Chapter 1

The evolution of workplace agreements

1.1 This is an introductory chapter which describes and outlines themes and arguments that will be presented more fully in the following three chapters. It puts the current interest in workplace agreements in an historical context, recognising that the pace of change has quickened suddenly in the light of the imminent introduction of the WorkChoices Bill. As was explained in the Preface, it has not been possible in this report to avoid anticipating what is likely to come with the WorkChoices Bill.

1.2 There is considerable commentary on the evolving process of wage determination over the past dozen years. Most areas of employment have been affected. Movement away from centralised wage fixing began with amendments to the Industrial Relations Act in 1993, toward enterprise bargaining arrangements, a move by the Keating Government which was initially opposed by sections of the union movement.

1.3 Since then, a diminishing proportion of the workforce has directly relied on industry-wide awards, which provide a comprehensive set of wages and conditions per industry, and which provide the current safety net for lower-paid members of the workforce. These are generally unskilled workers but also cover part-time and casual workers and immigrant skilled workers with poor English. Very large numbers of employees indirectly rely on awards, using them as the base starting point for collective and individual agreements, or, with respect to specific provisions, as default provisions. Skilled workers, and certainly those represented by unions, generally enjoy above-award wages and other benefits of enterprise agreements. However, it remains the case that the award system continues to underpin the wages and conditions of workers who have collectively and individually negotiated above-award wages; and acts as an important safety net for the remaining workforce. Such wage differentials in the workforce are not exceptional, as they were fifteen years ago, and are a notable characteristic of the current wages structure.

1.4 The central issue in the debate over industrial agreements, which is the subject of this report, is the extent to which the current trend toward wider disparities in wages and conditions can continue. Traditionally, the award structure has put a substantial floor under wages. This report deals in part with the consequences of the removal over time of the award structure, and its replacement by new mechanisms and agreement processes which many claim will widen the wages gap and create a permanent underclass of unskilled employees existing barely above poverty levels. There has been much speculation on the social consequences of such a development. It is feared it will move Australia towards the harsher and less egalitarian USA practice. The spectre of poverty and social alienation that is evident on the extensive fringes of American society concentrates the minds of many commentators, who also acknowledge that in many other respects the conditions and traditions of governance which prevail in the United States find no mirror in this country.

1.5 Of relevance to this inquiry are the social consequences of New Zealand's experience with individual contracts during the 1990s. It has been widely reported that the Employment Contracts Act of 1991 had disastrous consequences for workers who had previously relied on industrial awards to provide a safety net of minimum wages and conditions. The new system of individual contracts introduced in 1991 was a disaster for jobs, wages and productivity, resulting in a significant rise in the number of 'working poor'.[1]

1.6 The other side of this argument draws heavily from the necessity of continuing with the work begun with the 1993 legislation ushering in enterprise agreements, based largely on the assumption that economic imperatives make further movement along this path essential. That is, reform must follow reform in a continuing cycle in the direction of sustaining maximum productivity. To stand still is to go backwards. Proponents of this line of argument emphasise its importance at a time when the economy of the country is subject to unrelenting global competition.

Historical context

1.7 In the last 20 years, Australian wage fixation has moved incrementally from a centralised model of awarding national wage increases to match increases in the cost of living, to a much more devolved system, where wages are primarily set at the workplace level, often based on improvements in productivity.

1.8 This shift first started to occur in 1987, with the Commission's introduction of the Restructuring and Efficiency Principle.[2] This was reinforced (albeit at an industry level) by the Structural Efficiency Principle[3] which accelerated following the development of the Enterprise Bargaining Principle in 1991.[4]

1.9 From this time, the Commission's decisions and the Government's legislative action (most significantly through the *Industrial Relations Reform Act 1993* and the *Workplace Relations and Other Legislation Amendment Act 1996*) have facilitated this shift in focus from national and industry level wage fixation to workplace level wage fixation. In broad terms, by the mid 1990s, there was general acceptance of the principle that industrial agreements could not be fairly made without regard for the profitability – and the capacity to pay higher wages – of businesses, especially in such a diverse economy when not all businesses were profitable at the same time.

The Workplace Relations Act and subsequent amendments

1.10 Following the Coalition's election in March 1996, the Government introduced the *Workplace Relations and Other Legislation Amendment Act 1996*, which renamed

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1 See the discussion in chapter 2 at paras 2.33 and 2.34.

2 National Wage Case Decision, Full Bench, Australian Industrial Relations Commission, 10 March 1987, Print G6800

3 National Wage Case Decision, Full Bench, 12 August 1988, Print H4000

4 National Wage Case Decision, Full Bench, 30 October 1991, Print K0300

and significantly reformed the *Industrial Relations Act 1988*. The amendments focused on achieving wage increases linked to productivity at the workplace level. The new name of the act reflected this, as did new provisions relating to negotiating and certifying agreements. The act also introduced a new form of agreement, Australian Workplace Agreements (AWAs), which could be made between an employer and an individual employee.

1.11 Two other significant changes were to restrict the Commission's ability to make awards in relation to matters outside a core of 20 'allowable award matters' set out in section 89A, and the introduction of provisions requiring the Commission to review and simplify awards to remove all provisions falling outside these 'allowable award matters' after a transitional period of 18 months. These provisions achieved what the Commission had decided it could not do itself under the former legislation; this is, limit the content of the award safety net to a set of core minimum conditions.[5]

1.12 The simplification of Federal Awards to 20 allowable matters had the most significant effect of removing restrictions on casual labour. Although the rise of casual labour from 18.2 per cent of the workforce in 1988 to 26.6 per cent of the workforce in 2004 is a significant trend, its effect on workers has been more recently felt.[6] The committee believes it is a trend which will continue under proposals contained in the WorkChoices Bill.

1.13 The role of the Commission, and that of its awards, has developed to reflect the increasing emphasis on setting wages and conditions by agreement at the workplace. It was inevitable that the scope for arbitration by the Commission would be reduced in line with these changes, and the Commission itself had recognised this earlier.[7]

1.14 It is worth noting that the Government did not get their full proposal through the Senate. In the end, there were 176 Democrat amendments made to the original legislation.

1.15 Having been successful in having the Workplace Relations Act passed, with substantial amendments insisted on by the Senate, the Government thereafter had less success with subsequent amendments to the act. Many of the amendments the government has sought to make to the act in the years since 1996 have been thwarted by the Opposition and other parties in the Senate. While that is true, the extent of Government failure should not be exaggerated. It is common for the Government to claim that their legislative IR agenda has been routinely obstructed in the Senate, but

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5 Safety Net Adjustment and Review Decision, Full Bench, Australian Industrial Relations Commission, 21 September 1994, Print L5300, p.39

6 *Alternative estimates of casual density, with and without owner-managers of incorporated enterprises, 1988-2003*, Iain Campbell & Robyn May, Centre for Applied Social Research, RMIT University, 2005

7 National Wage Case Decision, Full Bench, 30 October 1991, Print K0300

up until June 30 2005 the Coalition secured passage of 18 workplace relations bills through the Senate. Of these, five were supported by all parties and passed without amendment, including the very substantial Workplace relations (Registration and Accountability of Organisations) Bill 2002.

1.16 The first significant amendments proposed after 1996 were contained in a major bill, the Workplace Relations Legislation Amendment (More Jobs, Better Pay) Bill 1999. The bill, often referred to as the MOJO Bill, sought among other things, to reduce the role of industrial awards, reform the certification of agreements and the making and approval of AWAs and to clarify rights and responsibilities relating to industrial action. It also sought to reduce allowable award matters, restrict union right of entry provisions and review provisions for freedom of association. This bill lapsed at the end of the 39th Parliament. Following the failure of MOJO to pass the Senate, this comprehensive amendment bill was 'unpackaged' into separate constituent bills which were reintroduced in following years. A number of less contentious bills were passed.

1.17 One of these was the Workplace Relations Amendment (Genuine Bargaining) Act 2002, which specified factors to be taken into account by the Commission when considering whether a negotiating party was genuinely trying to reach agreement, and which empowered the Commission to make orders in relation to new bargaining periods.

1.18 The Workplace Relations Amendment (Better Bargaining) Bill 2003 proposed to restrict access to industrial action before the expiration of an agreement, provide more ready access by employers to cooling-off periods, allow third party suspensions of industrial action and limit union access to protected and unprotected industrial action. The bill lapsed at the end of the 40th Parliament.

1.19 Most recently, the Workplace Relations Amendment (Simplifying Agreement-making) Bill 2004 sought to simplify certified agreement-making at the workplace level, reduce the delays, formality and cost involved in having an agreement certified, and prevent interference by third parties in agreement-making. It also sought to provide for the extended operation of certified agreements of up to five years. The bill lapsed at the end of the 40th Parliament.

1.20 The brief chronology above pertains primarily to amendments in relation to widening the scope of agreement-making. With its newly realised Senate majority, the Government has announced its intention to introduce legislation into the Parliament in late 2005 in its latest attempt to 'simplify' agreements. Announcements from the Government suggest that the bill will seek to encourage the use of Australian Workplace Agreements (AWAs) at the expense of collective agreements, and dismantle the award structure over time. The Australian Industrial Relations Commission (AIRC) will have responsibility for simplifying awards, regulating industrial action and registered organisations, and will play a role in relation to termination of employment. Employers and employees will also be able to use the AIRC to help them resolve a dispute. The new Australian Fair Pay Commission will

set and adjust a single minimum wage and determine other working conditions within a framework of a reduced number of allowable matters. These are expected to include annual leave, carer's leave, parental leave, and maximum ordinary hours of work.

Agreements: their scope and coverage

1.21 This section provides a descriptive summary of the nature and coverage of enterprise and individual agreements in the context of the broader employment framework, since the passage in 1996 of the Workplace Relations Act.

1.22 The act introduced significant changes to the legislative framework of formalised agreement-making in the federal jurisdiction. Under the act, there are a number of options for making an agreement, both formal and informal. Formal options include a certified agreement (CA), which are most commonly certified by the AIRC under either section 170LJ (employer and employee organisation), or section 170LK (employer and a majority of employees). Other options exist for the formation of a CA pertaining to new businesses and for the settlement of industrial disputes.

1.23 The other type of formal agreement is AWAs, which were the first non-collective agreement to be recognised by legislation in the federal jurisdiction. AWAs are made directly between an employer and an employee, and are approved by the Employment Advocate.[8]

1.24 The Australian Bureau of Statistics collects and publishes data relating to the scope and coverage of different agreements, as well as incomes. Registered agreements are statutory instruments and unregistered agreements are common-law agreements. The ABS records the most common methods of setting pay for all employees in May 2004 as being registered collective agreements (38.3 per cent), unregistered individual arrangements (31.2 per cent) and award only (20.0 per cent). Unregistered collective agreements (2.6 per cent) and registered individual agreements (2.4 per cent) were the least common methods of setting pay. The remaining 5.4 per cent of employees were working proprietors of incorporated businesses.

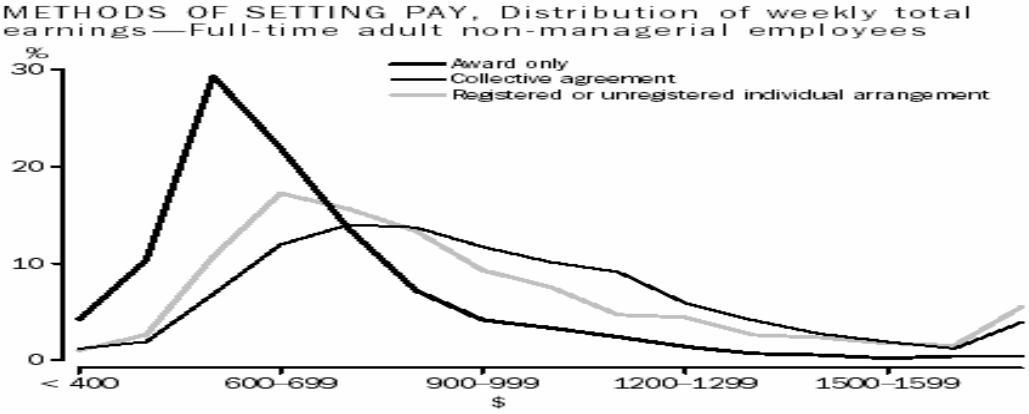
1.25 The most common methods of setting pay for full-time employees were collective agreements (41.5 per cent) and registered and unregistered individual arrangements (38.9 per cent). For part-time employees, collective agreement (39.7 per cent) and award only (34.3 per cent) were the most common methods of setting pay.

1.26 The median weekly total earnings for full-time adult non-managerial employees who had their pay set by awards only were $625.00. This compares with median weekly total earnings of $904.00 for full-time adult non-managerial employees who had their pay set by collective agreements and median weekly total earnings of $814.00 for full-time adult non-managerial employees who had their pay

8 *Agreement making in Australia under the Workplace Relations Act: 2002 and 2003*, A report prepared by the Department of Employment and Workplace Relations and the Office of the Employment Advocate, 2004, pp.1-2

set by registered and unregistered individual arrangements.[9] The committee notes that ABS figures do not differentiate between those agreements, collective or otherwise, which are in part underpinned by award provisions.

1.27 The following graphic illustrates the use of different employment arrangements across the income levels.[10]



1.28 The committee does not know how many AWAs are currently operative. Data relating to AWAs, and to an even larger extent non-AWA individual agreements, can best be described as estimates. They are individual agreements and confidential documents, running for differing lengths of time. At the committee's hearing in Perth, Western Australian Minister, Hon John Kobelke MLA, also referred to the difficulty in obtaining accurate data on the coverage of workplace agreements.[11]

1.29 The Office of the Employment Advocate (OEA) has submitted that AWA approvals have enjoyed an annual growth rate of 29 per cent over the past three years, and an even higher rate for small to medium businesses. The OEA also estimated that 'industry penetration' by AWAs stands at 5.4 per cent nationally.[12]

1.30 Professor David Peetz has taken issue with the OEA's submission, arguing that:

> …[I]t is important not to misinterpret cumulative OEA lodgement data as providing any measurement of actual coverage, as there is substantial potential for double and triple counting of AWA employees who leave and are replaced by AWA employees or who sign replacement AWAs … The OEA estimate that 5.4 per cent of the Australian population was 'covered' by AWAs in June 2005 is implausible, given that only 2.4 per cent were covered in May 2004, only 217 000 AWAs (equivalent to about 2.7 per

9 The statistics referred to in these paragraphs are drawn from the Australian Bureau of Statistics, *Employee earnings and hours*, publication 6306, May 2004, p.6,7.

10 Australian Bureau of Statistics, *Employee earnings and hours*, publication 6306, May 2004

11 Hon John Kobelke, MP, *Committee Hansard*, Perth, 25 October 2005, p.81

12 Office of the Employment Advocate, *Submission 19*, pp.3, 13

> cent of employees) were approved in 2004-05, and many of the workers covered by AWAs in May 2004 … would have either left their jobs or been covered by replacement AWAs.[13]

1.31 The ACTU had similar concerns, pointing to a disparity in the number of AWAs estimated to be in force by the OEA and the ABS of more than 226 000. This equates to a disparity of 115 per cent.

1.32 Professor Peetz also pointed to ABS data which makes clear that growth in the number of employees covered by collective agreements from 2002 to 2004 far exceeded the likely rise in registered individual contracts.[14]

1.33 One of the main criticisms of the use of the ABS data to support the view that the coverage of individual agreements is growing rapidly relates to the way the ABS categorises employees. Professor Ellem argued:

> [T]he way that the Australian Bureau of Statistics count these figures is not the most helpful way of doing it. When they do their samples, any one employee is classified into only one category whereas … a large number of or most employees in effect have their wages and condition determined by a combination of instruments. For example, if your wages and conditions are determined by a federal award and some kind of individual agreement then modifies some part of that agreement … [the ABS] would count such a person as being in the individual agreement-making category only. [Thus] we do not really know for sure what the make-up of the regulation of the Australian labour market is at the moment in any sophisticated way.[15]

1.34 Professor Ellem continued:

> I am saying that it is a genuinely difficult problem and there are legitimate ways of going about it. All that we want to do is to make sure that we are comparing like with like.[16]

1.35 Professor Ellem's observations appear to the committee to be well founded. The glossary of the relevant ABS report discloses that those in the individual arrangement category include employees who had the main part of their pay set by an individual contract, registered individual agreement, common-law contract, or an agreement to receive over-award payments.[17]

1.36 Finally, it was pointed out that figures from Western Australia are skewed as a result of a change of government. There is a higher proportion of AWAs in effect in

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13 Professor David Peetz, *Submission 33*, p.5

14 ibid.

15 Professor Bradon Ellem, *Committee Hansard*, Sydney, 26 September 2005, p.25

16 ibid., p.31. See also Dr Kristen van Barneveld, *Submission 6*, p.46

17 Australian Bureau of Statistics, *Employee earnings and hours*, publication 6306, May 2004, p.50

Western Australia than in any other state. This is partly due to the prevalence of AWAs in the mining industry, but also because most of the workers formerly covered by Individual Workplace Agreements went over to AWAs.[18] Nonetheless, it is clear to the committee that the scope and coverage of AWAs across the country is open to considerable dispute.

What do AWAs cover?

1.37 The most comprehensive analysis of AWA content was carried out by the Australian Centre for Industrial Relations Research and Training (ACIRRT) based on sample AWAs provided by the OEA between 2002-03. Issues commonly dealt with in AWAs include wages and other remuneration, span and flexibility of hours, leave provisions, and so-called 'family friendly' provisions. Of these, the most commonly covered issue is span and flexibility of hours, which 82 per cent of surveyed AWAs made reference to. Only 15 per cent of AWAs placed a limit on the number of hours to be worked in any one day, with 4 per cent of agreements allowing for more than 12 hours per day to be worked.[19]

1.38 Professor Peetz's submission contended that the span of hours is the predominant issue covered by AWAs, and he draws on ACIRRT research to argue that AWAs tend to provide for annualised working hours which are longer than other agreements. These 'annualised hours' can leave workers at a significant disadvantage because they tend to be paid at ordinary-time, rather than overtime rates of pay.[20] This results in wages being devalued over time. This was the general experience in Western Australia under its previous system of individual workplace agreements (IWAs). The Western Australian Government submission noted that while many IWAs included very open-ended hours of work under the guise of flexibility: '…an analysis of the loaded rates of pay for these workers did not appear to make up for the increasingly open and flexible hours of work arrangements'.[21]

1.39 The committee heard evidence from Ms Janine Freeman, Assistant Secretary, UnionsWA, that inclusion of annualised working hours in AWAs raises serious health and safety issues. Ms Freeman described the effect of annualised salaries on the ambulance officers who worked at Port Hedland:

> They had workplace agreements to annualise their salaries. At first the salaries looked extremely attractive because they were annualised and took things into account…When they looked at the hours they were working, the amount of call-out they had to do and the additional duties that were considered in the workplace agreement, they found that, if they had been on

18 Professor David Peetz, *Submission 33*, p.50. It draws on Todd and Eveline, *Report on the Review of the Gender Pay Gap in Western Australia*, University of Western Australia, 2004.

19 Office of the Employment Advocate, *Submission 19*, pp.14-22, drawing on research conducted by ACIRRT.

20 Professor David Peetz, *Submission 33*, p.8

21 Government of Western Australia, *Submission 48*, p.8

> a certified agreement, they would have been underpaid. The impact on families in Port Hedland – in remote and regional areas – was quite harsh and caused a lot of difficulty.[22]

1.40 The next most common employment condition covered by AWAs is leave, which was specified in 74 per cent of agreements, followed by 'family friendly' provisions such as parental leave or additional flexibility when required for family-related contingencies.

1.41 Alarmingly, only 38 per cent of AWAs covered by the survey made reference to wage rises, and in 41 per cent of AWAs one or more loadings such as overtime had been 'absorbed' into an overall rate of pay.

1.42 The ACTU drew on data from the Department of Employment and Workplace Relations (DEWR) to show that even collective agreements are frequently left wanting in content detail. Only about 29 per cent of employees covered by certified (collective) agreements are covered by comprehensive agreements. Comprehensive certified agreements appear most frequently in the construction, manufacturing, retail trade, and transport and storage industries. However, with the exception of retail trade, these agreements account for only a small proportion of employees covered by this type of agreement.[23]

1.43 Hence, for the purpose of this report the committee assumes that the number of AWAs currently in effect is uncertain, but that awards and collective agreements still set wages and conditions for the majority of the workforce.

Characteristics of employment under AWAs and other individual agreements

1.44 There is a significant proportion of the workforce which relies solely on awards and informal agreements. Workers operating under awards, and forms of unregistered agreements, total one quarter of the workforce, and are primarily those on lower incomes. They include a high proportion of women, and young and casual workers. As the ACTU argued:

> While there has been rapid growth in the number of employees covered by formal bargaining, awards remain relevant in setting the wages of one in five employees … [A]wards [also] remain relevant in underpinning bargaining for the majority of employees employed under collective agreements.[24]

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22 Ms Janine Freeman, UnionsWA, *Committee Hansard*, Perth, 25 October 2005, p.72

23 Department of Employment and Workplace Relations, *Agreement making in Australia under the Workplace Relations Act 2002-2003*, 2004, p.25. This data pertains to federally registered certified agreements.

24 Australian Council of Trade Unions, *Submission 22*, p.2

1.45 The following table illustrates the coverage of individual agreements among different industry groups.[25]

			INDIVIDUAL ARRANGEMENT			
	Award only	*Collective agreement*(a)	*Registered or unregistered*(b)	*Working proprietor of incorporated business*(b)	*Total*	*All methods of setting pay*
	PROPORTION OF EMPLOYEES *(%)*					
Mining	*1.9	38.8	57.6	*1.7	59.3	100.0
Manufacturing	14.9	35.8	44.5	4.8	49.3	100.0
Electricity, gas and water supply	*1.7	79.9	17.7	*0.7	18.4	100.0
Construction	15.2	24.1	40.8	20.0	60.8	100.0
Wholesale trade	14.9	16.0	61.8	7.3	69.1	100.0
Retail trade	31.3	33.4	30.3	5.0	35.3	100.0
Accommodation, cafes and restaurants	60.1	11.7	25.9	2.4	28.3	100.0
Transport and storage	14.4	41.9	36.2	7.5	43.7	100.0
Communication services	*2.1	62.6	32.8	*2.5	35.3	100.0
Finance and insurance	4.5	43.7	46.9	4.9	51.8	100.0
Property and business services	19.7	12.8	56.8	10.8	67.5	100.0
Government administration and defence	*0.8	89.3	9.9	. .	9.9	100.0
Education	8.9	83.5	7.2	*0.4	7.6	100.0
Health and community services	26.6	54.8	15.9	2.7	18.6	100.0
Cultural and recreational services	17.7	38.7	40.4	*3.2	43.5	100.0
Personal and other services	23.5	45.7	27.8	*2.9	30.8	100.0
All industries	20.0	40.9	33.7	5.4	39.1	100.0

1.46 The table shows the preponderance of workers employed under individual agreements who are occupied in the mining, wholesale trade, finance, manufacturing, property and business sectors. There is evidence to suggest that a significant proportion of these workers are not party to an AWA, but rather are engaged in informal over-award common-law agreements.

1.47 What is also clear from the table is the situation of workers in the burgeoning hospitality (hotel, cafes and restaurants) sector, who are more often than not working solely on awards, while those in retail, health and community and personal services also have a high rate of award adherence. These industries are among the highest employers of casual and female workers, as well as being among the lowest paid, particularly for women.[26] Any move toward AWAs which is facilitated under forthcoming legislation will probably affect these employees as the award structure gradually winds up.

1.48 It is pertinent to note here that in promoting individual agreements, employers are resisting collectivism and promoting workplace flexibility, but on their terms only. As the committee heard from one authority:

> The two biggest changes that have taken place, including in the services sector but more broadly in manufacturing, are an increase in the number of employees on 12-hour shifts. There is also an increase in the basic length of the working day to 12 hours. That does not mean necessarily that people work 12 hours a day but it means that any time within the 12 hours is considered ordinary working time. It reduces payments for working

25 Australian Bureau of Statistics, *Employee earnings and hours*, May 2004, p.29

26 Australian Bureau of Statistics, *Employee Earnings and Hours*, publication 6306, May 2004, p.20

> unsociable hours. …I think that in those sectors in particular the really critical thing about AWAs compared to any kind of old collective agreement is that what it is really about is individualising the process of making the agreement itself. It is about individualising employee representation at work and, I think, in effect reducing real flexibility for employees and reducing their voice in relation to their employer when they have a grievance or a concern.[27]

1.49 Evidence such as this puts a basis of academic research beneath instinctive distrust of workplace arrangements which avoid the scrutiny imposed by traditional processes of collective bargaining and tribunal decisions. This is the basis for fears that AWAs will not promote socially or family-friendly working conditions. Wage justice may be achieved through AWAs, as experience with mining and high-skill jobs has demonstrated, but even in these cases the costs to individuals has been high, and is barely sustainable over a working career.

Pattern bargaining and pattern agreements

1.50 Few industrial relations practices infuriate the Government more than 'pattern bargaining', whereby union managements across a state attempt to negotiate an identical enterprise agreement across comparable industries within a state. The Government claims that this defeats the rationale for enterprise based agreements based on shared interests of a firm and its employees. It argues that a firm's level of remuneration should be based on its capacity to pay, and its capacity to trade productivity increases with higher wages.

1.51 Peak employer bodies dutifully condemn pattern bargaining, but evidence to this committee's inquiries over a number of years from peak body constituents appears to be ambivalent. As wages make up the bulk of expenditure outlays, any practice which sets predictable wages at the same level across an industry greatly simplifies cost estimates for firms tendering for work. Pattern bargaining, especially in the building and construction industry, saves a great deal of management time and allows contractors to remain competitive on the basis of work practices, contract management and in managing the cost of materials. Productivity gains are no less assured under these conditions than in having to bargain large numbers of individual agreements.[28]

1.52 The Government's stand against pattern bargaining for collective agreements in the private sector is in contrast to its own habit of pattern bargaining for collective agreements in the public sector. Its stand against pattern bargaining for collective agreements in the private sector is also juxtaposed to its support of pattern individual agreements in both the private and public sectors. Anyway, AWAs are mostly not 'bargained' agreements but are imposed agreements, the only likely exceptions being

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27 Professor Bradon Ellem, *Committee Hansard*, Sydney, 26 September 2005, p.32

28 Senate EWRE Committee, *Beyond Cole: the future of the construction industry*, June 2004, pp.105-07

those for very high income employees. Nor do AWAs extend across an industry, although the variations may be slight in areas with skill shortages.

1.53 Some evidence suggests that many employers prefer awards and statutory collective agreements. They provide a base upon which to build common-law agreements. They provide a standard of wages and conditions which is useful. Professor Bradon Ellem agrees, arguing that, for many employers, transparent, efficient and equitable occupational health and safety and workers' compensation schemes are more important.

Conclusion

1.54 The argument about industrial agreement-making is about the relativities of bargaining power. The Government has taken the view that the upper hand in bargaining for wages and conditions has generally been held by employees, backed by their unions and the apparatus of wage-fixing institutions. Hence the frequent claim of its legislative intentions as securing 'balance', 'choice' and 'flexibility'. There is an unspoken assumption in Government circles, and some employer circles, that in many areas of employment wages are too high. Yet the Government also claims as a justification for AWAs that wages will increase. Evidence suggests that they will, but only in highly professional and highly skilled jobs, and in the particular circumstances of some industries, and as a result of volatility in the labour market and the long-term trend toward labour shortages in certain sectors.

1.55 The Government's legislative intent since 1996, which continue with the imminent WorkChoices Bill, has been to tilt bargaining power toward employers. It is a policy based on dubious assumptions about the relationship between employers and employees. The policy rationale is as follows: the economic is more important than the social; a philosophical objection to collective agreements (including awards); and an assumption that employment relations should regulate employees as economic units, who exist primarily for work. As a corollary to this, employers stand in a naturally ascendant relationship with employees, and their needs are therefore paramount. The system of individual contracts proposed by the Government will significantly enhance managerial prerogatives and diminish the independence and choice available to employees.

1.56 The reason given for the paramount importance of employer demands is the need to increase productivity. The flaw in this argument is that labour costs and hours worked are only two elements in the productivity equation. It will be argued in chapter 3 that squeezing labour is far less effective in raising productivity than improved management, technology and the injection of capital. What evidence we have shows that productivity in general is highest in firms in which collective, rather than individual, agreements are the norm, and where the security, and therefore contentment, of employees is manifested through good work performance.

1.57 As will also be noted, it is not productivity that concerns businesses as much as profitability. It is true that cutting labour costs may increase profits in some

circumstances, but this can be a blunt instrument in dealing with market cycles. If labour costs are significantly reduced, the flow-on effect through the economy will affect consumer demand. As employer's profit share is already at a record high of 27 per cent of GDP, and workers' wages share is almost at the lowest on record at 53 per cent of GDP, this committee agrees with commentators who wonder what the real purpose of these changes is.[29]

1.58 Perhaps the answer to this question was given by one of the key witnesses to this inquiry, who reminded the committee, that the focus of workplace changes proposed now and in the past by the Government is less concerned with outcomes than with process.[30] As the committee has observed before in dealing with numerous amendments to the Workplace Relations Act, the micro-regulation of industrial legislation ensures that process has become an end in itself; that hoops must be jumped through in particular order, lest employers be tempted to take a pragmatic view of the responsibility they have to hold the line with the Government in whatever it is attempting to achieve.

29 Tim Colebatch, 'Howard's high stakes IR gamble', *Age*, 18 October 2005, p.13

30 Professor Bradon Ellem, *Committee Hansard*, Sydney, 26 September 2005, p.29