Submission

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Inquiry into the Workplace Relations Amendment (WorkChoices) Bill 2005

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1. Introduction

This submission is wholly based on a recently completed monograph by Plowman & Preston (2005) titled "The New Industrial Relations: Portents for the Lowly Paid".

Through an examination of the earnings for select occupational groups we reflect on the likely effects of a nationally deregulated industrial system on wages and employment outcomes for the lowly paid. We also draw on the Western Australian experience of industrial relations deregulation to reflect on how the removal of the protection of awards is likely to impact on lowly paid workers.

The remainder of this submission is organised as follows. We begin, in the next section, with a brief overview of the Australian industrial relations system highlighting the historical role of tribunals in setting wages and community standards, as well as the more recent move to a decentralized, workplace-oriented approach to industrial relations. The subsequent section, Section 3, provides an overview of the thrust towards enterprise bargaining in the federal and Western Australian (WA) systems. In 1993, both governments legislated for workplace agreements, but with significant differences in affording protection to low paid workers. In Section 4 we analyse the wage relativities of a select number of occupational groups as a way of understanding how pay decentralization has impacted on particular groups of workers. The analysis suggests that decentralism has been accompanied by greater wage dispersion. In Section 5 we undertake an analysis of wage rates between groups in WA where deregulation and decentralized pay bargaining has not involved the same

safeguards as with other systems. This analysis suggests an even greater dispersion of wage rates than in the previous section. The final section is by way of summary and conclusion.

2. From Uniformity to Flexibility

Australia has had a distinctive set of arrangements for the determination of industrial relations outcomes and community employment standards. Unlike many other advanced economies where governments have the capacity to legislate on standards (such as hours of work, minimum wages, leave entitlements and other employment conditions), the Australian government has, until recently, been constrained by the Constitution in its ability to legislate broadly on work related matters. The Industrial (or Arbitration) power of the Constitution (s. 51 (XXXV), for example, provides for the prevention and settlement of interstate industrial disputes. Using these powers successive governments have conferred responsibility on industrial tribunals, such as the Australian Industrial Relations Commission (AIRC), to develop fair and acceptable standards for work and pay as a way of preventing and settling industrial disputes. Within this system primacy was given to collective bargaining whilst public interest tests (such as the economic and employment effects of particular decisions) have significantly guided the wage fixing principles and determinations of tribunal members.

Through a reinterpretation of the constitution the current government seeks to use the Corporations Power (s. 51 (XX)) to legislate directly on employment matters for employees of incorporated businesses (estimated at 80 per cent of the employed population). The proposal marks a radical departure from the past. Individual agreements will have primacy over collective bargaining whilst the rights to collectively bargain will be significantly curtailed. Even if a majority of employees wish to bargain collectively (with or without a union) the employer need not agree and may instead offer individual agreements if that is the employer's preferred mode of engagement.

Unlike collective agreements registered with the AIRC and their state counterparts, individual agreements (registered and common law) are private verbal and/or written agreements. Through 'agreement' the parties to private individual agreements may

negotiate over accepted community standards. Parties, may, for example, choose to trade off some annual leave in lieu of a pay increase, average out their hours, and trade off penalty rates or other entitlements. Since agreements are private and often verbal, monitoring outcomes within such a system is fraught with difficulty.

Historically Australia has been host to a highly centralized and regulated industrial relations system. Since the turn of the 20th Century wages have been determined by industrial tribunals. Over time, the actions of these tribunals led to industry and national award rates of pay. The focus was on ensuring an acceptable set of wage relativities within and between occupations and industries as a way of minimising industrial disputes. It was generally regarded that employees judged their pay as fair by reference to rates around them. Through the principle of comparative wage justice (CWJ) tribunals explicitly flowed through the wage gains from one sector to another as a way of maintaining an acceptable wage structure. If the structure became misaligned, then explicit efforts were often made to realign it. This approach led to, and was buttressed by, a national wages system that delivered uniform and simultaneous wage increases to all those covered by federal awards. This system of wage transmission minimized problems of relativities and CWJ. The outcome of this approach, and the concern with CWJ, was a rigid wages system with little capacity for horizontal (across awards) or vertical (within awards) wage adjustments that did not flow on to others.

This system delivered high real incomes, and relatively low unemployment, while the Australian economy was protected by way of tariffs, embargoes, quotas and subsidies. In 1974, as an anti-inflationary device, the Whitlam Government reduced tariffs by 25 per cent. This development led to further moves away from the protectionist regime that had underpinned the Australian economy. The conversion to this new 'global and open' approach was signaled by the floating of the Australian dollar in 1986 and the subsequent Labor policy of reducing, and subsequently eliminating, tariff protection (Hawke, 1991).

The industrial relations system adjusted to these new circumstances. Starting from 1974, multi-industry awards were fragmented into industry specific awards. These, in turn, were subsequently further fragmented into company awards and then company-

site awards (Plowman 2002). Under the aegis of the Accord, the federal (Labor) government and the Australian Council of Trade Unions (ACTU) sought to develop a wages system more in tune with the needs of an open economy. In 1986 the ACTU abandoned its historic claim for real wage maintenance. At that year's national wage case the Commission introduced the first set of devolved wage guidelines that, by 1991, had resulted in the Enterprise Bargaining Principles[1]. These, together with legislation, reduced the role of national wage cases (post-1991) to little more than the maintenance of a safety net of employment standards. In this climate of change, the Commission described its wage function principles as 'part of the transition to a new system of industrial relations'. The Commission formulated principles which it consider would aid 'the evolutionary process towards a system which combines an equitable and rational award system and a prime focus on enterprise industrial relations' (AIRC 1993:17).

3. Enterprise Bargaining Variants – Federal and WA Regimes

The call for greater flexibility, and the 'transition to a new system,' led to both the state and national governments legislating to bring about such flexibility. Writing in 1994, Reitgano noted that 'since 1990, at both the Commonwealth and state level, legislative activity has been directed largely towards facilitating the encouragement of collective bargaining models designed to achieve enterprise restructuring and microeconomic labour market reform'. Of importance to this paper is legislation ratified by the federal and WA governments in 1993. Both pieces of legislation were concerned with the development of greater enterprise-based bargaining. The former, however, provided for a range of safeguards to ensure that bargaining did not reduce relative standards for vulnerable workers. The WA legislation provided for minimum standards, but had little concern with relative standards.[2] Both pieces of legislation

[1] Under the Enterprise Bargaining Principle (EBP) the parties (employer and unions) could negotiate an enterprise agreement so long as they met some specific requirements, including; (a) the agreement had been negotiated under a single bargaining unit in an enterprise or (discrete) section of an enterprise (the aim of this requirement was to prevent flow-ons to other areas); (b) the bargaining agenda was broad; (c) wage increases were based on productivity; and (e) the agreement was for a fixed-term and provided for no further wage increase except in line with national wage case decisions.

[2] The *Minimum Conditions of Employment Act 1993* covered minimum's with respect to rates of pay (Part 3) and leave conditions (Part 4) (eg. annual leave, sick leave, parental leave). Under the Act the minimum wage was determined by the Minister, covered a 40 hour week (rather than the 38 hour week specified in the award), and was typically around $40 per week lower than the adult minimum wage determined by the tribunals (see appendix A to this paper). The casual loading was set at lower rate; 15 per cent vis a vis the 25 per cent loading typically found in many awards.

have relevance for present purposes. The federal legislation is important in that it broke away from the restriction of relying upon the arbitration head of power in the Constitution and established the precedence of using the corporations and foreign affairs heads of power to legislate in the area of industrial relations. The proposed new legislation extends the use of the new powers to industrial relations. The WA legislation is important since many of its provisions are similar to those proposed in federal legislation. Thus, it provides a useful litmus test for the likely outcomes of the federal proposals.

In summary, the (Commonwealth) *Industrial Relations Reform Act 1993* aimed at 'encouraging and facilitating enterprise bargaining and agreements' while at the same time 'protecting wages and conditions of employment through awards.' Other objects of this Act sought to ensure that Australia met international labour standards, and to prevent and eliminate 'specified forms of discrimination, such as discrimination on the basis of race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin'.

The distinctive feature of this federal Act (other than that relating to reinstatement in cases of unfair dismissal) was the provisions relating to 'enterprise flexibility agreements'. These were limited to 'constitutional corporations', that is, corporations coming under Commonwealth jurisdiction through the corporations head of power. For these enterprises, there was no need for the existence of an interstate industrial dispute to invoke Commonwealth authority. Further, there was no need for the matters in agreements to be the subject of 'ambit' arising out of earlier 'paper' disputes.[3] These agreements could be negotiated by unions or by other employee representatives. If the Commission was satisfied that the majority of employees approved, it certified the agreement, thus giving it force in law. When certified, agreements had precedence over any award or other industrial instrument that would have applied. In addition to this scrutiny, the Commission had to apply the 'no disadvantage test', that is, no agreement could be any less favourable when conditions

[3] By virtue of the way the Constitution provided for the making of industrial relations laws in the federal jurisdiction, companies wishing to be covered by a federal award or agreement had to first

were evaluated overall than the relevant award. A further safeguard was that any 'relevant' union could object to the certification of the agreement on stated grounds, even if the union in question did not have any members at the place of employment.

This Act was largely supplanted by the Coalition's *Workplace Relations Act 1996* where Australian Workplace Agreements (AWAs) took the place of enterprise flexibility agreements. Though the new Act reduced the role of the AIRC, awards and unions, it also introduced the Office of the Employment Advocate (OEA) whose role was similar to that of the Commissioner for Workplace Agreements in WA (see below). Despite these changes, the lack of majority in the Senate forced the government to seek compromises. In the end, the new Act preserved some balance between flexibility and safeguards, including the 'no-disadvantage test'. Further, the AIRC continued to have an important role in determining the national safety net.

WA also legislated in 1993 to provide for greater scope for enterprise bargaining. The system introduced in that year survived until 2003. We argue that this legislation, without the safeguards that were attached to the federal system, provides a good litmus test for what might happen to employment conditions for the vulnerable under WorkChoice.

At the time of introducing the WA legislation, the then Minister for Labour Relations (Mr G. Keirath), expressed views similar to those now expressed by the Prime Minister concerning the efficacy of the 'reforms'. Keirath noted that the new WA system would provide a 'genuine choice for both employers and employees as to the type of employment arrangements that will best suit their oganizational and individual needs at the workplace' (Keirath 1995). 'Through the provision of flexibility,' he noted, 'the WA government is convinced that workplaces will become more productive and profitable'. He further opined that the changes would lead to greater productivity, higher profits, greater domestic and international competitiveness, lower unemployment and a higher standard of living (ibid.).

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demonstrate the existence of an inter-state dispute. In practice this took the form of a 'paper' dispute (the unions issuing an 'abmit' log of written claims).

Prior to this legislation, the WA industrial relations system mirrored that of the other state and federal systems. At its apex was the Western Australian Industrial Relations Commission that had conciliation and arbitration powers (WAIRC). The WAIRC determined a minimum state wage, usually on an annual basis. It also registered awards and industrial agreements made between unions and employers. Its other major function was in the area of unfair dismissal. The system that operated was predicated upon collectivities of employees (through registered unions) and of employers (through their registered associations). Because of the application of the common rule, awards made for particular occupational groups generally had state-wide application.[4]

The 1993 changes sought to supplement 'the traditional conflict-oriented award system … by the more co-operation-oriented workplace agreements system'. The Minister also noted that 'flexibility within the workforce can be achieved by replacing constraining award conditions with innovative employment conditions designed for each specific work environment' (ibid.). The instrument for achieving these outcomes was the *Workplace Agreements Act 1993*. This was intended:

> to provide for the making of agreements between employers and employees as to their respective rights and obligations, for the registration of such agreements by a public official, for the effect of such agreements, and for their enforcement, to confer immunity for certain industrial action relating to such agreements, and to provide for related matters(s.1).

Under the Act, workplace agreements could be negotiated between employers and their employees. Both parties could be assisted by bargaining agents who could be an individual, a union or some other body. Once signed by the parties, the agreement could be registered by the Commissioner for Workplace Agreements. Limited tests applied to the registration of workplace agreements. The Commission had to be satisfied that the agreement complied with the provisions of the Act, that all parties understood their rights and obligations, and that each party genuinely WAted the

[4] The common rule provisions (which only exist in state jurisdictions) ensured the pervasive spread of minimum conditions in awards. Under these provisions employers were required to adhere to the occupational rates as set out in awards irrespective of whether or not the employer was actually a respondent to the award. An employer employing a shop assistant, for example, would therefore be obliged to pay the shop assistant rate as specified by the award.

agreement. Once registered, the agreement displaced any awards (including, after 1996, any relevant federal awards).[5] Further, once an agreement was registered, the parties to that agreement no longer came under the jurisdiction of the WAIRC for the period of the agreement.

Unlike awards or industrial agreements, workplace agreements were not public documents, and therefore not normally open to public scrutiny. These could be collective workplace agreements or individual workplace agreement. The latter overrode not only awards or industrial agreements, but also a collective workplace agreement. In theory, a workplace could develop as many individual agreements as there were employees. In practice, the major variation in most 'individual' agreements at the same workplace was the name of the employee in the agreement in question. In other words, little flexibility was applied between employees at the same workplace (Plowman 2001).

Since workplace agreements were beyond the reach of the WAIC, these agreements were not subject to the Commission's wage fixing principles. Changes to the state *Industrial Relations Act 1979* also removed single enterprise industrial agreements from these principles. These exclusions were to allow for greater flexibility for single-enterprise agreements. Despite seeking such flexibility, legislation provided limited safeguards. There was an 'implied provision' in agreements that 'an employer would not unfairly, harshly or oppressively dismiss an employee' (ibid.). Thus, a workplace agreement did not displace employees' rights to seek a remedy for unfair dismissal under the *Industrial Relations Act 1979* or before an Industrial Magistrate. The *Minimum Conditions of Employment Act 1993* provided a floor in relation to the minimum wage, annual leave, sick leave, bereavement leave, parental leave, redundancy, and public holidays – although the floor, as noted earlier, was typically below that provided for in the award.

There are strong parallels between the WA legislation and that proposed by the federal government. Firstly, there is a strong resonance in the rhetoric surrounding the

[5] Under normal circumstances a federal award or agreement would displace a state award or agreement. In 1996 the Howard Government legislated to provide that WA workplace agreements would displace the federal award or agreement.

need and rationale for such legislation. The raft of protected minimum conditions is similar (though less expansive) in the case of the proposed federal system There are also major differences. The role of unions in the WA system was reduced: in the federal proposal it is non-existent. The WA system continued to protect employees from unfair dismissal. The federal proposal is to exempt those employing 100 or less from unfair dismissal legislation, and, in certain circumstances, those employing more than 100. The federal system sought to ensure equity through the 'no disadvantage test' and gender equity. Those provisions did not apply to the WA system and will not apply in the proposed new federal system.

The development of both federal and state enterprise bargaining systems provide valuable insights about possible developments under WorkChoice. The new proposals embody many of the limitations of the WA legislation while removing the former protections of the federal legislation. In the following sections we review the increased wage dispersion that has accompanied decentralized pay bargaining at the national level. We then turn to the WA experience to suggest that its lack of safeguards has significantly impacted on the employment conditions for the low paid, many of whom are women.

4. Enterprise Bargaining Outcomes – National Overview

In this section we use data from the Australian Bureau of Statistics (ABS) Employee Earnings & Hours (EEH) survey (Catalogue Number 6306.0) to examine patterns of wage outcomes at the national level pre and post the introduction of a more decentralised wages system and deregulated labour market. Unless otherwise stated, the data on average weekly total earnings (AWTE) are for non-managerial adult full-time employees as at May of each year specified.

We begin with a presentation of data on methods of pay setting in Australia. As noted in the preceding section, throughout most of the last century wage determination in Australia was highly centralised and co-ordinated with a deliberate focus on the fairness of wage relativities, both within and across occupational groups. In 1990, 83 per cent of employees in Australia were employed under awards determined by either

the federal tribunal (33 per cent of employees) or state tribunals (50 per cent of employees) (ABS 1990). Since then, the arrangements for wage determination in Australia have become increasingly fragmented, with differences being particularly pronounced between full-time and part-time workers. As shown in Table 1, by May 2004, 34.3 per cent of all part-time employees were dependent on award, and therefore national safety net wage adjustments, for annual pay increases. This contrasts markedly with the full-time workers where only 12.6 per cent were reliant on the award system and where there was a significantly higher incidence of individual bargaining (mostly in the form of informal unwritten and/or unregistered over-award bargains).[6]

Table 1: Methods of Pay Setting, Australia, 2000-2004

	Award Only	Collective Agreement	Registered & Unregistered Individual Agreement*
Employed Full-time	%	%	%
2000	15.3	37.8	47.0
2002	13.0	39.1	47.9
2004	12.6	41.5	46.0
Employed Part-time			
2000	39.9	34.6	25.5
2002	35.4	36.5	28.1
2004	34.3	39.7	26.0

Source: ABS 6306.0. * At May 2000, Registered Individual Agreements amounted to 1.8% of all agreements. The share had increased to 2% by 2002. Comparable data are not reported for 2004.

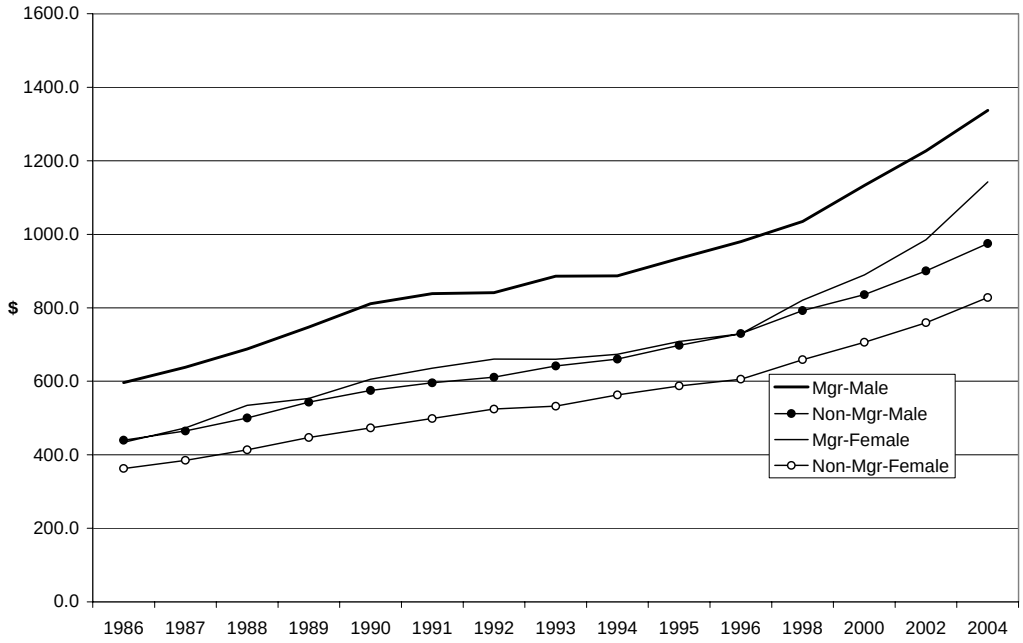
The significance of the above developments, as they relate to this paper, is that the wage adjustments under the various wage fixing instruments or streams differ markedly. While adjustments in the award stream (as determined by the AIRC) saw growth rates of around 1.5 per cent (below the CPI), average increases contained in collective agreements around the same time were in the 4 to 4.5 per cent range (Preston 2001b). The markedly different outcomes reflect, in part, the will of the federal government and their insistence that "… arbitrated safety net adjustments not [to] act as a disincentive to agreement making". (DEWRSB 2001: 98). Given the fragmentation of the system, and a concerted effort by the government to hold down

[6] Award rates are pitched at the 'average' employer's capacity to pay. Overaward bargaining is a method whereby unions seek better rates from those employers in a position to pay above the award.

the wages by those in the award stream (i.e. the stream where bargaining power is weaker), one would expect to see a fanning out of wage relativities over the 1990s.

Figure 1 below plots the nominal wage outcomes for managerial and non-managerial employees disaggregated by sex. It is apparent from the data that managerial employees, particularly male managerial employees, have experienced significantly stronger wage growth than their non-managerial counterparts.

Figure 1: Average Weekly Total Earnings, Managers & Non-Managerial Employees, 1986-2004

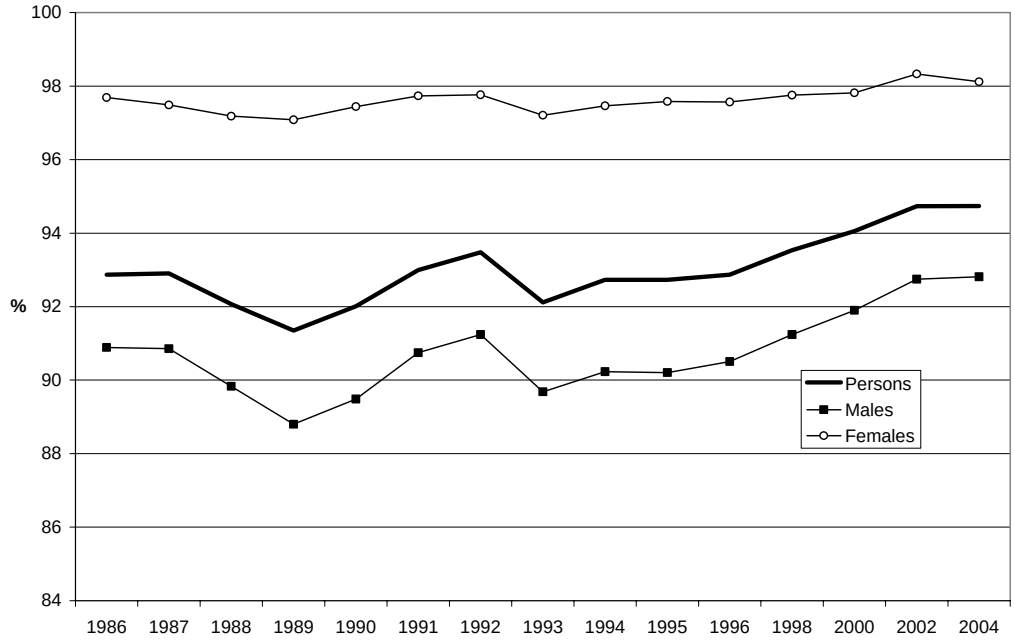


Source: ABS 6306.0

To shed further light on recent developments within the wages system, Figure 2 presents data on the share of AWTE accounted for by average weekly ordinary time earnings (AWOTE). This enables a comparison of base pay or earnings before taking into consideration over-time pay and other loadings. Since 1994 there has been a steady increase in AWOTE as a proportion of AWTE. At May 1994, 92.7 per cent of total earnings were accounted for by ordinary time earnings; by May 2004 this ratio had increased to 94.7 per cent. The change reflects, amongst other things, the trading off of overtime pay and penalty rates in the shift towards an annualized pay. For

women the changes have been less dramatic, reflecting the fact that women are generally under-represented in over-award bargaining and in overtime work.

Figure 2: Average Weekly Ordinary Time Earnings as a Share of Average Weekly Total Earnings, by Sex, 1986-2004



Source: ABS 6306.0

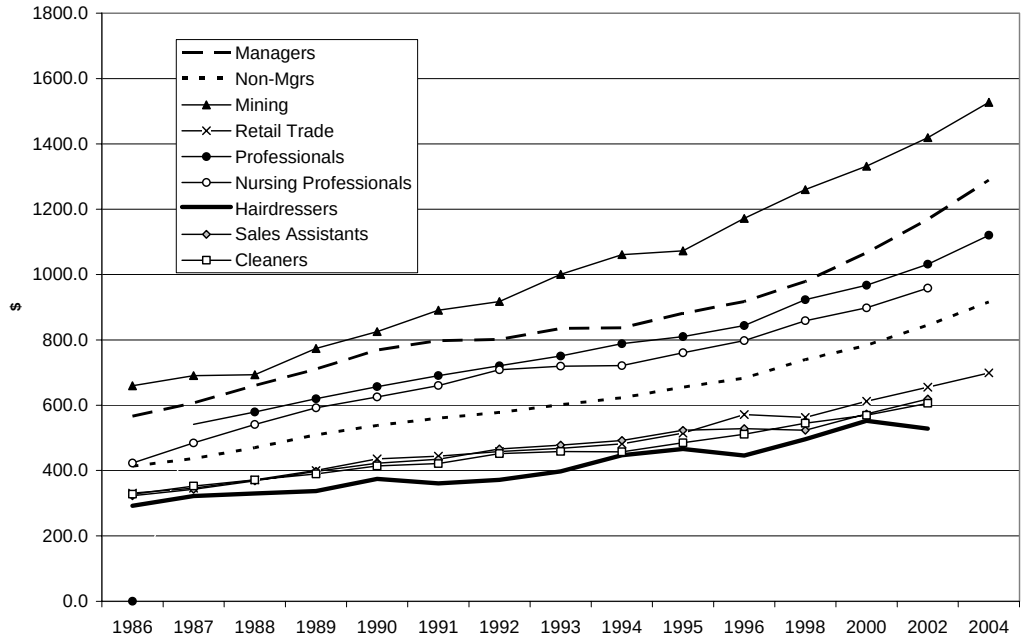
In the remainder of this section we utilize AWTE to examine wage movements over the past two decades. Since our interest is on understanding how developments have affected particular sectors of the economy, we focus our attention on select groups, specifically: the mining industry - a male dominated sector experiencing strong growth and skills shortages; the retail sector – a sector with above average take up of formal individual agreements and a high level of casualisation; nursing – a female dominated sector which is highly unionized but participates in a monopsonistic labour market; hairdressing – a highly feminised low paid, low unionized, sector; and cleaning – a mixed gendered low paid occupation. Figure 3 presents the nominal wage data for the period 1986 to 2004; Figure 4 shows the same data as a share of AWTE for all non-managerial employees (persons).

The data in Figure 3 suggest a widening wage gap between the highly paid and the lowly paid, and also the maintenance of relativities within the lowly paid band. The

widening gap can be attributed to workplace bargaining; the maintenance of relativities to institutional arrangements. It will be seen that the wage gap between those in the mining industry and cleaners has significantly increased. In 1990, the nominal weekly wage gap was equal to $411; by 2002 it had increased to $813. Put differently, in 1990 the AWTE of a cleaner relative to someone in the mining industry was equal to 50 per cent; by 2002 the ratio had fallen to 42.7 per cent.

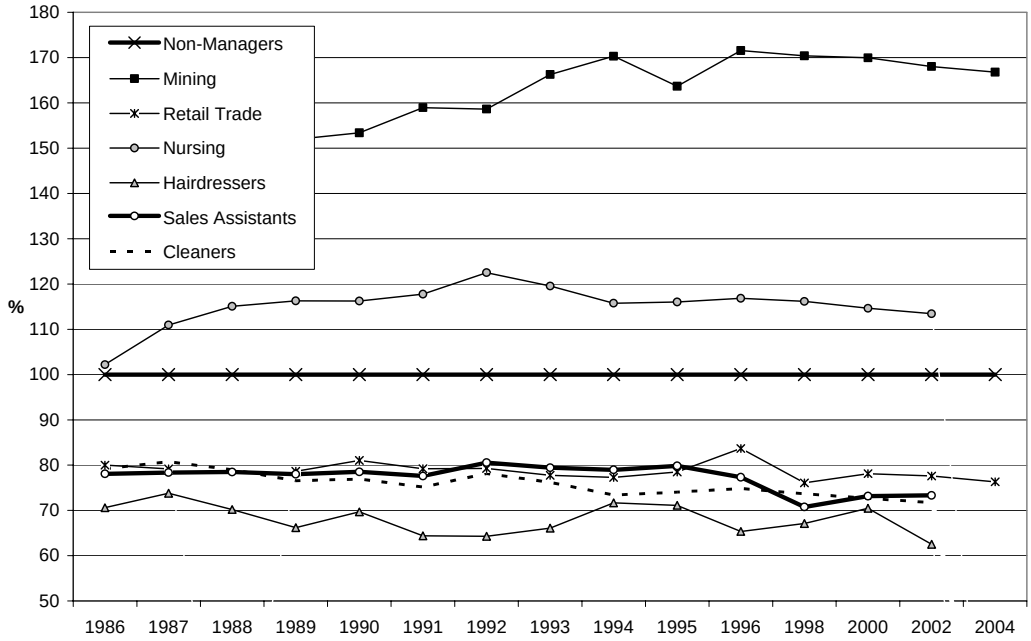
The data in Figure 4 further illustrate that the outcomes of enterprise bargaining or decentralised pay bargaining have not been uniform across the board. At May 1992, just after the introduction of enterprise bargaining in October 1991 (and the awarding of a pay increase), AWTE in the mining sector was 59 per cent above the AWTE of all non-managerial employees, whilst the corresponding earnings advantage for nurses was 23 per cent. At the other end of the spectrum, the corresponding May 1992 relativity for hairdressing and cleaners was equal to 64 per cent and 78 per cent, respectively. By May 2002 the corresponding hairdressing and cleaning relativities were 63 per cent and 72 per cent; in other words a gap of 37 and 28 percentage points, respectively, when compared to the average for all non-managerial employees. Over the same period nurses similarly lost out, with their pay advantage falling from 23 percentage points to 13 percentage points. In the mining sector the pay advantage increased to 68 per cent by May 2002.

Figure 3: Average Weekly Total Earnings, by Select Occupational & Industry Groups, 1986-2004 (Adult, Non-Managerial, Full-Time Employees)



Source: ABS 6306.0

Figure 4: Average Weekly Total Earnings (AWTE), by Select Occupational & Industry Groups Benchmarked to AWTE of all non-managerial employees, 1986-2004



Source: ABS 6306
(Note- disaggregated occupational data was not published in the May 2005 issue of ABS 6306.0. Data for adult, non-managerial employees in full-time work)

The story told by these data are consistent with a stories elsewhere of rising wage inequality in the Australian labour market (Saunders, 2005). Amongst all full-time employees, males at the bottom of the wage distribution have experienced the greatest relative loss in incomes. Between 1986 and 2000-01 the wage outcomes of women in the 10th percentile increased by 18 per cent, while male earnings in this bracket fell by three percent. Preston (2003) observes a similar outcome over the period 1990-1998, noting in particular that it is male employees in the private sector who have experienced relatively slower wages growth. The change coincides with falling rates of union membership (Peetz, 2002).

5.0 Portents from the West

The previous section suggested that the move to decentralized and enterprise-based wage determination has been accompanied by a greater dispersion in wage rates. Some have been advantaged; the lowest paid have been disadvantaged. As noted in Section 3, the federal enterprise bargaining system introduced in 1993 contained a number of safeguards for vulnerable workers. The 1996 amendments relaxed some of those safeguards but nevertheless maintained the safety net and the 'no-disadvantage' test. We contend that such safeguards reduced the degree of wage dispersion that would have resulted if they had not been in place. This is important for the future since the proposed federal legislation will remove safeguards. We test this premise by examining the WA situation between 1993 when the *Workplace Relations* Act was introduced and 2003 when this Act was repealed. As noted, this workplace bargaining system did not contain many of the safeguards that formed a part of the federal system. We test our premise in two ways. Firstly we examine the effects on the relative wages of females, and secondly we examine the wage outcomes for low paid workers.

Gender pay ratios provide useful measures of the progress and status of women in the labour market. Against such indicators, it can be shown that women in WA have fared badly relative to males, and indeed, relative to other women in Australia. Table 2 provides details of adult AWTE for the May 2005 quarter. The data are for full-time adult employees and are disaggregated by sex.

Table 2: Average Weekly Total Earnings, May Quarter, 2005

	Men	Women	Gender Wage Ratio (%)	Gender Wage Gap (%-point)	$- Difference in the Earnings of Males & Females
Western Australia	$1,194.90	$867.80	72.6	27.4	-$327.10
Australia	$1,136.70	$920.30	81.0	19.0	-$216.40
Difference between WA & Australia	$58.20	-$52.50	-	8.3	-

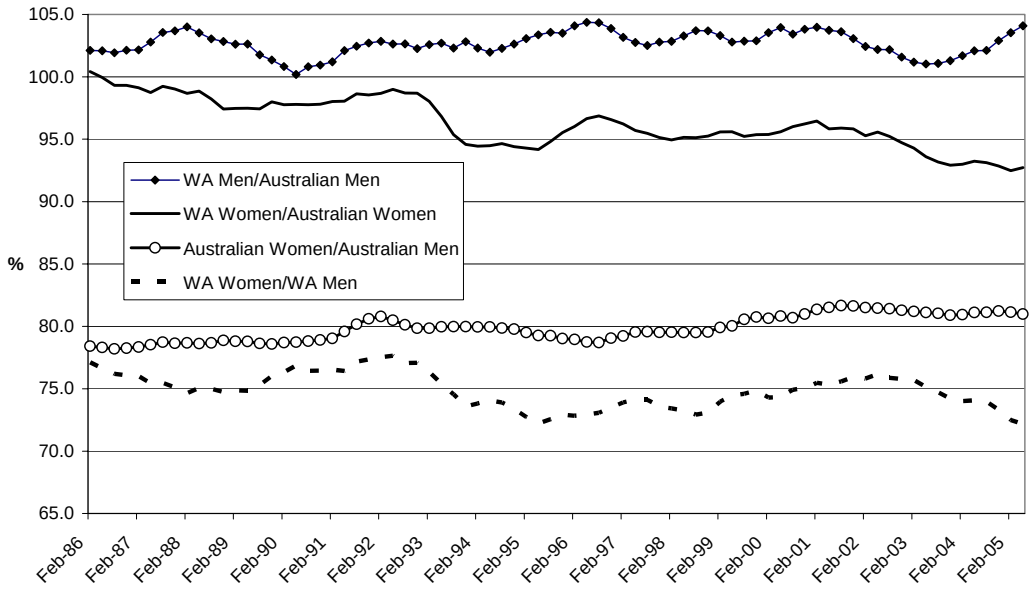
Source: ABS 6302.

Table 2 suggests a significant gender pay gap. In the May 2005 quarter, women in Australia employed full time earned, on average, 19.0 per cent ($216.40) less than their male counterparts. The gender gap between men and women was even greater in WA. There, women received 27.4 per cent ($327.10 per week) less than their male counterparts. We argue that this is the result, in some measure, of the enterprise bargaining system that has operated in WA. This development is illustrated in Figure 5. Other observations of the data in Figure 5 are as follows:

a) WA men have generally fared better, on average, than Australian men;
b) WA women have fared poorly relative to Australian women (at the May 2005 quarter the AWTE gap in earnings of Australian and WA women employed full-time was equal to $52.00 per week or a gap of 5.7 per cent); and
c) Australian women have marginally improved their average weekly earnings relative to Australian men.

In February 1992, prior to the introduction of new legislation, women in WA engaged in full-time work earned 77.5 per cent of the total earnings of WA men and 98.7 per cent of the total earnings of all women nationally. In other words, at the state level the gender pay gap was equal to 22.5 per cent. By May 1995 the WA gender pay gap had widened to 27.8 per cent, while the gap in the earnings of women in WA vis-a-vis women nationally had grown from 1.3 per cent to 5.7 per cent.

Figure 5: Average Weekly Total Earnings of Men and Women in Western Australia and Australia Compared, 1986-2005. (Adults employed full-time)



Source: ABS 6302
Note: data have been smoothed using a four quarter moving average.

Although women in WA did recover some ground between 1995 and 2002, the data show the gains were not maintained. Between May 2002 and May 2005 the gender pay gap in WA deteriorated by 4 percentage points. At the national level, the gap in the earnings of women in WA and women nationally increased by 2.9 percentage points. It is beyond the scope of this paper to examine in detail the causes of the changes observed here, however, analysis elsewhere for the period 1991 to 1996 attributes the changes to institutional effects; that is, the changing arrangements for wage determination (Preston & Crockett, 1999a and 1999b). The changes are not accounted for by changes in the human capital or 'productivity' characteristics of participants, nor are they caused by any sudden shifts in occupational or labour market structures.

Thus, we argue that changes in bargaining systems explain not only why WA women's earnings have fallen compared to WA men, but also, and more tellingly, when compared to other women in Australia. We suggest that an important part of the explanation is the system of individual/enterprise/workplace bargaining adopted in WA in 1993; a system unfettered by the need to apply the 'no-disadvantage' test, and

having lower minimum conditions than that provided by the WAIRC and its federal equivalent. The federal system, in effect, provided for the 'bargaining up' of conditions. The WA system provided for such bargaining, but also provided for the driving down of conditions in competitive industries. This will be developed more fully below.

It will be seen in Figure 5 that there were two significant periods of relativity decline. One is associated with the introduction of the *Workplace Agreements Act 1993.* The second, dating from the beginning of 2002, is associated with the movement from (WA) workplace agreements to Australian Workplace Agreements (AWA) in an attempt to avoid the legislative changes proposed by the new Labor Government at that time (Kobelke 2005). At the time of the election of the Gallop Labor Government (February 2001) there were an estimated 700 Western Australian (federal) AWAs. Within two years this number had increased to 4,000. By then, with only 10 per cent of the total Australian working population, WA accounted for over 30 per cent of all AWAs (OEA 2005). The Office of the Employment Advocate's data suggest that most of the WA agreements were converted into AWAs in a short period, suggesting that the 'no disadvantage' test was not applied in this conversion from State to federal agreements. While it is understandable that such a test would have little relevance to the mining industry where agreed rates of pay exceeded the award rates, the test would have been relevant to the other three major industries in which workplace agreements had become common (see below).

Workplace agreements were not universally adopted. Indeed, by 2001/02, just four industries accounted for over 60 per cent of all workplace agreements. One was mining (including services to mining) which accounted for 10 per cent of all agreements. The others were all female dominated industries – retail (21 per cent); accommodation cafes and restaurants (11 per cent); and business services (23 per cent) (Todd et al, forthcoming). In this context, workplace bargaining doubly disadvantaged women. Firstly, the mining industry, a male-dominated industry with high wage levels, quickly moved to workplace agreements as a means of reducing the role of unions. Employees were coaxed into such agreements by even higher rates of pay. The second factor is that the opposite situation occurred in female-dominated low paid sectors, such as hairdressing, accommodation, cafes, restaurants and cleaning.

These sectors have been, for the most part, removed from the protection of awards. The lack of bargaining power of employees has resulted in sectors marked by low pay, low skills, high labour turnover and employer attrition.

A more detailed analysis of low paid sectors in WA sheds greater light on the erosive effects of individual workplace agreements on employment standards. In February 2002, the Australian Centre for Industrial Relations Research and Training (ACIRRT) produced a report for the Commissioner for Workplace Agreements. The study examined four employment sectors: contract cleaning; shops and warehousing; security officers; and restaurants tearooms and catering. Fifty individual workplace agreements (IWA) for each of the four areas were randomly selected. In total, the 200 IWAs examined represented over 3,100 agreements in the sectors. These included groups not forming a part of the data previously presented in this paper which has concerned itself with full-time employees. The ACIRRT study found that such employees were very much the exception in the low paid sectors under review. In all, only 10.2 per cent of employees in the four sectors were employed on a full-time basis. Disturbingly, in view of heightened national security, only 4 per cent of security officers were employed on a full-time basis, most of whom (94 per cent) were male. By contrast, over 65 per cent of employees in the other three employment sectors were female. There were no junior security officers, but 33 per cent of those employed in the other three sectors were classified as juniors.[7] The study further suggested that 62 per cent of those employed under IWAs were employed on a casual basis, and 26 per cent on a permanent part-time basis.

The study compared conditions of employment under IWAs and their relevant awards. It found variance in the hourly rates of pay between the two instruments.[8] Hourly rates varied between $4.72 below the award and $5.60 above the award. Table 3 summarises the findings for the four sectors.

[7] Under the *Minimum Conditions of Employment Act 1993*, juniors were defined to be those under the age of 21 (s. 13.(1)(b)). Under the relevant awards, they are defined as those under the age of 18. It is unclear whether or not the ACRRIT study took account of the different definitions.

[8] The *Minimum Conditions of Employment Act 1993* specified a 40-hour working week. Awards generally specified a 38-hour week. Again, it is unclear whether this distinction was taken into account in the ACRRIT study.

Table 3: Variation in Agreement and Award Hourly rates of Pay, By Select Occupations, WA, 2001

		Occupation					
Difference in ordinary hourly rate of pay		Cleaner	Shop Assistant	Catering worker	Security officer	Total	Commulative Total (%)
	> $3 under award	14 2.0%	66 4.0%	7 1.9%	37 7.9%	124 3.9%	3.9%
	up to $3 under award	28 4.0%	199 12.0%	44 12.1%	47 10.1%	318 10.0%	13.9%
	up to $2 under award	125 18.0%	299 18.0%	80 22.0%	233 50.0%	737 23.1%	39%
	up to $1 under award	97 14.0%	432 26.0%	51 14.0%	37 7.9%	617 19.4%	56.4%
	no difference		66 4.0%			66 2.1%	58.5%
	up to $1 above award	389 56%	399 24.0%	44 12.1%	84 18.0%	916 28.8%	87.3%
	up to $2 above award	14 2.0%	66 4.0%	56 15.9%		138 4.3%	91.6%
	up to $3 above award		100 6.0%	29 8.0%	19 4.1%	148 4.6%	96.4%
	> $3 above award	28 4.0%	33 2.0%	51 14.0%	9 1.9%	121 3.8%	100%
	Total	695 100.0%	1660 100.0%	364 100.0%	466 100.0%	3185 100%	
	Source: ACRRIT 2002: 12						

Table 3 would suggest that 56 per cent of IWAs provided an hourly rate below the award rate, and that 44 per cent provided for a higher than award hourly rate. A larger proportion of casual employees (77 per cent) were paid below the award rates. A quarter of full-time employees, and about the same proportion of permanent part-time employees, were paid below the award hourly rate. However, if other information is taken into account, the above understates the real situation since most IWAs (over 80 per cent) absorbed into the hourly rates the penalty rates and loadings found in awards. In addition, a large number of IWAs did not provide for any wage increases during their currency, a period that could extend beyond five years.

Most IWAs did not distinguish between ordinary time and overtime and increased the span of the working week. Thus, IWAs provided for ordinary hours to operate between Monday to Sunday, in effect meaning that penalty rates did not apply to Sundays. The expansion of 'ordinary time' hours beyond those found in awards further reduced the incidence of penalty rates. Most agreements provided for working time arrangements to be determined on the basis of management discretion. As a result, few agreements contained any overtime provisions, and when they did, the vast

majority specified overtime at the ordinary time rate. Few agreements (only 16 per cent) made provision for time in lieu in cases were people were required to work 'unsociable' hours. When time in lieu was given, it was only at the ordinary equivalent, that is, time for time basis. Weekend penalty rates were non-existent in for catering workers and applied to only 16% of security officers. Less than a quarter of shop assistants, and just over a half of cleaners, were paid weekend penalty rates. In addition, only 52 per cent of agreements provided for the statutory four weeks annual leave. The other 48 per cent agreements absorbed annual leave into the ordinary rate of pay. Not surprisingly, therefore, few agreements (less than 10 per cent) provided for annual leave loadings. For the most part, these loadings were simply absorbed into the hourly rate of pay.

Taken all of the above into account, it will be seen that employment conditions in IWAs were inferior to those in awards, even when a direct comparison of hourly rates of pay might suggest otherwise. ACRRIT noted that overall, and on balance, most IWA outcomes were more detrimental to employees. It concluded:

> The two key areas that differed when comparing the award entitlements to the IWA were hours of work arrangements and the hourly rate of pay. … [W]orkers were less likely to be paid any additional penalty rate for working overtime hours for weekend work. A common approach was to expand the ordinary working time arrangements and thereby reduce penalty costs that would have been previously been paid for working outside ordinary hours. Compensation for non–standard working times was generally reduced significantly, especially when compared to the conditions outlined in the relevant award, or was non-existent. … While some workers on IWAs were receiving a significantly higher rate of pay relative to the award, this could largely be attributed to the fact that other entitlements … had been absorbed into the rate. … A closer analysis found that the 'loaded hourly rate' for these workers did not appear to make up for the increasingly open and flexible hours of work arrangements. .. [T]he findings in this report suggest that workers [were] in general 'worse off' under individual workplace agreements. (ACRRIT 2002: 64-65)

6.0 Conclusion

This paper suggests that the new federal industrial relations system bodes ill for low paid workers. It has shown that the limited amount of decentralization that has taken place in Australia since 1993 has resulted in a greater wage dispersion and the

widening of the earnings gap. This would suggest that the comprised system that previously prevailed, one in which productivity gains were shared by all workers through national wage cases, has given way to a more sectional approach. In this approach characterized by industry, workplace and individual level bargaining, those with bargaining power and with skills that are in short demand, have done well relative to other workers.

The WA experience, one which did not include the 'no-disadvantage' test, and one in which the prescribed minimum conditions were inferior to the minimum standards of awards, not only confirms the federal experience, but also shows that in the absence of safeguards individual bargaining can have a perverse effect on the lowly paid. Thus, in the presence of safeguards, relative earnings of the lowly paid will fall as better organized workers exploit market conditions. In the absence of safeguards, relative earnings will fall even further since the exploitation of market conditions by some is accompanied by the driving down of labour costs in areas of low paid employment. The federal proposal reflects the WA situation. Thus, the absence of the common rule and 'no-disadvantage' test will remove the previous 'suspender' effect of awards. Agreements will be identified with the trading off of conditions such as annual and sick leave, penalty and overtime rates, the extension of the weekly span of 'ordinary' working hours, and, in the case of low paid workers at least, a lack of adequate compensation for the loss of these conditions. The WA experience does little to encourage the belief that the driving down of the cost of labour will generate greater employment. Rather, it would suggest the further entrenchment of a secondary labour market of low paid, low skill, part-time, casual jobs with high turnover and low levels of investment in education and training.

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Appendix 1: Adult Minimum Wages in the federal and Western Australian jurisdictions

Year	Federal minimum wage set by AIRC	Minimum wage incorporated into state awards by WAIRC	Statutory Minimum Wage			
			Rate	As % of Average Wage	Monthly survey before wage rise	Monthly survey after wage rise
1993	*	*	275.50 (3/12/93)	46.1%		
1994	*	*	**301.10 (29/8/94)**	48.8%	May 1994	Nov 1994
1995	*	*	**317.10 (29/9/95)**	48.6%	Jun 1995	Dec 1995
1996	*	*	**332.00 (29/10/96)**	48.4%	Jul 1996	Jan 1997
1997	359.40 (22/4/97)	359.40 (14/11/97)	335.00 (10/11/97)	47.6%		
1998	373.40 (29/4/98)	373.40 (12/6/98)	**346.70 (7/12/98)**	46.9%	Sep 1998	Mar 1999
1999	385.40 (29/4/99)	385.40 (1/8/99)	346.70 (no change)	45.7%		
2000	400.40 (1/5/00)	400.40 (1/8/00)	**368.00 (1/3/00)**	45.7%	Dec 1999	Jun 2000
2001	413.40 (2/5/01)	413.40 (1/8/01)	**400.40 (22/3/01)**	47.7%	Dec 2000	Jun 2001
2002	431.40 (9/5/02)	431.40 (1/8/02)	413.40 (8/4/02)	47.4%		
			431.40 (1/8/02)	49.4%		

Notes:

1. Date of coming into effect in parentheses
2. Asterisk denotes that no single minimum wage prevailed across low-wage industries.
3. Adult means a person aged over 21.
4. For non-casual employees, simply divide by 40 to obtain the hourly wage (the only exception is July 2002 onwards, for which the divisor for the WA Statutory Minimum Wage is 38). Casual employees receive approximately 15-25% more, depending on the industry.
5. Average wage is full time adult ordinary time earnings, from Australian Bureau of Statistics. "Average Weekly Earnings, 6302.0", Table 13E (averaged over the year).
6. Bold type denotes the six Western Australian statutory minimum wage rises analysed in this paper.

Source: Leigh (2003)