy in more detail before we draw these arguments together.

The Australian Council of Trade Unions launched their living wage campaign in 1996, in the form of a claim in the Australian Industrial Relations Commission to vary awards. The case aimed to increase rates of pay for the lowest paid workers to compensate for falls in their real earnings during the first half of the 1990s. Since 1996, this campaign has resulted in annual wage increases for some of the lowest paid workers in Australia, and has re-established need as a criterion of wage fixing when it had been almost completely eclipsed by productivity-based criteria.

Recent estimates suggest enterprise agreements cover around 40 per cent of the workforce, leaving a large proportion dependent on the award system. These are the constituency for the living wage. As a group, they are disproportionately female, and concentrated in retail trade, health and community services, and the food service and hotel industries.[69] The living wage claim aims to achieve some kind of 'catch-up' for these workers who have clearly slipped behind the field.

Over time the wage component of the Living Wage Claim was incorporated into the annual decisions of the Australian Industrial Relations Commission on 'Safety Net Adjustments' (SNAs) to awards. In addition to its traditional role in industrial dispute resolution, under the Australian *Workplace Relations Act* 1996 (the Act), the Commission was responsible for establishing and maintaining a 'safety net', that is, a safety net of fair minimum wages and conditions of employment. The Commission was expected to have regard to the following:

1. the need to provide fair minimum standards for employees in the context of the living standard generally prevailing in the Australian community;
2. economic factors, including levels of productivity and inflation, the desirability of attaining a high level of employment; and
3. when adjusting the safety net, the needs of the low paid.

It is important to note that SNA cases did not simply deal with the lowest paid. Because the Act also authorised the Commission to rule on relativities, these cases set rates of pay for all those with limited enterprise bargaining power, not just the low paid. Consequently many middle and upper range white collar jobs were also affected by SNA decisions. Once the federal Commission reached a decision, the state tribunals usually made decisions identical to those made at federal level for workers on state awards.

The ACTU's living wage claims enjoyed modest but genuine success in the Safety Net Adjustment cases held annually between 1997 and 2005. How have living wage claims affected incomes of low paid workers? It is difficult to distinguish the impact of change in workforce composition from the impact of regulation on income. However, it is likely that Australia's system of wage determination has defended hourly rates of pay from falling as fast as they would have in the absence of intervention, and reduced the proportion of employees working at very low rates of pay. This appears to be one of the main reasons for the Government's proposal to replace the AIRC's SNA hearings with a process of statutory minima determined by a Fair Pay Commission. Table 3.2 shows that the proportion of employees earning less than ten dollars per hour (in constant 1999 dollars) declined over the decade from 1989 to 1999, with the most precipitous decline experienced by female workers. A similar pattern in the proportion of employees earning less than 12 dollars per hour is also evident. Significantly, the gender gap closed somewhat as the rate of improvement in men's real earnings lagged behind the rate of improvement in women's earnings. Moreover, that more than one fifth of the adult labor force earned less than twelve dollars an hour in 1999 is itself a symptom of broader processes at work in the economy, and of the importance of continuing and enhancing living wage campaigns.

Table 3.2: Wages Growth of Low-Paid Workers, 1989–1999 (%)

Year	1989	1990	1994	1997	1999
	Percentage of employees earning under $10.20 per hour				
Males	11.3	8.5	8.5	8.5	8.7
Females	16.4	13.4	10.6	10.0	9.2
Persons	13.5	10.6	9.4	9.2	8.9
	Percentage of employees earning under $12.20 per hour				
Males	24.0	19.7	21.5	20.7	20.0
Females	33.1	30.1	28.4	27.1	23.1
Persons	28.0	24.2	24.6	23.6	21.4

Sources: Labour Force Survey and Income Distribution Survey. Population: Adult, non-managerial employees.

A striking feature of the Safety Net Adjustments from 1997 to 2005 was that the Australian Industrial Relations Commission had been engaged in a comprehensive exercise of what is known as 'evidence based policy development'. Each year employers, unions and governments of all persuasions presented arguments and evidence of how much, if any, wages should rise for those with limited bargaining power. Since 1996 employers and the Federal coalition government argued that anything more than marginal increases would be counter productive, asserting that any wage rises would either increase employment losses or produce more subdued employment growth. The Commission has been in the position where it could assess these arguments in the abstract, as well as observe the

impact of its decisions over time. On the basis of this experience it reached a number of simple, but very important, findings.

The first is that the scholarly debates on the alleged negative impact of increases in minimum wages are, at best, inconclusive. The key point which has emerged is that what matters most are the scale of the increase and the nature of economic conditions prevailing at the time of its implementation. This underpinned the Commission's second key conclusion that reasonable wage increases for those dependent on awards are sustainable if introduced in a situation of healthy economic growth (AIRC, 2004). It is interesting to note that virtually identical findings have been reached by recent studies of the UK Low Pay Commission (LPC, 2004) and the OECD (2004) in their reviews of the literature on the economic impact of increases in the minimum wage. Clearly, the changes introduced in the *Work Choices* Bill to diminish the role of the AIRC in setting basic award rates have more to do with ideology than with facts. It is important when considering new long-term directions for wage policy in Australia that we do not forget the experiences and observations of the AIRC on the Safety Net Adjustment.

Up to now, we have examined developments in the work related earnings of people working as employees. Any comprehensive discussion of policy of work related earnings must, however, consider the situation of contractors - that is, those operating beyond the reach of both the bargaining and non-bargaining realms that we have considered so far. It is to this segment of the labour market that we now turn.

4 Commercial sector

4.1 Employees and contractors

The evolution of wages policy is intimately connected with the laws governing work. Throughout most of the last century Australian wages policy was developed on the basis of this country's unique system of labour law. As is well known, this realm of jurisprudence is built on the law concerning the employment contract. This contract can take on of two forms: a contract of service between an employer and an employee or a contract for the provision of particular services. Traditionally wages policy has been primarily concerned with setting rates of pay for employees. The work related earnings of contractors providing particular services has, generally speaking, been regulated by 'the market'. Rights and obligations of employers and employees have been specified in labour law. Those concerning contractors have been determined by commercial law - especially the general law of contract and trade practices.

The distinction between 'employees' and 'contractors' is relatively easy to draw in theory. In practice, however, the world does not correspond to such binary categories. Instead, as Collins (1990) has noted, there is a continuum determined by the degree to which control at work and the risks associated with work related earnings are distributed between different agents involved in production and service provision.[70] In thinking about wages policy of the future it is, therefore, essential that some consideration is given to the so-called 'commercial' sector; that is, the sector of non-employees. In particular we need to consider: What is its size and characteristics? How have the principles governing it co-existed with those of labour law? Most importantly, given that the distinction between 'employees' and 'contractors' is becoming more difficult to make, is there a need to redefine the foundation categories that underpin policies concerned with work related earnings?

In recent years the Australian Bureau of Statistics has gone to considerable trouble to generate

estimates of what it describes as the different 'forms of employment'.[71] Drawing on this work the Productivity Commission has produced a number of useful research papers which have helped make better sense of so-called non-standard forms of employment.[72] The size and nature of the 'commercial sector' is evident in the data produced by the 1998 Forms of Employment Survey. This shows that over 1.8 million (22 per cent) of employed persons were 'owner managers'. Of these just 850,000 (46 per cent) were what Waite and Will (2001) describe as 'Self-employed contractors'. These are people who do not employ anyone and more often than not work on a contract basis. About 490,000 (59 per cent) of these people could be safely described as 'independent contractors'. The remainder - some 350,000 - were what the ABS describes as in 'some way dependent' on the person to whom they worked. This group constituted about 4.2 per cent of all employed persons in 1998. The key indicators of dependence were the fact that they either:

- did not have control over their own working procedures;
- had terms in their contracts which prevented them from subcontracting their work; or
- their contract prevented them from working for multiple clients.[73]

It is important to appreciate that dependent employment relationships are not confined to self-employed contractors. Many owner managers with employees work on a franchise basis. These arrangements are often more prescriptive than those concerning employees. For example, some hamburger chains (organised on a franchise basis) dictate such specific details as who the suppliers of inputs will be and how long a hamburger patty should be cooked. Prescriptions of this nature are absent in many so-called 'employer-employee' relations. As such the estimate of 4.2 per cent of the workforce being contractors who are in some way dependent should be regarded as a lower bound estimate of workers having this status.

4.2 Labour law and commercial law

How have work related earnings of this segment of owner-managers been regulated in the past? As a matter of formality this sector is defined as falling beyond the reach of labour law as it is regarded as a realm of commerce. Work related earnings are determined as a by product of commercial arrangements. As such this sector is primarily governed by contract and trade practices law with their notions of competition characterised by 'mutuality' and 'equality of bargaining power' between the parties resulting in agreements which, once entered, have to be honoured. Formality, however, has often not coincided with the reality of the distribution of risk and structures of control in how labour is deployed and rewarded. Tensions have often arisen as to whether a realm of human economic practice is characterised as one primarily involving 'business' or 'work'. If a set of arrangements is regarded as 'business' it is regulated by the commercial law, if it is treated as 'work' it falls within the ambit of labour law. On what basis have these competing principles for regulating work related earnings co-existed? A defining feature of this area of law is that labour law principles have emerged as exemptions to the commercial law. For example, within the common law of contract, contracts involving labour gave the providers of labour special rights to recover payment for labour expended even if other parts of the contract were unenforceable (eg, rights to sue for *quantum meriut*[74]). The initial legal right for unions to exist emerged in the 1870s and took the form of gaining immunities from the common law prohibition against conspiracies to restrain trade. It took many years for unions to achieve positive recognition as opposed to mere

immunity from common law attack in the arbitration acts of the early twentieth century. Even today basic rights to collective bargaining are listed as special, limited exemptions to the operation of the Federal Trade Practices Act [s155]. But the dividing line between the law of 'commerce' and 'labour' has never been fixed and unambiguous.

Labour law notions of collective bargaining and socially defined standards overriding market outcomes have made serious encroachments into the commercial domain. Arguably the most developed jurisprudence in this regard has arisen in response to the problem of inequality of bargaining power surrounding owner drivers in the NSW road transport industry.[75] The public policy basis for collective bargaining rights and statutory determination of basic conditions for owner drivers emerged from the devastating effects of competition regulated on the basis of raw market forces alone. As the Transport Workers Unions has recently noted:

> 42. The primary purpose of these collective arrangements is the payment of rates which, as a minimum, allow drivers to recover all costs of the truck labour. That is, they operate to prevent exploitation to the extent of not even recovering everyday costs thereby fostering sustainability of the owner-driver; the stability of the transport operator and industry; and the safety of industry participants and general road-using public.[76]

Without such protection the practice of so-called 'destructive competition' prevails. According to the TWU this occurs:

> 44. . . . where competing transport operators win commercial contracts by charging prices that are below actual cost. Without at least minimal protections operators are able to force upon owner drivers rates that do not even cover vehicle and labour costs. This has flow-on effects for employee drivers, whose employers are then encouraged to cut their terms and conditions in order to compete. . . . 46. Failure to ensure at least cost recovery leads not only to jeopardising the owner-driver business model and a stable market within which operators can compete fairly, but leads to the proliferation of unsafe systems of remuneration by putting downward pressure on pay rates in the transport industry as a whole. This is not in the public interest because inadequate systems of remuneration lead drivers to work faster and/or longer in order to survive.[77]

Initially regulated under s88F of the NSW *Industrial Arbitration Act* this provision has evolved into a more general basis for the public setting of standards to overturn or radically change 'unfair contracts' involving 'work' in general. As a result key labour law rights are now available and used by those involved in partnerships, franchises and executive management as well as non-standard low skilled workers.[78] Innovations of this nature are not confined to NSW. At Federal level there has also been movement, most of which has occurred under the current Howard government. The 'Dawson Review' of Trade Practices Legislation proposed that small businesses should have a general right to bargaining collectively with large firms, where the large firm had a disproportionate amount of bargaining power. This provision was designed for sectors like retail where many small businesses often have limited bargaining power when negotiating rents with owners of large shopping malls.[79] The Australian Competition and Consumer Commission (ACCC) has recently granted Victorian chicken growers the right to bargain collectively with processors of their produce. In particular, it granted the right to withhold produce as part of a 'collective boycott.' The ACCC noted that the granting of such rights was necessary

> to provide growers with greater input into their contracts with processors leading to more efficient outcomes. The ACCC also consider[ed] that transaction cost savings c[ould] be achieved.[80] [81]

Ironically this privilege is only available to members to the Victorian Farmers Federation. Traditionally a strong supporter of 'freedom to contract' this leading employer association is now championing the extension of collective bargaining in its own domain while the Federal government is doing its best to wind it back everywhere else. The irony is even greater given that the Federal government has now tabled amendments to the *Trade Practices Act* in Parliament to prohibit any union ever being able to represent contractors and owner-managers in this way.[82]

4.3 The incursion of trade practices law

Countering the drift of labour law principles into domains normally covered by commercial law, has been the even greater incursions of trade practices law into heartland labour law territory. Since the 1970s sections of 45D and E of the *Trades Practices Act* have specifically outlawed so-called 'secondary boycotts'. This is industrial action undertaken in solidarity by unions not directly privy to a dispute but launched to help other unions bring greater pressure to bear on a particular employer. The typical example of such action concerned truck drivers refusing to cross a picket established by manufacturing workers in dispute with their employer. The truck drivers usually did not have an employment relationship with the factory owner but took the action in support of the workers in dispute. Such action has, historically, been very important for the union movement at large in enhancing its power *vis-à-vis* employers. While the secondary boycott provisions have provided for significant penalties, they were rarely used in the 1970s and early 1980s, and remained dormant.

This situation has changed dramatically in recent years. Prosecutions and actions taken pursuant to these provisions have not only increased - they have also changed in form. Actions against traditional forms of solidarity action have grown in number. These have typically involved campaigns by unions to establish 'pattern' agreements through coordinated action against firms endeavouring to resist agreeing to arrangements which are, generally speaking, accepted as industry standards. Good examples of this involving road transport workers and construction workers are provided by the ACCC in the later 1990s.[83] Of even greater significance, however, has been the use of these provisions of the *Trades Practices Act* to undermine industrial arrangements and action undertaken to regulate the growth of nonstandard forms of employment (eg, restrictions on the use of contract labour and labour hire) and employment contracts that fragment bargaining units (eg, Australian Workplace Agreements). An example of the former is provided in a case involving the Communication, Electrical and Plumbing Union which took action attempting to limit the contracting out of work to a labour hire firm.[84] An example of the latter has been the levying of huge fines (ie, $100,000 each) on three unions[85] involved in a picket directed at resisting the use of non-local labour on the basis of Australian Workplace Agreements in the construction and operation of a new gas processing plant in rural Victoria.[86] The settlement of this case involved registration of an agreement between the aggrieved employer, the ACCC and the three unions concerned. In accepting the settlement, Justice Gray of the Federal Court gave a very candid commentary on how it is often the realities of the cost of litigation, and not substantive rights that is shaping the evolution of punitive arrangements in this area of the law. As he put it

> 8. . . . if I had been determining the penalties myself in this case I should have fixed a figure considerably lower than the $100,000 agreed. . . . The respondents [ie, the unions] are not profit-making enterprises. They did not engage in the conduct the subject of the proceeding for their own gain, or the gain of their officials. Their overriding concern was no doubt to protect the employees of Upstream Petroleum Pty Ltd, including those employed in the future, . . . from possible exploitation by the negotiation individually of their terms and conditions of employment. The use of a picket is a very traditional means of engaging in industrial action over such an issue. With the exception of a four-hour period on 2 October 2002, access to the site was not blocked. . . . In these circumstances, to call upon the respondents each to pay such a large sum from their resources, which ultimately come from the pockets of wage-earners appears to be excessive.
>
> 9. . . . There can be little doubt that the agreement has been brought about as much for financial reasons as for any other. Facing a proceedings that would have been long and involved if the [ACC] Commission were put to its proof, the respondents probably chose to pay larger amounts in penalties rather than incurring large bills for the Commission's costs of the proceedings.
>
> . . .
>
> 11. My conclusion is that the penalties sought must be at the very highest end of the range appropriate for conduct of this kind.[87]

Clearly unions endeavouring to maintain coherent labour market standards on a multi-employer basis by endeavouring to pursue pattern bargaining and/or to maintain decent forms of employment and coherent collective bargaining structures now face profound obstacles in trades practices law. And the problems do not just concern abstract principles of law, but the very practical problem of incurring huge losses associated with the costs of litigation and not simply the penalties imposed for breaching commercial law. It was for reasons such as these that industrial tribunals have always operated as a 'no-costs' jurisdiction. As such, the shift to a more commercial basis for regulating relations at work involves far more than an abstract shift in the determination of rights and obligations - it has very practical implications as to the viability of enforcing those rights and obligations.

4.4 Implications for wages policy

As the logic of enterprise bargaining becomes more pervasive, the role of commercially based principles for regulating work related earnings will increase. Previously wages policy was built on a foundation of labour law that governed work related earnings and conditions of employment on the basis of dealing with classes of work - what were defined as industries, occupations and callings. Unions and employer organisations respondent to awards covering these classes of work were treated as the key parties for setting and maintaining standards for them. These generally applicable standards were codified in awards that governed basic wages and working conditions for anyone performing a particular class of work covered by that award. With the shift to enterprise bargaining the status of unions and employer organisations has changed. They are now regarded as representing particular groups of people - members - and not particular categories of work. And as they endeavour to raise standards it is not treated at law as raising standards for a class of work in general, rather as activity directed at furthering gains of a narrowly defined, sectional group - their members. Gains made are contained in

agreements, the benefits of which only extend to the parties involved – that is, the relevant enterprise and its workers. This has major implications for how unions in particular are defined and their legal rights and obligations specified. Instead of being labour market players helping set and maintain widely applicable standards they are increasingly treated as economic agents who must play by the rules of business. These are 'the enterprise' as the unit of bargaining and, increasingly, legal rights and obligations as defined by the laws governing commerce and not employment.

This is a particularly unhelpful development. Labour law originally emerged because of the inadequacy of commercial law principles for dealing with the social domain of work. Just as the law covering marriages is not governed by the law of contract, so it was recognised that relations at work required distinct principles appropriate to that domain. It is ironic that within the domain of commercial law the fiction of individual contracts as adequate for regulating business relations is giving way to at least limited rights to collective bargaining. As the recent case with Victorian chicken growers has shown, the key issue is often the reality of power relations within a supply chain - not the formal contractual relations between each producer and his or her individual contract with the processor. It was realities such as these that gave rise to the law governing owner drivers in NSW. The principles here subsequently evolved into the more general laws governing unfair contracts - s106 of the NSW *Industrial Relations Act*. Any coherent wages policy of the future needs to build on foundations such as these; foundations that engage with the modern realities of production and service provision. A retreat to 'time honoured' principles of contract and commercial law are just not appropriate, either for the realm of commerce or the realm of work.

Wages policy is ultimately about setting a price for labour. As such it is concerned with the issues of labour supply and labour demand. This section has dealt with one aspect of demand. Labour demand does not just concern the issue of quantity (ie, more or less requirements of labour hours). It also has a qualitative dimension, a key one of which is how the risks of employment are shared. This is overwhelming determined by employers in the forms of employment they offer to potential workers. This section has highlighted the importance of understanding this important qualitative dimension of changing demand conditions, especially the changing legal forms used to coordinate production and service provisions. Equally significant have been changes occurring on the supply side of the labour market. Life courses are changing, but not on the basis of myriad 'unique individual' experiences. The challenge here is to grapple with changing categories of life experience. It is to this issue that we now turn.

5 Work and welfare

5.1 A wage earner's welfare state

Australia's history of labour market regulation, particularly its unique industrial institutions and its compromises between capital and labour, had important consequences for its system of welfare. The 'basic wage' principle which grew out of the Harvester decision reaffirmed that the labour market was the central institution for providing for the welfare of the working class. In Francis Castles' classic phrase, Australia developed 'the wage earners' welfare state'.[88] Other forms of public welfare provision were marginal or non-existent. When the labour market failed, as it did dramatically during the 1930s, this absence of public welfare was starkly revealed. As Macintyre succinctly phrased it: 'Most

Australians experienced the Depression as an elemental force laying waste to the national economy and reducing whole communities to hardship and despair'.[89] Consequently, one of the central pillars of the post-war settlement in Australia was remedying this deficiency by providing social welfare payments, particularly sickness benefits and unemployment benefits. Despite universality in entitlement, compared with insurance schemes, these benefits were nevertheless a secondary layer of support, intended to supplement failings in the labour market but not to replace its central role. They formed a 'residual conception of social security', in Ben Chifley's words: 'bridge building to carry the people over those economic gaps which must necessarily occur from time to time'.[90] A situation like this left the post-war welfare state highly vulnerable because this kind of welfare worked fine during periods of prosperity and short-term economic downturns, but it could not cope with any long-term decline in the labour market fortunes of any significant section of the population.

The other shortcoming in this welfare model was its lack of universalism and its partiality towards means-testing and targeting of benefits. This became particularly evident during the 1980s as the Hawke Labor Government distanced itself from the universalism of the Whitlam years. The trend accelerated during the 1990s, as Fred Argy explained:

> developments in our social security system - a much tougher set of eligibility criteria and penalties, the erosion of relative benefits for many welfare recipients, deliberate attempts to 'shame' recipients and a shifting of responsibility to non-government players - are pregnant with significance. They strike at the very heart of egalitarianism - equal access to welfare benefits as a right. A large number of welfare recipients, notably the long-term unemployed, face an income support system that has become less generous and more conditional, arbitrary, demeaning and moralistic.[91]

In this section we look at the latest version of moralistic welfare politics. Instead of a serious engagement with the problems of deficiencies in labour demand alongside sectoral shortages in labour supply, current policies have become preoccupied with cheap solutions based on welfare-to-work strategies. While these may be electorally popular, they fail the test of sustainability across the life course, the trajectory which many workers must negotiate during their interrupted working lives. As we shall argue, policies which deal effectively with transitional labour markets are more appropriate than policies aimed at creating a low wage sector in Australia.

5.2 The failure of employment policy

For at least the past decade policies aimed at integrating labour-market policy with welfare policy have been deficient, if not chaotic. The conception which has dominated policy thinking has largely ignored issues of labour demand. From within this framework, the characteristics of the unemployed have been used to explain unemployment: sometimes this is couched in harsh terms - they are seen as 'work shy' or 'welfare dependent' - and sometimes it is phrased in less moralist human capital terms - they lack skills or motivation. Current debates around 'welfare dependency' disguise the fact that employment policy in Australia has largely failed. The current welfare debate is highly moralistic and, as we argue below, has resurrected the nineteenth century distinction between the 'deserving' and 'undeserving' poor. A harsh regime of breaching - removing or reducing unemployment benefits - has been instituted to police this distinction, to accentuate the

moralism, and to save on government expenditures. Simply missing an interview with Centrelink staff can lead to the loss of unemployment benefits, the loss of income for the poorest people in the community.

Current approaches to employment policy are entirely locked within a labour supply perspective yet it is clear that there are two aspects to unemployment: a demand deficiency which creates a pool of unemployed persons, and a supply dimension which determines both the amount of labour on offer, and the composition of that labour. Effective labour-market programs need to address all dimensions. They need to confront the major regional imbalances between supply and demand: labour shortages in affluent parts of the major cities alongside a paucity of jobs in the rural regions. They also need to deal with the composition of the pool of unemployed (as well as those outside the labour market) whose morale and skills may need augmenting if they are to make the most of job opportunities which arise. The Keating Government's Working Nation program attempted to grapple with these problems, through the case-management of job seekers, but the withdrawal of several billion dollars from that area during the late 1990s has left a serious vacuum in the area of genuine labour market programs. The current Job Network system does not constitute a serious intervention in the labour market: there are no skills formation initiatives, job subsidies for employers or targeted public sector employment programs.

Because of the dominance of labour supply perspectives, the arguments for demand deficiency are rarely heard. This perspective is, however well established, with important contributions in the United States by Galbraith, and in Australia by Mitchell and his colleagues.[92] As Mitchell and Muysken (2002) argue, the core explanation for unemployment in Australia lies in constrained demand:

> the rise in unemployment [following the 1974 recession] was associated with a marked deficiency in aggregate demand. Had aggregate demand not fallen in the mid-1970s and remained well below the 1960s levels for the next decade, the unemployment rate would not have risen significantly in Australia. The severity of the demand restraint meant that the unemployed pool rose beyond what could be absorbed in any normal recovery.[93]

For Mitchell and Muysken, government responsibility is clearly evident: 'misguided government policy has been responsible for the persistently high unemployment and the cumulative and permanent losses to social and economic well-being entailed'.[94] These researchers trace the evolution in Australia of a 'GDP gap', a direct pointer towards the deficiency in demand. Over the past two decades GDP growth has been insufficient to keep pace with the growth of the labour force and labour productivity. They argue for employment policy to be re-oriented towards restoring the kind of economic growth which would deal effectively with unemployment. Bill Mitchell, for example, proposes a Buffer Stock Employment model whereby the government would act as an employer of last resort, absorbing workers who were displaced from the private sector. Such employment could expand and contract according to the economic cycle.[95] John Langmore and John Quiggin have also called for increased government spending on community services and infrastructure as a way of simultaneously reducing unemployment and contributing to the 'vitality of the economy', thereby guaranteeing its long-term expansion.[96] Clearly, without a re-orientation of employment policy along these lines, regional unemployment problems in Australia will not be alleviated.

It may seem strange to emphasise problems of demand deficiency at a time when the unemployment rate is at a 30 year low - just over 5 per cent. However, this figure is

seriously misleading for several reasons. The unemployment rate is no longer a reliable indicator of the overall health of the labour market;[97] it does not register the growth in under-employment; and it does not reflect the departure of large numbers of mature age workers who have left the labour market. The labour force 'extended under-utilisation rate' goes someway to capturing the under-employment component, and this rate stood at 12.2 per cent in September 2004.[98] This reflected a combination of the unemployment rate (5.5 per cent), the under-employment rate (5.6 per cent), and a subset of marginally attached persons.

If we add to this the involuntary exodus from the labour force of mature age workers - particularly men in their late 50s and early 60s with backgrounds in blue-collar occupations - we glimpse still higher levels of unemployed labour. As Evan Thornley observed in his Alfred Deakin Innovation Lecture:

> We used to have about a million unemployed and about 100,000 disability pensions. Now we've got half a million unemployed and 600,000 disability pensions. We've just rearranged the deck chairs, and declared victory.[99]

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

> . . . the proportion of the 15+ population in employment is at historically high levels. But if we take into account the changing mix of full-timers and part timers in the workforce, and their average hours of work, and derive a measure of average hours worked per head of the whole population of working age (15+ years) . . . labour utilisation does not look so high by historical standards . . . we have been at or around present levels on a number of occasions in this cyclical expansion.[100]

In summary, whatever the 'true' unemployment figure turns out to be, and despite the pockets of skills shortages evident in key sectors, the comfortable conclusion that 'we have beaten unemployment' is not warranted by the evidence. The key issue for public policy in the coming years is how the interface between those in employment and those not - whether on welfare or outside the labour market - should be handled. What is the right policy mix for managing transitions between these two states and what does this mean for wages policy?

5.3 Welfare to work and wages policy

The 2005 Federal budget was notable for its generosity to high income earners alongside its niggardliness to those on welfare. Two different newspaper comments on the following day typified the range of ideological positions on welfare prevailing in contemporary Australia. The right-wing *Daily Telegraph* headlined:

> Workers 1 Shirkers 0. Treasurer Peter Costello last night emerged a working class hero by rewarding workers with $22 billion in tax cuts and prodding the able-bodied off welfare.

Meanwhile the moderate *Sydney Morning Herald* posted a cartoon showing a messianic Peter Costello facing a group of Australians on welfare:

> And Peter said unto the lame, the ageing, and the single parent: 'Behold, I will throw away your pension; rise up and work!'

From 2006, new welfare recipients on the Parenting Payment (Single) benefit and

disability benefits will be expected to undertake job seeking activities. Not only will their incomes be lower if they find themselves on unemployment benefits (Newstart allowance) but they will become subject to the moralistic policing of both Centrelink and Job Network providers. The latter will be given, for the first time, the power to breach their clients.

While the ostensible reasons for these changes have been couched in terms of national priorities, such as solving labour shortages and dealing with the demographic 'time-bomb' of an ageing population, the underlying logic is more prosaic. There is a political dimension - evident in the *Telegraph*'s headline - of scapegoating single parents and the disabled, but there is also an economic imperative. And it is in this economic realm that the connection with wages policy becomes evident.

A low wage sector for Australia?

As we have argued throughout, the underlying logic of much of the industrial relations changes which have occurred, as well as proposals currently being developed, is accentuating labour market fragmentation and the polarisation of earnings in Australia. It is about the creation of a low wage sector in Australia comparable to that in the United States. For some economists, this is seen as the only solution to unemployment; for others, it meshes with their pre-conceptions of what defines an 'efficient' labour market.[101] Artificially high minimum wages - 'propped up by the AIRC' - are seen as an impediment to further economic growth.

The low wage sector strategy in Australia has received a major boost with the Howard government gaining control in the Senate from July 2005. The industrial relations changes currently foreshadowed to commence in 2006 include the creation of a new Fair Pay Commission to take over the AIRC's tasks in making wage decisions. The AIRC's role in vetting enterprise agreements will also be removed, and the award simplification (or 'award stripping') process will see another four provisions removed (rules of jury service, notice of termination, long service leave and superannuation). Newspaper reports have quoted Prime Minister Howard as refusing to guarantee that no worker would be worse off under the new system.[102] These changes have been welcomed by those economists who reject the principles underpinning the wage-earners' welfare state. As Chris Richardson observed:

> The problem is that we have been using our industrial relations system like a welfare system, using companies to try and achieve fairness when that's not what they're good at . . . They're good at making money, and we should let the tax and welfare systems get the fairest system we can make.[103]

When it comes to public policy, implementing a low wage strategy involves a fundamental contradiction with the functioning of the welfare system. As we noted earlier, Australia had developed a highly targeted social security system. Benefits are paid according to very precise means-testing guidelines. One of the consequences of this is that 'poverty traps' are common. When low income recipients earn additional money, they lose a very large percentage of that extra income by way of tax payments and reduced benefit payments. In some cases, low wage workers receiving some form of social security payment can face effective marginal tax rates (EMTR) of over 60 cents in the dollar - often much higher - if they earn extra income. In recent years, attempts have been made to reduce EMTRs and allow welfare recipients to take on a certain amount of part-time work without jeopardising their social security benefits.[104] There are limits, however, to how far one can reduce the

'taper' at which social security benefits cut out altogether. Consequently, the EMTRs which they face will always be significant. This is particularly so if re-entry into the labour market also entails the loss of health care and travel concessions.

Ultimately, the only way that financial incentives for re-entry into the labour market can be truly effective is for the gap between social security benefits and the prospective wage to be widened. In other words, the jobs on offer need to be middle-paying jobs, not minimum wage jobs. Clearly, a strategy of encouraging welfare to work cannot co-exist alongside a low wage strategy unless the welfare system itself is compromised. This means either a reduction in welfare benefits - to widen the gap - or compulsory withdrawal of entitlement to benefits. Both of these tactics have been evident in recent years, and the 2005 Budget exemplified them. Moving people from disability and single parent status to job seeker status means a lower level of benefits and also a more draconian set of eligibility requirements.[105]

A complete rethink is needed around the concepts and terminology of the welfare debate. In current debates, receiving income support from welfare is somehow more 'passive' and morally dubious than receiving other forms of unearned income (such as rental income, inheritances, dividends). One hundred years ago social commentators worried about the 'idle poor', but they also worried about the 'idle rich'. Today, the latter group, despite their massive growth in numbers, have slipped off the radar screens of the moral critics. As Guy Standing points out in his illuminating discussion of 'workfare'

> the claims that the long-term unemployed or other recipients of transfers are immersed in a 'dependency culture' are exaggerated . . . many studies have shown that the poor want to work just as much as the non-poor. . . . The dependency-combating argument put forward by workfare proponents is double-edged. Why stop at the poor? What about middle-class dependency, which is considerable. In many countries the more affluent strata are dependent on tax relief that allows them to contract enormous debts, such as mortgages. Many middle-income earners are dependent on fiscal welfare.[106]

What happens within the current moral framework is that welfare invariably becomes associated with negativity, and with reactionary public policy responses. Instead of a one-sided 'mutual obligation' punitive regime, the welfare system should be approached as something which is liberating, as a system of mutual community support operating across disparate social groups and across generations. As the work of Schmid and his colleagues[107] shows, the real issues we should be grappling with today are about the multiple transitions in working life: movements between education and work, parenthood and work, and work and non-work more generally. In particular, public policy needs to address the challenges of family formation, and how sickness and misfortune should be handled from a more enlightened labour market perspective. Life is full of risks, working life even more so. How should these risks be managed over the life cycle so that fairness prevails?

In essence, welfare policy should not be primarily focused on the persecution of those at the bottom of the labour market. While ensuring the integrity of the system is obviously important, welfare policy should more broadly encompass challenges faced by all citizens in managing risk and in smoothing the transitions between the different stages in their working lives. Family formation, child care resources, tax disincentives and issues of female labour supply should be the major starting point for contemporary debates, not just a tabloid-style debate about whether the disabilities suffered by ageing factory workers are genuine or not.

Family formation and the reserve army

Public policy for dealing with labour shortages is a complex issue, and the current mix of policies exhibit considerable confusion. As Patricia Apps has shown, the current policies around family payments inhibit female labour supply.[108] As Apps and Rees argue:

> Australia['s] . . . Family Tax Benefit system results in almost prohibitive tax rates on female labour supply over significant ranges of family income . . . Effective tax rates faced by married mothers with young children can be in the order of 60 to 80 cents in the dollar . . . [109]

With this research in mind, Ross Gittins responded to the 2005 budget as follows:

> Employers are reluctant to take on older workers, those who have been out of the workforce for years and those with disabilities . . . The silly thing about scouring the bottom of the employment barrel is that the Government, for its own ideological reasons, is ignoring a much more fruitful source of recruits to the paid labour force: married mothers.[110]

For married mothers there is not only the issue of EMTRs if they lose family payments, but there is also the cost of childcare. The choices between allocating their labour to domestic production or into market work clearly hinge on a careful 'cost-benefit' analysis of their family circumstances, the current tax transfer system, and availability of resources outside the home, particularly childcare.[111] This suggests that a low wage strategy is not consistent with increasing female labour supply from this source. To explore this further, it is worth considering how wage levels and sources of labour supply are related.

The core of this relationship is the simple truism that a low wage sector requires a surplus labour supply to maintain downward pressure on wages at the bottom of the labour market.[112] A low wage strategy will always require an increase in what is sometimes called 'the reserve army of labour'. Following the seminal work of Botwinick[113] (1993) we would argue that this notion of the reserve army can be fruitfully employed to illuminate the nexus between welfare and the labour market.

The reserve army has traditionally relied on married women but, as just noted, this option is increasingly limited because of deficiencies in the supply of childcare and because of disincentives built into the family payment system. The welfare-to-work strategy, on the other hand, faces fewer limitations because it rests on compulsion, rather than the building of incentives. It is increasingly aimed at recruiting from the most vulnerable segments of the population, among workers whose life circumstances are least likely to protect them from taking up the lowest paying jobs. This is a key difference between their labour, and those of married mothers. The latter do not have to accept the lowest paying jobs: not only do many of their partners have incomes, but the incentives for working outside the home are very sensitive to the relative advantages of that choice. If the job on offer pays too little, it makes much more sense to stay home and engage in domestic production, such as childcare and housework.

Botwinick also shows how the replenishing of the reserve army of labour creates conditions of constant competition for the employed workforce, particularly the lowest paid. Efforts by workers themselves to build shelters from competition play an important role in segmentation.[114] While Botwinick's main concern is explaining persistent wage differences, the argument he advances about the interconnections of low wages, underemployment and the reserve army is most illuminating:

> . . . chronic underemployment is the normal condition within the aggregate labor market . . . labour mobility is no longer a sufficient condition for the equalization of wage rates . . . low-wage firms . . . continue to find ample sources of cheap labour within the reserve army. Consequently, there will tend to be little upward pressure on wage rates at the low end of the labor market.

Those workers who ultimately exert a downward pressure on above-average wage rates primarily come from the reserve army. More importantly, the actual pressure on above-average wage rates comes from the actual or potential replacement of high-wage workers by these cheaper and generally more desperate workers within the reserve army.[115]

Forcing single parents and the disabled to more 'vigorously' search for work reinvigorates the reserve army of labour. This in turn plays an important role in fostering the low wage strategy which is the hallmark of contemporary neo-liberal policy in Australia.

6 Where next?

Wage policy deals with some of the most important issues affecting the quality of life in societies with market economies. It is the domain where work related earnings, economic performance and citizens' material living standards intersect. As such, it is not a 'technical' issue amenable to 'value free' solutions. While rigorous analysis can help identify the matters requiring decision, ultimately the decision is about the type of society we want to live in. How much should people earn for their role in the division of labour? How should the benefits of economic development be shared? And how should the labour component of production and service provision be constituted, in price terms, relative to capital? In the early part of the twentieth century answers to these questions were framed on the basis of the Australian variant of the male breadwinner model of employment - what we have referred to as the 'Harvester Man Model'.[116] As we have shown at length in that book, this model of employment has been in secular decline for some time but some legacies of this era remain.

6.1 Old problems, new approaches

Over the last century the earnings of Harvester Man were determined in an institutional setting which accorded major significance to three types of stability. Initially, the system of conciliation and arbitration was founded to nurture industrial stability by nurturing 'a new province of law and order'.[117] In settling disputes, awards were made between the contesting parties. Following the logic of the common law, like cases were to be treated alike. This philosophy of jurisprudence underpinned the notion of 'comparative wage justice' - that is, the maintenance of stable occupational wage relativities - articulated as different wage 'margins' for different levels of skill and responsibility associated with different types of work.[118]

As the wages system matured, the system of conciliation and arbitration evolved to become a key player in nurturing and maintaining macro-economic stability. This involved industrial tribunals coordinating general movements in wage rates with changes in other macro-economic variables such as employment, inflation, the balance of payments and inflation. The basis on which this stability was determined varied over time. For example, during the late 1980s concerns with 'comparative wage justice' gave way to issues of 'structural efficiency' and there was constant balancing between respecting the economy's

'capacity to pay' general wage increases and the maintenance of living standards through preserving 'real wages'.

However, these differences all occurred within an institutional framework that accepted and promoted a coordinated approach to wage determination. Central to the dynamism of this system was the interplay between economic realities and formal institutional determination of industrial tribunals. The key economic realities were underlying levels of unemployment and the outcomes of collective bargaining. Developments in these set powerful limits to, and provided guidelines for, what was sustainable for industrial tribunals.

Today these institutional settings no longer dominate the labour market in the way that they used to. The proportion of the workforce corresponding to the Harvester Man model of work and home life is a fraction of what it used to be.[119] The last two decades have seen an increased presence of women in the workforce, the spread of non-standard employment, and the fragmentation in the conditions of employment experienced by the workforce, particularly around wages and hours of work. Just as significant has been the change in the system of wage determination. Whereas previously there was an intimate connection between the bargaining and non-bargaining sectors, today such links are at best muted, and generally non-existent. Of growing significance is the domain beyond both awards and collective agreements: whereas once this constituted a small proportion of the labour force, it is now a sizeable segment.

If we were designing a wages system from scratch, where would we start today? Waltman's arguments about building on the idea of self-reliance are very attractive. In a democracy it is self-evident that as people become more independent of either the state or the rich, community self-determination also grows. In devising new institutional arrangements for setting rates of pay for self-reliant individuals it would also seem self-evident that they should engage with changing economic and social realities. The essence of these realities is, as John Donne might have said, that no workplace is an island. Production and service provision are increasingly organised on a network or supply-chain basis.[120] Conceiving production as occurring primarily on an enterprise basis fails to grasp this key reality of modern economies - a reality noted in the literature on coordinated flexibility and in the emerging principles governing social standards for contractors in the NSW and nascent collective bargaining rights in Federal trade practices law.

Equally, no worker is an island. Most workers share labour market experiences caused by important labour market transitions, such as taking up studying, having children, experiencing spells of unemployment and retiring. As noted in Section 5, Gunter Schmidt and his colleagues have described these periods of life course change as producing 'transitional labour markets'. Clearly, any sensible wages policy today should take the notions of 'self reliance', 'network production' and 'labour market transitions' as central reference points. Building on the recent literature concerning coordinated flexibility noted in Section 2, these categories should be operationalised in an institutional arrangement that blends the public determination of decent labour market standards with bargaining, especially by newly defined collectivities, such as those determined through supply-chains arrangements and changing life courses.

6.2 New priorities

Promising as these leads may be, it important to recognise that in any realm of policy,

especially wages policy, new institutional arrangements cannot be built from scratch. The legacies of the past powerfully shape what is possible in the present and future. As Karl Marx eloquently noted, even in revolutionary situations 'all the traditions of past generations weigh like a nightmare on the brain of the living'.[121] Our own era is no exception. Wage policy today must engage with the decaying edifice of Harvester Man and the profound segmentation in the formal system of wage determination. Therefore, in moving forward, while guided by concerns with self-reliance, network production and changing life courses, at the same time we are aware of the necessity of working with our institutional legacies, particularly the forms of wage determination discussed in previous sections. Consequently, we now offer an overview of the key issues for employers, unions and public officials which are relevant in each of the four domains discussed earlier.

The non-bargaining sector: setting the lower and upper bounds of work related earnings

Every society needs a reference point for determining living standards. In Australia this reference point has, traditionally, come from the labour market - the wage earners' welfare state insight. Jerold Waltman has recently established the moral, conceptual and factual bases for a 'living wage' as vital for providing a coherent and robust foundation for both economic and social development. Developing and maintaining a decent foundation wage should be central to any wages policy in the future.

What principles should inform the rate prevailing for such a wage? There is a strand of Australian wages policy which has taken actual living standards as a key reference point in the determination of the rate for the most basic level of work related earnings. There is a better ability to ascertain this today than ever before. The comprehensive 'Budget Standards' approach developed by the Social Policy Research Centre at the University of New South Wales provides an excellent basis for identifying what is required for modest, but adequate, budget standards.[122] At the same time, the growing data on Australia's working time preferences[123] have shown that hours preferences are very closely related to earnings. With data such as these a more rigorous foundation to wages and related hours issues could be developed.

Australia has never had a minimum wages system along the lines that operate in places like the UK and USA. Instead, it has had a comprehensive set of award rates for different occupational groups. This recognised the reality that many people in the labour market, not just the lowest paid, often lacked equality of bargaining power with the people engaging their services. It important that this tradition not be lost; but rather, extended.

Many problems in the wages system today are generated by developments in the high wage sector. Prime among these are deepening inequality and destabilising relativities. This has implications not only for wages movements, but it also has a highly destabilising impact on consumption norms.[124] There are a number of ways this problem can be addressed. Jerold Waltman has proposed that movements in the minimum wage be linked to movements in the earnings of the top 5 per cent of the population. Such a linkage would focus the attention of policy makers on the source of any undue 'wage pressures' on those best able to restrain their earnings. If the rich show no restraint, lower income earnings should not be expected to provide macro-economic balance by falling further behind in relative terms. A more direct option would be to impose punitive taxes on organisations that grant increases in work related earnings above an agreed community norm. This is an idea proposed by the Noble Laureate, James Tobin, over three decades

ago.[125]

The development and maintenance of upper and lower bounds to the wage systems will require more effective institutions of wages policy than currently exists. Australia's traditional network of industrial tribunals was inspired by a judicial model of intervention and decision-making. While in recent years these tribunals have evolved to perform more 'executive' functions, it is important that this older tradition continues and that tribunals develop the capacity to make their own inquiries into living standards. Currently they are limited to the evidence presented to them by the parties. While this is often very comprehensive, there is a need for industrial tribunals to increase their capacity to comprehend and respond to the changing nature of work. In recognition of this they should also have a more encompassing name: something like 'Work and Working Life Commissions' which signifies they can set standards for all forms of employment across all levels of the labour market. In conducting their affairs, however, they should not be regarded as the sole adjudicators of labour market standards. The setting of new wage norms - both upper and lower limits - should not just involve industrial tribunals making administrative decisions by fiat. Their deliberations should also be highly influenced by the decisions of other players in the labour market, especially those manifested in the agreements reached between employers and unions. Such an approach to wages policy would build on an earlier tradition where awards and agreements evolved in an iterative way. Developments in the non-bargaining sector would influence and be influenced by the bargaining sector. This would overcome the weaknesses of a system based primarily on administrative fiat on the one hand and the free play of market forces on the other.

The bargaining sector: fly-wheel for standard setting

Developments in the non-bargaining sector should set upper and lower bounds for labour market standards. The rates of pay that would prevail for many workers should, however, be determined on the basis of bargaining. This should involve organisations which represent collectives of workers who face common employment situations and those owning and/or controlling those situations.

For many workers today, conditions at work are governed as much, if not more, by firms at the head of supply chains rather than by the workers' immediate 'employer'. This reality is recognised in sectors like car production which has its own 'industry panel' within the Australian Industrial Relations Commission. This panel deals with disputes affecting all the four car assemblers as well as suppliers involved in industries as diverse as glass, rubber and plastics production. Similarly, in clothing there have been initiatives to hold retailers accountable for the conditions experienced by the outworkers who ultimately produce the goods they sell. While developments in cars and in clothing are at an early stage of evolution, they nevertheless provide important pointers on how the nature of bargaining could evolve to address the changing realities of work. An operating example of such arrangements is provided by project agreements in construction. Instead of each sub-contractor having a separate rate for workers performing the same work on site, a common 'site rate' prevails. While this is usually the preferred practice for many project managers, sub-contract employers and unions, significant moves are underway to outlaw this particular variant of 'pattern bargaining'.

Initiatives directed at achieving the benefits of coordinated flexibility in Australia in the short run are likely to be frustrated by the *Work Choices* reforms. Whatever their

intentions, these laws will not prevail against the underlying economic realities which shape production and service work in today's Australia. For example, innovations based on 'skill eco-systems' are directly dealing with many of the realities emerging around skills formation. Some of these are long standing in nature,[126] others are more recent.[127] These developments should be monitored closely because structures associated with skill are often closely allied with those involving wages. Another area to watch closely is that of developments in the commercial sector, for what is being expressly forbidden in industrial law is now, in part, being tolerated in trade practices law.

The commercial sector: substitute for, or component of, the wages system?

As we discussed in Section 4, there has long been an uneasy relationship between contracts of and contracts for service. There appear to be major initiatives underway to promote contracts for service at the expense of contracts of service.[128] These developments should not blind us to the progressive outcomes possible within the commercial sector. The rights of owner-drivers in the NSW road transport industry provide an instructive case in how collective bargaining and publicly defined standards can flourish in a world based on contracts for service. Indeed, developments in this area of practice have provided the basis of the 'unfair contracts' jurisdiction which has delivered rights for anyone - irrespective of their formal legal status - to gain access to fair earnings, conditions and treatment if the contract involves 'work'.

It is also worth acknowledging the nascent growth in collective bargaining rights within trade practices law. While there is an undeniable need to dramatically change those parts of the *Trade Practices Act* that encroach on the realm of labour law (such as sections 45d and 45e) there is also a need to observe closely how other parts of this law respond to the changing realities of commercial life. This implies that any comprehensive approach to wages policy should monitor (and devise appropriate changes) around laws which govern the commercial sector. These should ensure that such laws operate as an integral part of the wage system in a positive sense, and not as loopholes for undermining established labour standards. The recent emergence of collective bargaining for small businesses is an important development worth close attention in this regard.

Welfare and work: beyond the low paid sector

The current debate about the links between work and welfare is dominated by a strategy for reorganising the unemployed and others dependent on welfare into a large-scale, low-paid workforce. Such an approach is very disturbing. For those most immediately affected, it promises to load onto their already disadvantaged lives a greater burden of disadvantage. From a labour market perspective, this approach ignores the fact that while many welfare recipients want to work, most employers don't want to hire them. From the perspective of social policy, the approach undermines the fundamental objectives of good public policy: namely, the creation of a greater range of choices and the expansion of social rights, rather than their contraction.

The one positive feature of the current debate on 'welfare reform' is that it recognises the intimate connections between wages, taxes and income support. Instead of only considering these connections in the lower reaches of the labour market it is vital that the debate is broadened to examine these connections for the entire population. One of the most significant features of modern working life has been a growing interest - especially

amongst women and the young - in redefining the links between paid work and life beyond it. Fewer women are either workers or mothers - growing numbers combine both roles. Few young people are just students or workers - many are both. Across the population at large a small but growing number of men wish to combine work with family time. In addition, increasing numbers of people combine full-time work with study. German researchers at the WZB in Berlin have argued that developments such as these mean it is important that policy grapples with what they call the changing nature of 'transitional labour markets'.[129] For them a far more progressive approach to wages, taxation and income support policy should be based on acknowledging that labour force participation varies over the life course. For us, a relevant living wage system should complement this reality, not push against the tide by ignoring it. The task is to devise earnings regimes which make for fairer and more efficient transitions across the life course. We need to move beyond poverty traps and all the other counter-productive elements of the welfare system which impede smooth transitions between appropriate work situations.

At the same time, developing sound policies for earnings over the life course could also provide a new rationale for thinking about issues like long service leave and study leave. Similarly, easing the tensions associated with working and the care of younger and older citizens could also be incorporated into a wages system based on these principles, a system which ensured decent rates of pay, good standards for flexible hours and rights to social support at the neighbourhood level.[130] In this regard, the activities of State and local governments can be just as important as developments at a national level. There is no need to wait for enlightenment to descend on Federal Government thinking for policy-makers at other levels to develop effective policy mixes that link wages, hours and social support. The challenge is to experiment with new approaches which expand the choices open to people in making those key transitions in their working lives, and those which provide options in how we respond to the challenge of an ageing population.

6.3 Conclusion

At present, changes in wage policy are driven by an ideology that fits poorly with how labour demand and labour supply are changing. For policy today, the key challenge is to work with sub-optimal institutional arrangements and do the best that is possible to capture the benefits of both coordination and flexibility. This will provide a basis for generating labour market standards appropriate to a modern, civilised society. As such, it would also arrest the paradoxical trajectory of current developments in the labour market, the disturbing reality that Australian society grows richer at the same time as fragmentation deepens.

Chris Briggs, John Buchanan *and* ***Ian Watson*** *are researchers in the Australian Centre for Industrial Relations Research and Training (acirrt), University of Sydney.*

1 O'Malley, N (2005). 'Industrial Revolution', *Sydney Morning Herald* 28-29 May: 37.
2 Briggs, C and Buchanan, J (2005). 'Work, Commerce and the Law: A New Australian Model?', *Australian Economic Review* 38, 2: 182-191
3 ACIRRT (1999). *Australia at Work: Just Managing*, Prentice Hall, Sydney. Watson, I, Buchanan, J, Campbell, I and Briggs, C (2003). *Fragmented Futures: New Challenges in Working Life*, Federation Press, Sydney.
4 Briggs, C and Buchanan, J (1999). Australian Labour Market Deregulation: A Critical Assessment, Research Paper 21 1999-2000, Department of the Parliamentary Library.
5 ACIRRT (1999) *op cit.*
6 See, for example Watson *et al* (2003) *op cit*: 159ff.
7 *Ibid*: 84–106.
8 Borland, J (1999). 'Earnings Inequality in Australia: Changes, Causes and Consequences', *The Economic Record* 75, 229: 177–202; Watson *et al* (2003) *op cit*; Harding, A and Greenwell, H (2002). Trends in Income and Consumption Inequality in Australia, Conference paper presented at '27th General Conference of the International Association for Research in Income and Wealth', Stockholm, Sweden.
9 Watson *et al* (2003) *op cit*: 62–63.
10 For example, the dispersal in hourly earnings in Australia for both male and female employees grew steadily. For example, there was a rise in the Gini coefficient, which ranges from 0 - when all earnings are shared equally - to 1 - when all earning are held by one person, among men from 0.21 to 0.26, while the increase among women was from 0.21 to 0.24. (Unpublished data from ABS (1989). Confidentialised unit record data from How Workers Get Their Training Survey, Australian Bureau of Statistics; ABS (1993). Confidentialised unit record data from Survey of Training and Education, Australian Bureau of Statistics; ABS (1997). Confidentialised unit record data from Survey of Education and Training, Australian Bureau of Statistics; ABS (2001). Confidentialised unit record data from Survey of Education, Training and Information Technology, Australian Bureau of Statistics,
11 These figures are the median earnings for the decile.
12 See Watson, I (2002). 'Wage inequality and Underemployment: Australia in the 1990s', *Journal of Industrial Relations* 44, 1: 88–107.
13 Gregory R (1993). Aspects of Australian and US Living Standards: the Disappointing Decades, 1970–1990. *The Economic Record.* March: 61–76.
14 Harding and Greenwell (2002) *op cit.*
15 ACIRRT (1999) ch 3.
16 For more details on AWIRS see Callus, R, Morehead, A, Cully, M & Buchanan, J (1991). *Industrial Relations at Work: The Australian Workplace Industrial Relations Survey*, AGPS: Canberra.
17 Taken from Short, M, Preston, A and Peetz, D (1993). The Spread and Impact of Workplace Bargaining: Evidence from the Worplace Bargaining Research Project, Department of Industrial Relations, AGPS, Canberra, Table 6.
18 More details about this source can be obtained from Department of Industrial Relations, 1995. See also Agreements and Data-base Monitor (ADAM) Report No 7, December 1995: 10 and ADAM Report No 9, July 1996: 20.
19 See especially DIR (1996). *Enterprise Bargaining in Australia: 1995 Annual Report*, AGPS: Canberra. A summary of all relevant material is provided in Buchanan, J, Van Barneveld, K, O'Loughlin, T & Pragnell, B (1997). 'Wages Policy and Wage Determination in 1996', *Journal of Industrial Relations*, 39, 1: 96-120.
20 For a summary, see P Hall and D Soskice (eds) (2001). *Varieties of Capitalism: the Institutional Sources of Competitive Advantage*, Oxford University Press, Oxford
21 The OECD itself distinguishes between no less than 9 types of coordination mechanisms. See OECD (2004). *Employment Outlook*, Organisation for Economic Cooperation and Development, Paris: 134.

22 Department of Employment and Workplace Relations (DEWR) (2002) *Agreement-making in 2001 and 2002*, Canberra.
23 Abbott, T (2002). 'Workplace Relations (Genuine Bargaining) Bill 2002', *Second Reading Speech.*
24 Calmfors, L and Driffil J (1988). 'Bargaining Structure, Corporatism and Macro-Economic Performance', *Economic Policy*, 3, 1: 14-61.
25 Dawkins, P (1988). 'The Economic Effects of Deregulation and Decentralisation of Wage Determination', *Journal of Industrial Relations*, 40, 4.
26 Acirrt (2002) 'Key Features and Trends in Building and Construction Industry', Discussion Paper 9, http://www.royalcombci.gov.au/hearings/discus.asp. Buchanan, J, Briggs, C & Wright, C (2002). *A Critique of the Productivity Commissions Review of Automotive Assistance*, http://www.acirrt.com/pubs/Carindustry, acirrt.
27 See AIRC (2000). *Australian Industry Group and Automotive Food, Metals, Engineering, Printing and Kindred Industries Union*, Print T1982, October 16.
28 Buchanan, J *et al* (2002) *op cit.*
29 See Sissons, K and Marginson, P (2002). 'Coordinated Bargaining: a Process for our Times?, *British Journal of Industrial Relations*, 40, 2: 197-220.
30 The 'dual convergence'/'varieties of capitalism' literature divides OECD nations into two groups - the 'coordinated market economies' of Northern and Western Europe and the Anglo-Saxon 'liberal market economies' which are characterised by decentralised bargaining and a large non-union sector. See, for instance, Iversen, T and Pontusson, J (2000). 'Comparative Political Economy: A Northern European Perspective', in T Iversen, J Pontusson and D Soskice (eds) *Unions, Employers and Central Banks: Macroeconomic Coordination and Institutional Change in Social Market Economies*, Cambridge University Press, Cambridge. The OECD rates Australia 2 out of 5 on centralisation and coordination where 1 is the most decentralised and uncoordinated (OECD (2004) *op cit*: 151). Australia is by this rating less decentralised/ uncoordinated than New Zealand, the United Kingdom and the United Kingdom - no doubt in part reflecting safety net reviews - but still relatively decentralised/ uncoordinated by OECD standards.
31 Soskice, D (1990). 'Wage Determination: the Changing Role of Institutions in Advanced Industrialised Countries', *Oxford Review of Economic Policy* 6, 4: 36-61.
32 OECD (2004) *op cit*; Regini, M (2000). 'Between De-regulation and Social Pacts: the Responses of European Economies to Globalisation', *Politics and Society* 28, 1: 5-34; Schmid, G (1993). 'Coordinated Flexibility: the Future of Labour Market Regulation', in C Buechtemann (ed) *Employment Security and Labor Market Behaviour: Interdisciplinary Approaches and International Evidence*, ILR Press: Ithaca, New York.
33 OECD (2004) *op cit*: 134.
34 OECD (2004) *op cit.*
35 Thelen, K and Kume, I (1999). 'The Effects of Globalisation on Labor Revisited: Lessons from Germany and Japan', *Politics and Society* 27, 4: 487 & 490.
36 Streeck, W (1989). 'Skills and the Limits of Neo-Liberalism: The Enterprise of the Future as a Place of Learning', *Work, Employment and Society* 3, 1: 126.
37 Traxler, F and Kittel, B (2000). 'The Bargaining System and Performance: a Comparison of 18 OECD Countries', *Comparative Political Studies* 33, 9: 1174.
38 Goodin, R (2003). 'Choose Your Capitalism?', *Comparative European Politics*, 1: 203-10; Hall, P and Soskice, D (2001). 'An Introduction to Varieties of Capitalism', in P Hall and D Soskice (eds) *Varieties of Capitalism: the Institutional Sources of Competitive Advantage*, Oxford University Press, Oxford: 24.
39 Buchanan, J *et al* (2002) *op cit.*
40 Maurice, M, Sellier, F and Silvestre, J (1984). 'The Search for a Societal Effect in the Production of Company Hierarchy: A Comparison of France and Germany', in P Osterman (ed) *Internal Labour Markets*, MIT Press, Cambridge; Prais, SJ (1995). *Productivity, Education and Training. An International Perspective,* Cambridge University Press, Cambridge; Crouch, C, Finegold, D and Sako, M (1999). *Are Skills the Answer? The Political Economy of Skill Creation in Advanced*

Industrial Countries, Oxford University Press, Oxford; Briggs, C and Kitay, J (2000). Vocational Education and Training, Skill Formation and the Labour Market: Overview of major contemporary studies, BVET Changing Nature of Work Working Paper, NSW Board of Vocational Education and Training.

41 Productivity Commission (2002) *Review of Automotive Assistance: Inquiry Report*, Report 25, Canberra.

42 Rimmer, M (1998). 'Enterprise Bargaining, Wage Norms and Productivity', *Journal of Industrial Relations* 40, 4: 605–623; Wooden, M, Loundes, J and Tseng, Y (2002). 'Industrial Relations Reform and Business Performance: an Introduction', *Working Paper* 2/02, Melbourne Institute.

43 OECD (2004) *op cit*.

44 Traxler and Kittel (2000) *op cit*: 1180.

45 OECD (2004) *op cit*: 159.

46 Aidt, T and Tzannatos, Z (2002). *Unions and Collective Bargaining: Economic Effects in a Global Environment*, World Bank: Washington, United States.

47 Hall and Soskice (2001) *op cit*: 21.

48 Goodin (2003) *op cit*.

49 Hall, P and Soskice, D (2003). 'Varieties of Capitalism and Institutional Change: A Response to Three Critics', *Comparative European Politics*, 1: 243.

50 Western, B and Beckett, K (1999). 'How Unregulated is the US Labor Market? The Penal System as a Labour Market Institution', *American Journal of Sociology*, 104: 1030-1060.

51 Blyth, M (2003). 'Same as it Never Was: Temporality and Typology in the Varieties of Capitalism', *Comparative European Politics*, 1: 215-222; Western and Beckett (1999) *op cit*.

52 Howell, D (2002). 'Increasing Earnings Inequality and Unemployment in Developed Countries: Markets, Institutions and the Unified Theory', *Politics and Society*, 30, 2: 193-243.

53 Blyth (2003) *op cit*: 216.

54 OECD (2004) *op cit*: 142. The AIRC (2004) has come to the same conclusion in an Australian context in its annual review of evidence relating to the effects of its safety net wage increases: '... Taking all of the research into account, it has not been established that moderate increases in the wages of the low-paid, of themselves, will diminish aggregate employment outcomes.'

55 OECD (2004) *op cit*: 166.

56 Ehrenreich, B (2001). *Nickel and Dimed, On (Not) Getting By in America*, Henry Holt and Company, New York.

57 OECD (1997). *Labour Market Policies: New Challenges - Policies for Low Paid Workers and Unskilled Jobs Seekers*, Organisation for Economic Cooperation and Development, Paris: 10.

58 Pindus, N, Dyer, D, Ratcliffe, C, Trutko, J and Isbell, K (1997). Industry and Cross-Industry Worker Mobility: Experiences, Trends, and Opportunities for Low-Wage Workers in Health Care, Hospital, and Child Care. The Urban Institute. Table 7A.

59 Burtless, G (1998). Can the Labor Market Absorb Three Million Welfare Recipients?, Paper prepared for 'The Low Wage Labor Market: Challenges and Opportunities for Economic Self-Sufficiency' research project: 16.

60 Brenner, R (1998). 'The Economics of Global Turbulence', *New Left Review* 229: 241.

61 *Ibid*: 206-07.

62 Bell, L and Freeman, R (1994). Why do Americans and Germans work Different Hours?, Working Paper No 4808, National Bureau of Economic Research; Bosch, G (1999). The ILO and Working Time, mimeo, Institute for Work and Technology Science Centre North Rhine-Westphalia Gelsenkirchen.

63 See LPC (2005). National Minimum Wage, Low Pay Commission Report 2005, UK Low Pay Commission.

64 Waltman, J (2004). *The Case for a Living Wage*, Algora Publishing, New York: 9.

65 *Ibid*: 4.

66 *Ibid*: 6.

67 Figart, DM (ed) (2004). *Living Wage Movements: Global Perspectives*, Routledge, London.

68 Watson, I (2004a). 'Minimum wages and employment: Comment', *Australian Economic Review* 37: 166–72; Watson, I (2004b). A needle in a haystack. Do increases in the minimum wage cause employment losses?, Working Paper 90, acirrt, University of Sydney.

69 ABS (6203.0) (2002). Labour Force, Australia, Australian Bureau of Statistics: 17.

70 Collins, H (1990). 'Independent Contractors and the Challenge of Vertical Disintegration to Employment Protection Law', *Oxford Journal of Legal Studies* 10, 3: 353–380.

71 ABS (6359.0) (1998, 2001). Forms of Employment, Australia, Australian Bureau of Statistics; ABS (6361.0) (2000). Employment Arrangements and Superannuation, Australian Bureau of Statistics, April to June.

72 For example Murtough, G and Waite, M (2000). The Growth of Non-traditional Employment: Are Jobs Becoming More Precarious, Productivity Commission Staff Research Paper, AusInfo; Waite, M and Will, L (2001). Self-Employed Contractors in Australia: Incidence and Characteristics, Productivity Commission Staff Research Paper, AusInfo.

73 Waite and Will (2001) *ibid*; ABS (6359.0) (1998) *op cit.*

74 This was an exception to the general rule that if the formalities of a contract were not complied with the contract was unenforceable.

75 Bray, M (1990). *A Precarious Victory: The Regulation of Self-employed Owner-drivers in NSW Road Transport, 1940-1988*, Monograph No 29, Industrial Relations Research Centre, University of NSW.

76 TWU (2005). Transport Workers Union of NSW Submission to Inquiry into Independent Contractors and Labour Hire Arrangements, 16 March, Sydney: 18–19.

77 *Ibid*:19–29

78 Phillips, J and Tooma, M (2004). *The Law of Unfair Contracts in NSW*, Law Book Company, Pyrmont.

79 Commonwealth of Australia (2003). *Review of the Competition Provisions of the Trade Practices Act*, Commonwealth of Australia, Canberra.

80 ACCC (2005). 'ACCC to allow Victorian chicken growers to collectively bargain with processors', http://www.accc.gov.au /content/index.phtml /itemId/ accessed 11 May 2005.

81 This decision is currently on appeal in the Australian Competition Tribunal. We thank one of the anonymous referees for drawing our attention to this.

82 Freehills (2005). Competition Law Update, April.

83 ACCC (1997). 'Further ACCC court action against Transport Workers' Union in Queensland', http://www.accc.gov.au /content/index.phtml /itemId/86990 accessed 11 May 2005; ACCC (1999). 'ACCC concludes WA construction (sic) Forestry Mining and Energy Union proceedings', http://www.accc.gov.au /content/index.phtml /itemId/322935 accessed 11 May 2005.

84 ACCC (1998). 'ACCC acts against CEPU for alleged Secondary Boycott', *ACCC News Release*, http://www.accc.gov.au/content/ index.phtml/itemId/87349

85 The three unions in the Patricia Baleen Gas Processing Plant of East Gippsland case were the Australian Manufacturing Workers Union, the Electrical Trades Union and the Australian Workers Union.

86 ACCC (2004). '$300,000 penalties for secondary boycott', http://www.accc.gov.au /content/index.phtml /itemId/502401 accessed 11 May 2005.

87 Gray, J (2004). 'Australian Competition & Consumer Commission v Automotive, Food, Metals, Engineering, Printing & Kindred Industries Union', FCA 517. It is useful to note how the ACCC reported the outcome of this decision. It only quoted paragraph 11 and made no reference to the strong sentiments expressed in paras 8 and 9. As such its publicity of the decision implies Justice Gray endorsed the high quantum of damages imposed when in fact the exact opposite was the case. See ACCC (2004) *op cit.*

88 Castles, F (1985). *The Working Class and Welfare*, Allen and Unwin, Sydney.

89 Macintyre, S (1985). *Winners and Losers. The pursuit of social justice in Australian history*, Allen and Unwin, Sydney: 66.

90 *Ibid*: 83.

91 Argy, F (2003). *Where to From Here? Australian egalitarianism under threat*, Allen and Unwin, Sydney: 17.

92 Galbraith, JK (1998). *Created Unequal: The Crisis in American Pay*, University of Chicago Press, Chicago; Mitchell, W and Watts, M (1997). 'The Path to Full Employment', *The Australian Economic Review* 30, 4: 436-444; Mitchell, W (1998). 'The buffer stock employment model and the NAIRU: the path to full employment', *Journal of Economic Issues* 32, 2. PAGES; Mitchell, W (1999). 'Full employment abandoned - the macroeconomic story', in M Carman and I Rogers (eds) *Out of the Rut: Making Labor a Genuine Alternative*, Allen and Unwin, St Leonards; Mitchell, W and Muysken, J (2002). Why aggregate demand matters for understanding unemployment, Working Paper No 02-01, Centre of Full Employment and Equity, University of Newcastle; Burgess, J, Mitchell, W, O'Brien, D and Watts, M (1998). 'Unemployment: Promises, Policies and Progress', *Labour and Industry* 9, 2: 103-122.

93 Mitchell and Muysken (2002) *op cit*: 5.

94 *Ibid*: 2.

95 Mitchell and Watts (1997) *op cit*: 441–42.

96 Langmore, J and Quiggin, J (1994). *Work for All: Full Employment in the Nineties*, Melbourne University Press, Melbourne.

97 Watson, I (2000). 'Beyond the unemployment rate: Building a set of indices to measure the health of the labour market', *Australian Bulletin of Labour* 26, 3: 175–190.

98 ABS (6105.0) (2005). Australian Labour Market Statistics, Australian Bureau of Statistics.

99 Thornley, E (2005). 'Innovation at the Workplace', Alfred Deakin Innovation Lectures 2005 15 May, ABC Radio National.

100 Henry, K (2005). The Fiscal and Economic Outlook, Conference paper presented at 'Address to the Australian Business Economists', 17 May, Sydney: 3.

101 See Watson and Buchanan (1999) *op cit*: 213ff; Moore, D (1998). 'Why Regulation of the Labour Market is Inequitable, Outdated and Inefficient', Occasional Address to Annual Meeting of the HR Nicholls Society 30 November.

102 Garnaut, J (2005a). 'Bosses free to wield the big stick', *Sydney Morning Herald* 27 May: 1.

103 Chris Richardson, quoted in Garnaut, J (2005b). 'Hire and fire licence for most employers', *Sydney Morning Herald* 27 May: 7.

104 There are now over 12 per cent of unemployment payment recipients who declare earnings due to the increased availability of part-time and casual work and changes to income tests that allow recipients to keep more of their earnings. Wilson, S (2000). 'Welfare to work policies in Australia and the welfare reform process', Social security in the global village: International Research Conference on Social Security Helsinki, 25–27 September.

105 Though as Ross Gittins points out, the EMTR for those on unemployment benefits remains higher than for those on sole parent and disability benefits. Gittins, R (2005b). 'Treasurer's tax cut justification a bit rich', *Sydney Morning Herald* 18 May: 17.

106 Standing, G (2002). *Beyond the New Paternalism: Basic Security as Equality*, Verso, London: 185.

107 Schmid, G (1993). 'Coordinated Flexibility: the Future of Labor Market Regulation', in C Buechtemann (ed) *Employment Security and Labor Market Behaviour: Interdisciplinary Approaches and International Evidence*, ILR Press, Ithaca; Schmid, G (1995). 'Is Full Employment Still Possible? Transitional Labour Markets as a New Strategy of Labour Market Policy', *Economic and Industrial Democracy* 16: 429–456; Schmid, G (1998). Transitional Labour Markets: A New European Employment Strategy, WZB Discussion Paper, FS I 98-206; Schmid, G (2002a). 'Towards a theory of transitional labour markets', in G Schmid and B Gazier (eds) *The Dynamics of Full Employment: Social Integration Through Transitional Labour Markets*, Edward Elgar, Cheltenham; Schmid, G (2002b). 'Transitional labour markets and the European social model: towards a new employment contract', in Schmid and Gazier *ibid*.

108 Apps, P and Rees, R (2001). Fertility, female labour supply and public policy, Discussion Paper No 409, IZA; Apps, P and Rees, R (2002). 'Fertility, Dependency and Social Security',

Australian Journal of Labour Economics 5, 4: 569–585; Apps, P (2002). 'Why an Earned Income Tax Credit Program is a Mistake for Australia', *Australian Journal of Labour Economics* 5, 6: 549–568.

109 Apps and Rees (2002) *op cit*: 577.

110 Gittins, R (2005a). 'Mr Incredible, or just a lack of credibility', *Sydney Morning Herald* 11 May: 1, 8.

111 See Apps and Rees (2002) *op cit*: 581.

112 The following discussion draws heavily on Watson (2002) *op cit*.

113 Botwinick, H (1993). *Persistent Inequalities: Wage Disparity under Capitalist Competition*, Princeton University Press, Princeton.

114 See, for example Freedman, M (1976). *Labor Markets: Segments and Shelters*, Montclair New Jersey, Allanhled, Osmun and Co. Publishers.

115 Botwinick (1993) *op cit*: 111, 113.

116 Watson *et al* (2003) *op cit*.

117 Higgins, H (1922). A New Province for Law and Order; Being a Review by Its Late President for 14 Years of the Australian Court of Conciliation and Arbitration, reprinted Dawsons of Pall Mall (1968 ed), Constable and Co Ltd, London.

118 Provis, C (1986). 'Comparative Wage Justice', *Journal of Industrial Relations* 28, 1: 24–39.

119 Watson *et al* (2003) *op cit*.

120 Smith-Doerr, L and Powell, D (2004). 'Networks and Economic Life', in N Smelser and R Swedberg (eds) *The Handbook of Economic Sociology*, Russell Sage Foundation and Princeton University Press, Princeton; Smith-Doerr, L (2003). 'Network Analysis', in J Beckert and M Zafirovski (eds) *International Encyclopedia of Economic Sociology*, Routledge, London; OECD (1999). *Boosting Innovation: The Cluster Approach*, Organisation for Economic Cooperation and Development, Paris.

121 Marx, K (1970). 'The 18th Brumaire of Louis Napoleon', in K Marx and F Engels (eds) *Selected Works*, Progress Publishers, Moscow.

122 Saunders, P, Chalmers, J, McHugh, M, Murray, C, Bittman, M & Bradbury, B (1998). Development of Indicative Budget Standards for Australia, Policy Research Report No 74, Department of Social Security: Canberra; Saunders, P (2006). 'The Historical Development of Budget Standards for Australian Working Families', *Journal of Industrial Relations*, Forthcoming.

123 ABS (6359.0) (1998, 2001) *op cit*; ABS (6361.0) (2000) *op cit*; Watson *et al* (2003) *op cit*: 89; and van Wanrooy, B (1998). 'Working time', PhD. Australian National University.

124 Frank, RH (1999). *Luxury Fever: Why Money Fails to Satisfy in an Era of Excess*, The Free Press, New York; Schor, J (1998). *The Overspent American: Upscaling, Downshifting and the New Consumer*, Basic Books, New York.

125 Withers, G (1982). 'The Concerned Politician's Guide to Countering Inflation and Unemployment', *Australian Bulletin of Labour* 9, 1: 55–68; Alexander, J (1989). 'The Political Economy of Tax-Based Incomes Policy: Wealth Effects of Post-Keynesian TIP', *Journal of Economic Issues* XXIII, 1: 135–146.

126 For example, Buchanan, J and Evesson, J (2004). Creating markets or decent jobs? Group Training and the Future of Work, National Centre for Vocational Education Research, Leabrook.

127 Buchanan, J (Forthcoming). *From 'skill shortages' to decent work: the role of skill ecosystems*, Discussion Paper prepared for the NSW Board of Vocational Education and Training, Sydney; DET (2005). skillecosystem.net: linking jobs and skills, http://www.skillecosystem.net edn, NSW Department of Education and Training.

128 DEWR (2005). Proposals for Legislative Reforms in Independent Contracting and Labour Hire Arrangements, Discussion Paper, Department of Employment and Workplace Relations, Commonwealth of Australia.

129 See for example, Schmid (1995), (2002a) *op cit*.

130 Buchanan, J and Thornthwaite, L (2001). Paid work and parenting: Charting a new course for Australian families, A report prepared for the Chifley Foundation, ACIRRT.

Attachment 6

Brigid van Wanrooy, Michelle Jakubauskas, John Buchanan, Shaun Wilson and Sean Scalmer, *Australia at work. Working Lives – Statistics and Stories*, University of Sydney, October 2008 [available from www.australiaatwork.org.au]

9. Conclusion

The *Australia at Work* project has been undertaken to provide up-to-date information on employees' perspectives on working life. In doing so, the research aims to answer to primary research questions:

1. How, if at all, has the lived reality of the labour contract for Australian workers changed since March 2006?
2. How, if at all, has Australian working life changed since March 2006?

While these questions have been addressed to some extent within this report, they will receive the further attention they deserve through the ongoing research process. This report shows that as expected, no dramatic changes have occurred in the last two years. The labour market rarely experience major change within such a short period of time. While there have been dramatic political and economic developments in the two years, these have yet to register in working life. The research findings outlined in this report reveal that there a number of underlying realities at work that continue to evolve and deserve closer reflection.

The Labour contract: the significance of employees' perceptions

The lived reality of the labour contract for employees is something that is only available from this study. As Chapter 3 revealed, there are major challenges in capturing these understandings on the basis of categories used in labour law and by the Australian Bureau of Statistics (ABS). Further research will be devoted to refining these categories to capture how workers perceive workplace bargaining and understand the basis of their enforceable rights at work.

That said, employee accounts of how their pay and conditions are set are important for understanding what people think is shaping movements in earnings and enforceable employment conditions. The findings here are illuminating. At a time when the union movement and the Federal government have made the promotion of enterprise bargaining the centrepiece of labour law reform, less than one worker in six reports this is how their wages are currently set. Given data collected from employers we know this is an under-estimate. In contrast, compared to ABS estimates more than twice as many people believe award and over-award arrangements are the central basis for determining their pay and conditions. Awards remain relevant for a sizeable proportion of employees who will, in future, be excluded: among employees earning over $100,000 p.a. 28 per cent report 'awards play a role' in setting their pay and conditions.

Latent tensions in working life and beyond

Our research reveals that on a number of indicators working Australians remain, to quote last year's report, 'a happy bunch'. Around two in three employees report managers

consult them, can be trusted to tell things the way they are, and treat them fairly. However, data on a range of other issues indicates a number of latent problems.

(a) Working time and preferences. Working hours continue be problematic for Australian workers. Around one-third (30 per cent) of all workers want either fewer or more hours of work. Employees' desire to change their hours becomes more common the further people stray from 'standard' hours. Full-time employees content with their hours, work on average 45 hours or less per week; while those who want to reduce their hours, work more than 45 hours per week. Part-timers who want to work more hours have a preference of 30 hours per week on average. Finally, employees continue to report greater pressures within the hours they work, with more than half the workforce reporting that more and more is expected of them for the same amount of pay.

(b) Labour market transitions. The source of these preferences is, in some cases, closely associated with workers' other roles in life. Chapter 2 reported the various 'transitions' of working Australians. Around half have care responsibilities and/or children to support (47 per cent for both males and females). Around one in six combines work and study. Indeed, among young workers aged under 21 only a third are not studying. The non-work responsibilities that lie within the household tend to reduce women's participation in paid work. In comparison, men with children devote more time to work. Working couples with children devote a total of around 75 hours to paid work each week, while those without children contribute more than 80 hours. In thinking about working life issues it is impractical to conceive of those in paid employment in isolation from their broader commitments.

(c) The squeeze on living standards. The need for closer consideration of workers' living standards was starkly identified in last year's report which noted that 52 per cent of working Australians were either finding it difficult to get by or just coping on their household income. In 2008 this proportion has risen to 56 per cent (these data were collected before the October financial crisis). What is striking is that the problem is particularly acute among households with children and only one person in paid employment. In single parent households a staggering 79 per cent of workers reported they were either having difficulty getting by or just coping. In traditional 'breadwinner' households, comprised of couples with only one person in paid employment, 71 per cent reported such an experience. Even among dual earning households with children, 62 per cent also report this. It is only when households are earning over $100,000 per annum that there is a greater chance that working Australians would report they are either comfortable or doing well.

It is well-established that many Australians maintain their standard of living by relying on debt, commonly, mortgages and credit cards. More than 85 per cent of employees report having debt to repay, with one in five not being able to repay their debt on time. There is

some evidence of the links between working hour pressures and ability to pay debt on time. Further research is needed on the nexus between 'working and spending'.

Redefining 'standard' employment

The chapters on forms of employment and the self-employed identified the trade-offs made between security of employment and control over workload. The limitations of using simple categories to conceptualise the complex realities of working life were also highlighted. The downside of secure permanent employment is work intensification and longer hours. On the other hand, a greater number of casual employees stated they had control over their hours, but feel less secure in their jobs. It appears that it is increasingly difficult to achieve both standard employment rights and standard working time arrangements. But stepping out of employee status and becoming self-employed offers no solution. The self-employed work the longest hours and have the highest levels of dissatisfaction with them. Half of the self-employed with employees want to reduce their time on the job.

Using refined disaggregations of non-standard employment provides further evidence of the need to move beyond binary thinking about the core categories used for understanding forms of employment. Many long-serving casuals have characteristics close to that of permanents, in relation to perceived job security and reports of work intensification. While many managerial/professional permanent employees have similar characteristics to the self-employed, particularly in their working time practices and preference. There is no clear demarcation between 'casual' and 'permanent' employees, or 'employees' and the 'self-employed'. This is not an argument for ignoring such categories, for there are still very significant legal differences in the enforceable rights of workers falling into different forms of employment. However, these rigid legal conceptualisations are inadequate for understanding the lived employment realities of many workers. Labour standards need to be more encompassing in their reach and not limited to these simplistic categorisations.

Unions at work: where are the future union members?

A matter of importance for industrial relations research and policy is the level of union membership. Aggregate numbers commonly used to track change in levels of unionisation overlook the churn in membership. Among employees who were with the same employer in 2007 and 2008, 3 per cent joined a union. Among those who changed employer, 5 per cent left and 6 per cent joined. Among those not employed in 2007 but working in 2008, 10 per cent are now union members. The net impact of this churn on membership is hard to predict because of the different membership rates of different groups.

Among those with the same employer 23 per cent are union members, among those changing employer and previously not employed it was around 10 per cent. What the study confirmed, however, is that there just under one million workers who are unrepresented and interested in joining. Compared to unionists this group is, among other things, younger, better off, from a non-English speaking background and more likely to be working in growth areas of the economy. Australian's attitudes to unions are similar to those in countries with

much high rates of unionisation, such as Sweden. Clearly the policy environment and not just individual choice has a major influence on union density.

Policy implications

We are at a critical juncture for Australian labour law, with the Rudd Government's *Forward with Fairness* legislation soon to be released. A large scale empirical study such as this does not offer answers to the question: what is to be done? It does, however, highlight the issues that policy needs to address. Three issues in particular stand out as requiring attention.

Ensure awards are relevant and effectual. Currently, much of the focus of the Federal Government and unions is on union collective bargaining at the enterprise level. However, employees' awareness of this process is limited. Roughly speaking, for every worker reporting they are on an enterprise agreement, there is another one saying they have an individual contract, and two reporting award arrangements. More importantly, awards remain centrally important for most employees. Over half the workforce report awards play a role in shaping their wages and conditions. This includes many earning in excess of $100,000 per annum. While supporting bargaining activity at the workplace level is important, it needs to be reinforced by other initiatives. Effective maintenance of awards will be central to achieving this outcome.

The scope and reach of working time standards. The chapters on working time, forms of employment and the self-employed highlight profound weaknesses in the current approach to managing extended hours and intensity of work. It is clear current approaches are not grappling effectively with today's problems. Consideration of the volume of work, the level of responsibility and the associated resources is needed. Currently, the labour standards regime is not engaging with these modern realities. A system capable of doing this will not limit the range of matters potentially subject to labour standards.

The issue of working time highlights the problems in limiting the reach of labour standards to particular groups of workers. The award system governs more than just wages. We have shown that it is higher-paid employees, soon to be removed from awards, who are the most susceptible to the issues surrounding long hours of work. Additionally, there are many self-employed and contracted workers for whom the working time problem is intensified. A system of labour law capable of engaging with these realities will need to:

- Move beyond the unhelpful binary thinking that has separated, often arbitrarily, 'permanents' and 'casuals', 'employees' and the 'self-employed'.
- Remove limits to the reach of labour standards defined arbitrarily on the basis of income thresholds and categories of employment.

As the labour market evolves, so should our system of labour law. Setting arbitrary limits as to *what* and *who* is 'in' and 'out' of the system of labour standards will merely allow those

with most power in the labour market to shape the nature of working life in ways that suit them and not necessarily in the interest of those working for them.

Linking working life policy with other realms of policy. Data on perceived living standards and debt raise serious challenges. While better labour standards can help with these issues, interventions in this realm of policy alone will not be adequate. In the short run, close links with other policy domains, especially child care and social inclusion will be important. In the longer term, however, it will only be when greater attention is devoted to managing norms of consumption and debt that longer term solutions to current pressures will be found. Innovative working life policies, that are integrated into inclusive policies aimed at improving social and economic life more generally, will be important.