Submission

to

Senate Employment, Workplace Relations and Education Legislation Committee

Inquiry into the Workplace Relations Amendment (WorkChoices) Bill 2005

Submission no: 106

Received: 9/11/2005

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SUBMISSION

TO

INQUIRY INTO THE WORKPLACE RELATIONS AMENDMENT (WORKCHOICES) BILL 2005

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Federal IR Reform: the Shape of Things to Come

Nov 2005

Commissioned by
Unions NSW

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1 Introduction/Executive Summary

The Federal Government's *WorkChoices* Bill is widely acknowledged to be the most far-reaching change to our industrial relations system in the past century. There are five primary dimensions to the IR changes:

- *Unifying labour law* by over-riding the state systems;
- *Limiting the reach and influence of labour law and the award system* by encouraging commercial contracts, 'corporatising' labour law and removing the award safety net for workplace agreements;
- *Tilting labour law* in favour of employers by regulating unions and de-regulating employers;
- *Transforming the AIRC* from a Dispute-Settling body to an Institution which enforces Labour Law on Unions;
- *Centralising IR Authority* from the AIRC to the Executive and Parliament in an historic realignment which ends the Australian tradition of an independent, judicial-like institution setting minimum labour standards.

Predicting the effect of changes to labour legislation is not easy. As always the 'devil is in the detail' – especially with such a complex, technical and far-reaching piece of legislation as *WorkChoices*.

However, this is not the first experiment with major labour market deregulation in jurisdictions with award systems. Victoria, Western Australia and New Zealand have also previously undertaken similar reforms – dismantling award safety nets in favour of agreement-making underpinned by a handful of statutory minimum conditions. There is also some data allowing for comparisons between the Federal Government's preferred option, individual Australian Workplace Agreements (AWA's), and outcomes under awards and collective agreements.

Past results in all these jurisdictions have been identical. Whether we are talking about New Zealand, Australian state jurisdictions or AWAs, the result has been agreements focused narrowly on wages and working hours flexibility, the widespread loss of penalty/overtime rates and the growth of low-pay jobs and wage inequality - especially in regional areas and especially for women, young people and low-skill employees. Internationally, the outcomes in nations with deregulated labour markets such as the United States and the United Kingdom have been the same: far-reaching labour market deregulation of this character has without exception been associated with a large low-wage sector and wage inequality.

Concretely, there are five mechanisms through which low-pay jobs will expand under *WorkChoices*:

1. Firstly, award-dependent employees with low bargaining power will be shifted by their employers to low-pay AWAs/non-union collective agreements. The replacement of the 'no-disadvantage test' based upon awards for workplace bargaining with the five minimum standards of the Australian Fair Pay and Conditions Standard (AFPCS) will lead to the loss of important sources of earnings such as overtime/penalty rates and casual loadings – especially in non-union service sector jobs. By allowing the 38-hour week to be 'averaged' over a 12-month period, employers can easily contract out of the 38-hour week without paying overtime and penalty rates;

2. Making it easier to convert employees into contractors outside the system of minimum labour standards, whilst removing remedies against exploitative arrangements such as unfair contracts provisions, will lead to quasi-unregulated/ sub-award standard jobs in some occupations such as security guards and contract cleaning;

3. There will be an 'inter-generational' effect in some sectors whereby new employees work under lower rates and conditions than existing or previous employees. New employees can be presented with take-it-or-leave-it AWAs whilst other measures such as liberalised transmission of business, greenfield agreement and unfair dismissal provisions will make it easier to replace existing workers or set up new businesses with cheaper alternatives;

4. There are expanded opportunities to lower the wages and conditions of existing employees. There are gaping holes in statutory protection for employees against pressure to sign AWAs, terminated agreements will become award and agreement-free and bargaining power is systematically tilted towards employers under *WorkChoices*.

5. The changes to the wage-setting principles and selection of personnel associated with the establishment of the Fair Pay Commission will almost certainly led to the stagnation of minimum wages and their decline as a ratio of average earnings. There is also no mechanism guaranteeing a wage increase for employees of constitutional corporations in the state systems during the three-year transition period. Employees with low bargaining power could face a de-facto wage freeze;

The IR reforms are complemented by the welfare-to-work reforms which tighten, lower and remove eligibility for benefits, notably if workers refuse jobs – even take-it-or-leave-it AWAs which remove award entitlements such as overtime and penalty rates. Welfare reforms will forcibly generate a labour supply for low-pay jobs which undercut existing wage and employment standards.

The dynamics of product market competition in a deregulated labour market will sooner or later trigger a 'race to the bottom' in cost-sensitive, competitive markets. To survive in

the market place, firms will be forced to match competitors who do lower their labour cost structures by using cut-price contractors and casuals, replacing existing workers with cheaper labour or lowering wage and conditions of existing workers.

Consequently, these IR reforms represent a decisive shift away from the traditional 'living wage' approach towards a low-wage sector policy. Real wages will on average continue to display healthy growth in the immediate future. Many employees will be untouched and wonder what the fuss is about – notably those in CBD professional jobs under common law contracts and those in occupations and areas with labour and skill shortages. But there will be increased inequality and low-wage jobs. It will probably take some time, and may not fully occur until the next major downturn or recession, but the size of the Australian low-wage sector will gradually expand towards levels found in other English-speaking nations such as New Zealand, the United Kingdom and the United States.

Our projections are that in the medium-term there will be major changes to our labour market institutions and regulatory arrangements:

- Awards are likely to substantially wither away in the medium-term, primarily as existing and especially new employees in non-union workplaces with low bargaining power are switched over time by their employers to AWAs and non-union collective agreements.

- The coverage of certified agreements will over time come to more closely shadow union membership as in other deregulated labour markets. On top of the 20 per cent or so of union members, just under 15 per cent of non-union members are covered by certified agreements. The ability of trade unions to recruit and organise this group will probably be of key strategic importance to how the union movement weathers these reforms.

- The number of employees will also certainly fall significantly as employers take advantage of new-found freedoms to engage them as contractors – sometimes legitimately so as independent contractors but also 'bogus' contractors.

- The object of these reforms is to simplify employment regulation, especially for small business. However, the gains from headline reforms such as unifying labour law have been over-stated by advocates and for many firms will be overwhelmed by the added complexities, risks and costs associated with redrawn (but not eliminated) federal-state boundaries, a more complex and regulated IR system and the shift of dismissal claims into cost jurisdictions.

The end-result is likely to be a deeply fractured, atomised labour market: a dwindling handful of award-only employees, a decline in collective bargaining, swelling numbers of employees on individual and non-union agreements and a surge in workers who are

swept voluntarily or involuntarily outside the IR system altogether onto commercial contracts.

The effects of these IR reforms will not stop at the workplace and the labour market. There are social dimensions to IR reform which will change the relationship between the sphere of work, private households and the community. Fragmenting working time erodes the common time for families, friends and community activities so it also fractures social relationships. The quality of family life, parenting, relationships and health - already under strain because of the well-known 'work-life collision' (Pocock 2003) - will deteriorate further for those where the quality of jobs and earnings is affected.

The growth of inequality will worsen health outcomes and the quality of life across society by sharpening the 'social gradient' (Marmott 2004). It may seem far-fetched to assert IR reform could worsen life expectancy and rates of morbidity. But social epidemiologists have amassed compelling scientific evidence of a 'social gradient' in life expectancy and a range of conditions such as stroke, heart disease and mental illness linked to levels of inequality, the quality of work and community. Industrial relations reform which lead to rising inequality, poor quality jobs and increase the angle of the 'social gradient' are likely to increase rates of 'excess' morbidity and mortality and impact on the mental and physical health of low and middle-income earners. As Professor Marmot (2004: 18-19) notes: 'Many politicians, however, preach the virtues of inequality (set the wealth producers free). If bigger social and economic inequalities, i.e. a steeper

social gradient, are related to bigger health differences, this might give the politicians pause.'

1.1 *How Should IR Reform be Judged?*

Before commencing more detailed analysis, it is worth considering what should be the benchmarks against which these reforms are judged. The key labour market and workplace challenges currently facing Australia can be summarised as follows:

- Lowering unemployment and addressing labour and skills shortages which are likely to intensify as the population ages
- the productivity slow-down;
- improving the efficiency and equity of transitions between education, work, households and retirement - especially easing the stresses on work-family balance;
- the growth in inequality, low-pay jobs and poverty.

These reforms are either irrelevant to solving or will deepen these problems. Independent assessments, using generous assumptions, found relaxing unfair dismissal laws would create few extra jobs (Oslington & Freyens 2005). There is a vigorous but unsettled debate on the relationship between minimum wages and employment but opponents of minimum wage standards have been unable to empirically prove the safety

net increases of recent years have cost jobs. In relation to boosting labour supply, the major source of untapped labour is women with children amongst whom employment rates are very low by OECD standards (OECD 2002). Instead of stigmatising and targeting those on disability and single parent pensions, 'scouring the bottom of the employment barrel' as Ross Gittins (2005) put it, the focus should be on tax disincentives, childcare resources and family friendly provisions such as paid maternity leave. De-regulating the labour market will only worsen the monetary disincentives, irregular hours and work-family stresses which discourage mothers from working. Nor will facilitating the growth of low-wage jobs, encouraging firms to compete on lower labour costs, create incentives for innovation and productivity growth. None of the major IR academics have endorsed the claims of the Commonwealth Government that WorkChoices will boost productivity (Gregory 2005; Lansbury 2005; Peetz 2005; Wooden 2005).

These reforms will however greatly expand the low-wage sector and inequality. Some political figures and commentators urging these reforms have spoken of the 'once-in-a-generation' opportunity to implement far-reaching IR reforms: they may also represent generational change because once labour market institutions are unravelled and de-constructed they are not easily put back together.

2 Federal IR Reforms

There appear to be five primary dimensions to the Federal IR reforms. Firstly, measures to *limit and contract the reach and influence of labour law and the award system* by encouraging commercial contracts, 'corporatising' labour law (McCallum 2005) and removing the 'no-disadvantage test'/award 'safety net' for workplace agreements. Secondly, to *unify labour law* by over-riding the state systems. Thirdly, *further tilt labour law in favour of employers* by regulating unions and de-regulating employers. Fourthly, *transform the AIRC into an administrative institution which enforces labour law on unions* whilst outsourcing its dispute-settling functions to the Common Law courts, private mediators and a new low-pay commission (Briggs & Buchanan 2005). Fifthly, Centralising IR Authority from the AIRC to the Executive and Parliament and extending political control over IR institutions and the bargaining parties.

2.1 Shrinking Labour Law and Awards

Unfair dismissals and the bid to create a single, national IR system have gathered most publicity but the most far-reaching and radical reforms focus on contracting the reach of labour law and awards. There are three dimensions:

- measures to facilitate and encourage the movement of employees from employment to commercial contracts beyond the sphere of labour law

- measures to facilitate and encourage the movement of employees from awards, and collective agreements, to lightly-regulated AWA's

- the removal of four more 'allowable matters' (paid jury leave, termination notice, superannuation & long service leave) which awards can cover and the establishment of an inquiry into award classification structures.

The final shape of awards will not be clear until after the inquiry so the focus here is on the measures to shift employees from awards into agreements and from employment contracts into commercial contracts.

The key change is the replacement of the 'no-disadvantage test' based on the relevant award for assessing an agreement with satisfying five statutory minimum standards. Currently, the OEA (the authority responsible for AWAs) and the AIRC (the authority responsible for certified Agreements) have a statutory duty to ensure workplace agreements do not leave employees overall worse off compared to the relevant award – the 'no-disadvantage test'. The Coalition is now going to legislate to replace the no-disadvantage test with a requirement that an agreement must contain just five statutory minimum standards to be legally valid: the minimum award wage, three leave

entitlements (personal, unpaid parental & annual leave) and ordinary working hours. Even these meagre entitlements are not guaranteed. An enterprise agreement which allows for the 38-hour week can be 'averaged' over a period of 12 months will be valid. In other words, an employer could require their employees to work 70 hours one week, 6 hours the next without paying over-time or penalty rates. Two weeks of annual leave could also be cashed out – paving the way for the erosion of the 38-hour week, overtime rates and the Australian standard of four weeks holidays. Certified agreements will be lodged with the OEA instead of the AIRC and agreements will also come into effect immediately upon lodgement.

The Coalition will also introduce a new Act, the *Independent Contractors Act (ICA)*, to facilitate and encourage the movement of employees from employment contracts into commercial contracts. The object of the Act is to:

> enshrine and protect the status of independent contractors and encourage independent contracting as a wholly legitimate form of work. These policies reflect the Government's position that independent contractors should not be regulated by workplace relations law, but by commercial law ... (and) that parties should be free to decide their working arrangements according to their own needs and genuine preferences (DEWR 2005: 5 & 20).

The ICA appears to have its genesis substantially as a response to developments in agreements, state legislation and the courts to control the growth of 'dependent contractors'. The ICA will over-ride the state laws on deeming and unfair contracts. Notwithstanding rhetoric about respecting the choices of the parties, it will legislate to outlaw the negotiation of any clauses on contractors by the parties to awards or agreements. The ICA may also over-ride other state laws which apply to contractors such as workers compensation, anti-discrimination and occupational health and safety (DEWR 2005: 15). The 2004 election policy also explicitly criticised courts which 'have developed tests to uncover "sham" independent contractors arrangements', claiming they have often 'gone too far and that, too frequently, the honest intentions of parties are disregarded and overturned' (Liberal-National Party 2004: 3). The ICA is designed to legitimise and facilitate the movement of work arrangements from labour law to commercial law.

2.2 Unifying Labour Law

The second objective is to create a single, unified system of labour law by over-riding the state IR systems through the use of corporations power. Some of the administrative complexities and inefficiencies associated with multiple, overlapping systems of labour regulation have led to recurrent calls to create a unified system of labour law. A unification of labour law could be achieved if the states were to 'hand-over' responsibility for employment regulation to the Commonwealth Government (as the Victorian Government did) but this is clearly not going to occur in the immediate future. The

Commonwealth Government will therefore proceed by legislating through the Corporations Power to over-ride aspects of the state systems. Under this constitutional head, the Commonwealth Parliament may legislate with respect to "Foreign, trading and financial corporations formed within the limits of the Commonwealth" which covers most incorporated bodies in our nation.

Leaving aside the legal questions as to its validity for the moment (see 4.4), the effect of these changes may not be so much as to create a single system of labour law so much as to recast the foundations of labour law in favour of employers. In the short-run, the immediate effect will be to eradicate some aspects of state labour law which deliver better standards, entitlements and rights for workers and trade-unions – what John Howard (2005) calls the 'dead weight of Labor's highly regulated State industrial relations systems.' In the longer-run, it will accelerate the corporatisation of labour law. As McCallum (2005) explains, the corporations power is framed primarily in terms of the rights and obligations of corporations and only secondarily those who deal with corporations such as their employees: 'In time, our labour laws would become a sub-set of corporations' law and employees would be regarded as little more than actors in the economic enhancement of corporations.'

2.3 Tilting Labour Law

Within the remaining system of labour law, the objective of these IR reforms is to shift bargaining power towards employers by regulating unions whilst de-regulating employers. *WorkChoices* aims to shift employees onto AWAs. Employees individually have less bargaining power whilst *WorkChoices* removes many of the legal standards which inhibited employers from exploiting their bargaining power at the bottom-end of the labour market from shrinking the safety net through to removing procedural safeguards to ensure employees genuinely consent to AWAs (employers will essentially self-assess AWAs under *WorkChoices*). Bargaining under *WorkChoices* will only be underpinned by the five minimum standards of the AFPCS once an award or agreement expires (unless their employer agrees otherwise). The floor underneath bargaining for eighty per cent of employees will collapse down to the AFPCS placing employers in an enormously powerful bargaining position as almost all existing standards will be unprotected at the outset of negotiations.

WorkChoices will also make Australia the first OECD nation to reconfigure labour law in favour of employer lockouts. Australia already has the most de-regulated or liberal lockout law in the OECD – in particular allowing for 'AWA lockouts' to coerce employees into signing an individual agreement. However, whilst a myriad of limitations will be applied to strikes, almost entirely hollowing out the right to strike, lockouts are virtually excluded. The key changes to strike laws include:

- completely prohibiting industrial action during the life of an agreement and for the first five years of a greenfield agreement;
- requiring unions to undertake a bureaucratic secret ballot process before undertaking industrial action. A group of workers will first have to apply to the AIRC for permission to hold a ballot which will only be granted if certain conditions are met such as the applicant has genuinely tried to negotiate. If the AIRC approves the ballot, industrial action can proceed if 50 per cent of employees on the roll vote and 50 per cent of those vote yes. The Commonwealth will pay 80 per cent of 'validly incurred' costs (as determined by the registrar).
- Even if a group of workers is taking protected action, *WorkChoices* gives the Minister, any 'significantly affected' third-party and the AIRC the capacity to suspend or terminate the bargaining period if they are 'adversely effecting' an employer.

Mandatory secret ballots will make it much harder, time-consuming and expensive for groups of workers to take industrial action and sharpen the effect of lockouts vis-à-vis strikes. The process will take weeks at a minimum – potentially months if there are legal challenges for which there are ample opportunities (employers will be able to challenge the holding of a ballot, the wording on the ballot, whether the industrial action concords with the wording on the ballot and so on). Employers will remain free to lockout their employees with three-days notice, no questions asked. Unlike employers, unions will

also be limited to complying with the requirements for detailed specification of the industrial action on the ballot paper.

Whereas lockouts are virtually immune from legal challenge, legal recourses available to terminate strikes are so open-ended it is difficult to think of a strike which will not be vulnerable to legal challenge. Australia will be the only nation in the OECD that actually makes it harder – significantly harder at that - for a group of workers to withdraw their labour than for an employer to lock-out their employees. It is remarkable that AWA lockouts even exist – it is an obvious breach of the promise of the Commonwealth Government that no-one can be forced onto an AWA - but following *WorkChoices* they will be the most lightly regulated form of industrial action.

WorkChoices reverses the assumptions and principles of labour law traditionally applied here and elsewhere. Low-skilled employees are implicitly assumed to have equal bargaining power to their employers. Minimum labour standards are unnecessary and individual agreements are preferable. Where employees have higher skills and are bargaining collectively, *WorkChoices* implicitly assumes employees have more bargaining power and elaborate state regulations are required to protect employers. Consequently, *WorkChoices* tightens the circumstances under which unions can legally take industrial action, imposes a legalistic ballot process and create almost open-ended rights for third parties to apply for the suspension or termination of industrial action. The right to strike is virtually extinguished by *WorkChoices*.

2.4 Enforcing Labour Law on Unions: Reconfiguring the AIRC

The primary role of the AIRC under WorkChoices appears to be as an enforcer of these regulations. When the Liberal-National Party first came to power in 1996, some voiced fears (or hopes) that the days of the AIRC might be numbered. In practice, the Liberal-National Party has diluted the independent capacity of the AIRC to settle disputes and set fair labour market standards whilst enhancing its capacity to 'police the boundaries' of the bargaining system by enforcing remedies against industrial action and removing its discretion how to exercise these powers.

> we have endless provisions that direct the Commission as to what it must and must not do, what factors to treat as relevant or irrelevant, whose views to seek and whose to disregard, when things must be done — and so on, ad infinitum (Stewart 2005).

Under *WorkChoices*, the AIRC will further lose its role in vetting certified agreements, hearing unfair dismissals for employers with less than 100 employees and its most important remaining role, setting minimum award wage rates, will pass to a new body – the Australia Fair Pay Commission (AFPC). Its role in relation to industrial action will be extended, notably in relation to administering secret ballots.

In the longer-term, the Commonwealth Government's preference appears to be for a market of private mediators to substitute for if not replace the AIRC. Private mediators in

Victorian small businesses are being trialled and the model dispute resolution clause under *WorkChoices* allows the parties to refer disputes to private mediators.

2.5 Centralising IR Authority

WorkChoices represents a historic centralisation of IR authority from the AIRC to political and bureaucratic institutions. Industrial relations authority is centralised by using the Corporations power to over-ride the state systems but also through a myriad of changes which centralise authority to Parliament, the Executive, the Minister and the Department of Workplace and Employment Relations. Under the arbitral power, the Commonwealth Parliament does not have a 'direct' industrial power to set wage and employment standards. As a consequence of the arbitral power, Commonwealth Parliament delegated authority to the Federal industrial relations commission which was established as a judicial-like institution with safeguards to protect their independence. WorkChoices signals an end to the Australian tradition of independent, judicial-like institutions determining wage and employment standards.

One of the major structural changes is the replacement of awards and the no-disadvantage test with the Fair Pay and Conditions Standard as the safety net underpinning bargaining. Minimum labour standards will now be determined by the Executive, usually via negotiations with the Senate, instead of by the AIRC. The risk is that wage and employment standards for the low-paid will be the product of political

lobbying, horse-trading and party-political disputes instead of a more formal, rational process.

Some other examples of how *WorkChoices* extends the authority of the Minister and political institutions over industrial relations include:

- The OEA, which has assumed many of the functions of the AIRC, can be directed through legislative instrument how to discharge its duties;
- The Chair and Commissions of the AFPC are on fixed-term appointments subject to renewal by the Minister which erodes their independence and likelihood of impartiality from the Government of the day;
- The DEWR, under the direction of the Minister, has an open-ended capacity to determine what can and cannot be included in any enterprise agreement by nominating a matter as 'prohibited content'.
- The Minister has sweeping powers to issue a declaration terminating any bargaining period and therefore removing access to protected industrial action

New IR institutions (OEA, AFPC) lack the independence from the political process of the AIRC, Parliament will now determine minimum labour standards which underpin bargaining whilst the Executive has extraordinary powers to intervene in disputes and to determine the content of agreements. The centralisation of IR authority under

WorkChoices is unprecedented: the Executive and Parliament will have more control over IR than at any other point in modern Australian history.

3 Deregulating Award Systems: the Experience of New Zealand, Victoria and Western Australia

There is now a significant body of experience with labour market deregulation in award systems. Victoria, Western Australia and New Zealand all replaced award systems with bargaining systems underpinned by statutory minimum standards. Comparisons between the Coalition's preferred instrument for regulating employment, AWAs, and other instruments such as awards and collective agreements also offer a guide.

The outcomes have been remarkably consistent:

- The overwhelming majority of agreements were narrowly focused on changes to earnings and working hours;

- Large groups of employees lost penalty rates, overtime rates, shift penalties and other allowances. Only ¼ employees under the Victorian system were being paid weekend penalties (less than 10 per cent in hospitality), between 40-50 per cent of individual agreements in Western Australia removed penalty and over-time rates whilst detailed longitudinal studies of retail earnings in New Zealand found

hourly rates fell by between 18 per cent (ordinary time employees) up to 44 per cent (part-time employees working evenings and weekends) reflecting falls in ordinary rates and the removal of penalty and overtime rates.

- Labour market deregulation was associated with the growth of low-wage jobs, especially in regional areas and particular sectors (hospitality, recreation & personal services, mining/construction), and inequality.

These findings are elaborated beneath.

3.1 *The Victorian Experience*

The Kennett Government abolished awards in 1993 and replaced them with a handful of statutory minimum standards under Schedule 1 (minimum hourly wages, annual, sick leave). So the Victorian system was very similar to what will now be introduced by the Commonwealth government. However, the Kennett Government referred its industrial powers to the Commonwealth Government in 1996. Schedule 1 was incorporated into the *Workplace Relations Act* and renamed Schedule 1A. So Victoria then had a dual system: employees who were already covered by or transferred to the Federal system with award minimum standards and the Schedule 1A workforce.

The Victorian experience under the Kennett Government allows for a quasi-natural experiment on the effects of labour market deregulation. We have two groups of employees in the same state covered either by Federal awards or statutory minimum standards under Schedule 1A. A survey was undertaken by ACIRRT in 2000 for the Victorian Industrial Relations Taskforce to compare earnings and employment conditions for the two groups of employees. The survey found around one-third of employees were covered by Schedule 1A and around two-thirds were covered by Federal awards. The findings were reported in Watson (2001).

The key findings were as follows. Average hourly minimum rates were higher for schedule 1A employees who were paid $14.40 on average against $13.47 for federal award employees. However, there was much greater dispersion in the minimum hourly rate and a greater numbers of schedule 1A employees on or near minimum rates.

Table 3.1 (overleaf) illustrates the portion of employees who were paid less than $10.50 per hour:

Table 3.1: Portion of Employees paid Less than $10.50 per hour, Region and Industry

	Federal Award	Schedule 1A
Metropolitan Region	13%	15%
Non-Metropolitan Region	8%	22%
Agriculture	17%	26%
Mining/Construction	8%	24%
Manufacturing	16%	7%
Hospitality, Recreation & Personal Services	10%	28%
Infrastructure	1%	17%
Education, health & community services	10%	10%
Other	2%	13%
Total	10%	18%

Source: Watson (2001: 302).

Table 3.1 illustrates almost twice as many Schedule 1A employees were working for less than $10.50 an hour, there was a pronounced geographical dimension to the emergence of low-pay jobs following the removal of the award safety net which were concentrated in

non-metropolitan workplaces and it was especially pronounced in some industries such as mining/construction and hospitality, recreation and personal services.

Additionally, a massive 42% of Schedule 1A employees were on the minimum rate compared to 26% of Federal award workplaces.

So the findings were quite decisive. Using regression models to test for the influence of other mediating factors, Watson (2001: 303) concluded:

> A workplace which had Schedule 1A employees had nearly twice the odds of being in the low wage category compared with a workplace with federal coverage, with all other variables held constant.

Schedule 1A employees were further disadvantaged by the loss of penalties and allowances. Whereas overtime penalties, weekend penalties, shift allowances and annual leave loading were standard conditions for Federal award employees, they were 'exceptionally limited' amongst Schedule 1A employees. Table 3.1.1 illustrates the incidence of these benefits across Schedule 1A workplaces:

Table 3.1.1: Benefits paid by Schedule 1A workplaces by industry, percentage of Schedule 1A workplaces

Industry	Higher rate of pay for overtime %	Penalty rates for working weekends %	Shift allowances %	Annual leave loading %
Agriculture	26.6	15.8	0.0	26.3
Mining & construction	49.3	38.8	10.7	45.2
Manufacturing	51.2	43.0	14.1	54.2
Wholesale & retail	64.5	27.8	13.6	46.8
Hospitality, recreation & services	19.0	7.7	1.2	24.0
Infrastructure	27.4	26.0	3.5	44.2
Education, health & community services	21.9	9.7	1.5	25.4
Other	39.3	23.3	2.3	28.2
Total	40.8	23.9	5.9	35.2

Source: Watson 2000.

Only 6 per cent of Schedule 1A workplaces paid shift allowances, less than a quarter paid weekend penalties, 35 per cent paid annual leave loading and 40 per cent continued to pay overtime rates. In hospitality, recreation and personal services only 8% per cent paid weekend penalty rates and 19 per cent overtime rates.

Nor was it generally the case that these employees were being effectively compensated for the absence of penalties and loadings through higher wage rates.

Table 3.1.2: Benefits paid by Schedule 1A workplaces according to minimum hourly rates category (percentage of Schedule 1A workplaces in each dollar bracket)

Benefits paid	Minimum hourly rates in Schedule 1A			
	Under $10.50	$10.50 to $18.00	Over $18.00	Total
Higher rate of pay for overtime	28.3	44.4	41.1	40.8
Penalty rates for working weekends	16.0	25.0	28.6	23.9
Shift allowances	7.4	5.6	5.3	5.9
Annual leave loading	16.4	39.7	39.0	35.2

Source: Watson 2000. Population: All workplaces with Schedule 1A coverage

The lowest paying workplaces were also the least likely to pay additional benefits such as penalties and allowances. These employees suffered a double financial disadvantage.

The creation of a cheaper second-tier workforce following the removal of the award safety net in Victoria was confirmed by a Full Bench of the Australian Industrial Relations Commission in relation to the retail industry. The Shop, Distributive and Allied Employees Association (SDA) sought to rope in 17,000 Victorian retail employers to the federal award. The Commonwealth Government and employers opposed the application on the basis it was going to jeopardise employment levels by raising labour costs. On January 17 2003, the AIRC concluded it was 'beyond doubt' the Schedule 1A safety net was lesser than federal awards and some employees under Schedule 1A were disadvantaged because they did not receive provision for overtime, penalty rates, annual leave loading, shift loadings and severance entitlements (AIRC 2003).

Labour market deregulation and the removal of the award safety net were clearly associated with the loss of penalty rates and allowances and the growth of a low-pay sector in Victoria.

3.2 *The New Zealand Experience*

New Zealand also dismantled its system of awards and industrial tribunals with very similar results. Awards were removed altogether and agreements had to comply with 6 statutory minimum conditions (the statutory minimum wage, annual leave, sick/bereavement/carer's leave, and public holidays). The *Employment Contracts Act (1991)* abolished the industrial tribunals and the multi-employer award system, replacing them with individual employment contracts and collective employment contracts (a contract between an employer and two or more employees), but favouring individual contracts which were considered the 'natural' state of affairs (Anderson, 1994: 124). The ECA completely removed the legal status of trade unions, referring only to 'employees organisations' without according them any legal rights or requiring employers to even recognise and bargain with these organisations.

The ECA engineered a major shift away from collective agreements. Union membership fell dramatically, the coverage of collective agreements was limited to union members and now extends to just 20 per cent of employees (mostly in the public sector). The remaining 80 per cent are covered by individual agreements. Even amongst collective

agreements, there were major concessions such as the removal of penalty rates negotiated by unions as the price of retaining representative status and a collective agreement (May & Walsh 2004: 11; Harbridge, Thickett & Kiely 2001; Conway). The absence of disaggregated wages data, or aggregate wage data which incorporated the effects of changes to allowances and penalty rates, led a New Zealand economist, Peter Conway, to undertake a minutely-detailed longitudinal study of changes to earnings in supermarkets (see below) which illustrated large falls in earnings.

What Happened in the New Zealand Retail Sector? [Box this]

Peter Conway undertook a longitudinal study of how earnings changed for supermarket operators changed following the deregulation of the labour market. He used 1520 individual observations from 48 agreements and awards in unionised workplaces to examine how wages changed for three typical groups of workers – a part-time adult checkout operator who works 28-hours including one evening and one weekend day, a 16-year old student working 14-hours a week including two evenings and one weekend day and a full-time adult working a 40-hour, Monday-Friday week with no evenings. The results showed extraordinarily large reductions in earnings for existing employees and new commencements.

Table 3.2: Changes in Real Hourly Rates for Supermarket Workers (%), New Zealand, 1987-97

	Existing Employees	New Commencements
Scenario 1: Part-Time Adult	- 30.1	- 36.3
Scenario 2: Part-Time Student	- 44.4	-43.3
Scenario 3: Full-Time Adult	- 11.2	-18.2

Source: Conway (1999: 38-39).
Note: the data does not include non-union workplaces or new start-ups. Nor does it include other non-quantifiable changes which may influence earnings such as change to public holidays, sick leave entitlements etc. The likelihood is therefore as Conway notes that this data if anything underestimates the loss of earnings.

The longitudinal data shows the biggest losses occurred amongst employees working evenings and weekends which reflects the removal of penalty rates. Those working standard hours also lost close to one-fifth of their pay which demonstrates base rates also fell significantly in real terms.

Some of the concessions were extracted directly by employers but mostly Conway (1999) found an 'intergenerational effect' as new employees replaced old employees on lower rates. There were some cases of stand-over management tactics cutting rates. In an investigation by the New Zealand Department of Labour, a supermarket checkout supervisor described the experience at her workplace:

> As soon as the Employment Contracts Act came in everything changed in this place ... we were called in one by one and given this printed document with a place to put your signature. Some of the young ones were not allowed to take their contracts home for their parents to read. The first year all of us who already worked there got penal rates. As people left or were sacked, the new ones went on a flat rate with no set amount ... within a year there was a 90% rollover of staff (Conway 2003).

In a sector with high levels of turnover and low levels of union organisation, rates fell furthest amongst new commencements who signed individual agreements.

There is bi-partisan party-political acceptance across the Tasman that New Zealand is now a low-wage economy.[1] Between 1992-96, labour costs fell a staggering 22 per cent relative to capital costs (Black, Guy & McLellan 2003). These results were predicted by the New Zealand treasury (1993):

> An increased dispersion in wages is expected over the next three years. Wages of professionals, managers, and other skilled people, especially those employed in the profitable and productive export sector, are likely to rise above the rate of inflation. On the other hand, the wages of the unskilled, especially part-time and young workers (where turnover may be relatively high) will probably have no wage increases and new entrants may start on lower pay rates than existing workers.

[1] See the statement by National Spokesperson for Finance, John Key (2005).

A widening wage gap reflected in average earnings – around 25 per cent once variations in the exchange are accounted for - has occurred between Australia and New Zealand, even in recent years as unemployment rates have fallen beneath 4 per cent in New Zealand (2 per cent for white New Zealanders), contributing to the drift of New Zealanders to Australia in search of better jobs. Income inequality and levels of poverty increased significantly throughout the 1980s and 90s (Dalziel 2002: 42-44; Podder & Chatterjee 1998) – and as we'll see the low-wage economy also became a low-productivity economy.

3.3 *The WA Experience: 'We had the Cheapest Labour in All the Country'*

Western Australia offers another opportunity to assess the impact of the Federal IR reforms. In 1993, Western Australia similarly introduced legislation requiring agreements only meet 10 statutory minimum standards.[2]

The Commissioner of Workplace Agreements produced two reports on agreements published in 1996 and 1999. Some of the key results relating to low-wage agreements and the loss penalty and overtime rates are illustrated in Table 3.3:

[2] Namely, a minimum wage, annual leave, sick leave, bereavement leave, public holidays, standard 40-hour week, three procedural rights including protection against unfair dismissal.

Table 3.3: New Workplace Agreements Which Removed Penalty Rates, Overtime Rates and provided for Sub-Award Ordinary Rates of Pay, Western Australia, 1996 & 1999

	1996	1999
Abolition of Penalty Rates	54	44
Abolition of Overtime Rates	40	44
Sub-Award Ordinary Time Rates	5	25

Source: CWA (1996, 1999) cited by Peetz 2005a.

These results were further validated by other quantitative and qualitative research. ACIRRT's (1996) study of 25 individual contracts also found 'the most profound difference' from the relevant awards was in relation to working time and the absence of penalty rates for weekends, evenings and public holidays. Todd et. al. (2004) concluded from a series of interviews with employer representatives:

> Employers in the service sector who chose to use WPAs were primarily motivated by the opportunity to lower labour costs. All 9 interviewees from employer associations in the service sector concurred with this. The main issues addressed in the WPAs were the spread of standard hours and the removal of penalty rates, shift loadings and all sundry allowances. The preference was for one flat hourly rate that may or may not incorporate some loading for the trade off of penalty rates ... One representative of small business retailers commented: 'we had the cheapest labour in all the country'

There were also compliance issues even with the remaining entitlements and a culture of lawlessness developed, especially amongst small business. One employer representative interviewed by Todd et. al. (2004) noted:

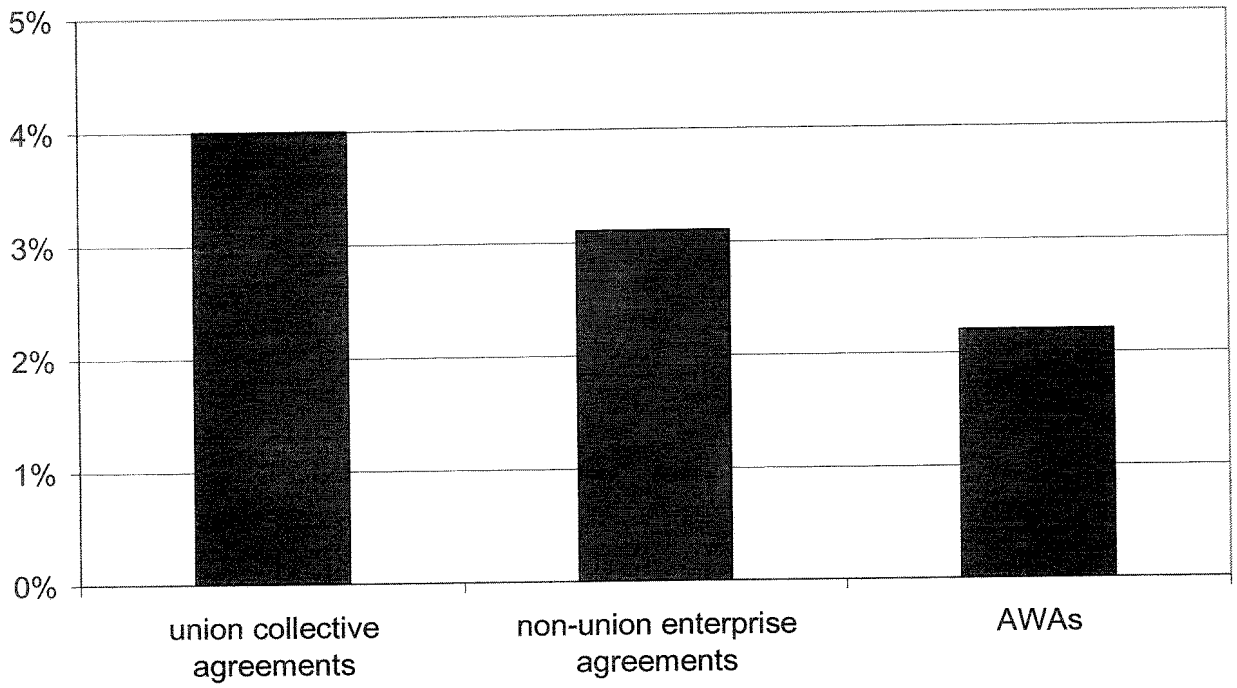
> There was a significant proportion of small businesses that had come into operation under a system in which they were the only rules. When small businesses think there are no rules they don't bother complying with such rules as there are ... they thought ... there were no rules ... so they behaved that way.

Following the election of a Labor Government in Western Australia, employers with WPA's moved their employees over en-masse to AWAs. The low-wages in the Western Australian agreements are reflected in the fall in earnings in AWAs.

3.4 The AWA Experience

Research into AWA's has consistently found that the vast majority of AWA's are primarily if not solely focused on wages and hours (Cole et. al. 2001; Mitchell & Fetter 2003; Roan et. al. 2001). Agreement wage data has consistently found without exception that union agreements deliver higher wage increases than collective non-union agreements which deliver higher wage increases than AWA's. The OEA stopped releasing AWAs to ACIRRT in 2001. The last comparison, released in 2001, was typical:

Figure 3.4: Annualised wage increases under currently operating agreements, December 2001



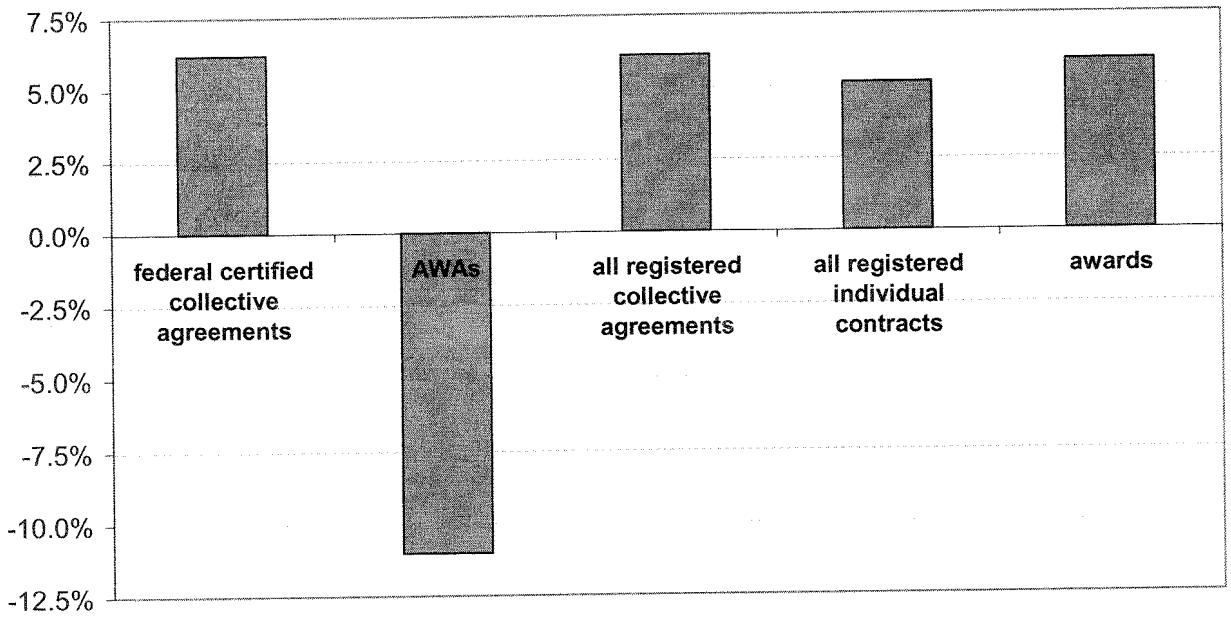
Source: ACIRRT 2001; van Barneveld 2003 cited by Peetz 2005a

Note: These were the last data on AWAs made available to ACIRRT

Primarily reflecting the transfer of Western Australian employers with low-wage individual agreements into the Federal system following the election of a Labor Government, average earnings under AWA's has fallen dramatically between 2002-04.

Figure 3.4.1

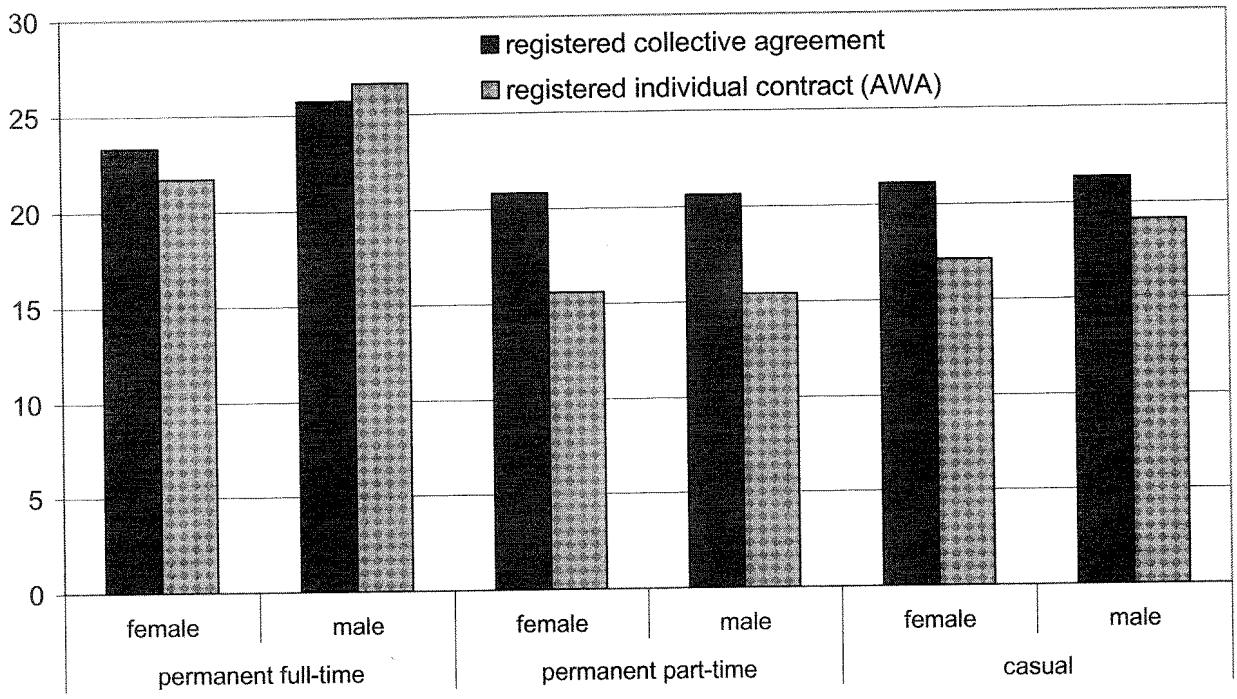
Change in average weekly earnings, by agreement type, 2002-2004



Source: ABS Cat No 6306.0, Peetz (2005a).

Average pay data can be misleading and is likely to inflate AWAs compared to other types of agreements, primarily because of their concentration in sectors with higher than average earnings such as mining, the public service and telecommunications. However, ABS data still illustrates that for all but male, permanent full-time workers collective agreements pay better than individual agreements.

Figure 3.4.2: Average hourly earnings, non-managerial employees by method of setting pay, May 2004



Source: ABS Cat No 6306.0, Peetz (2005a)

As Baird and Todd (2005) further note, the gender pay in male and female earnings is larger under AWA's – around 20 per cent – than other types of agreements.

Other key findings in relation to AWA's by independent academic studies were:

. AWA's were much less likely to contain a specified wage increase. Only 20 per cent of AWA's in the ACIRRT database in 2001 included a quantified wage increase though a further 20 per cent contained some reference to wages (be it a dollar amount, CPI etc.). 60 per cent of AWA's were silent on wages.

- AWA's were more likely to extend ordinary working hours and absorb penalty rates and the like into a single-hourly rate. The primary focus was on hours flexibility with few other 'soft' provisions relating to staff development and employee involvement.
- AWA's were more likely to include wage increases 'at risk' which were contingent upon individual performance assessments by management (ACIRRT 2001a; ACIRRT 2001b; Van Barneveld & Arsovska 2001).

Independent assessments of AWAs have universally reached the conclusion that the 'overwhelming proportion' of AWAs were focused on short-term cost-cutting rather than productivity enhancement (Cole et. al. 2001; Van Barneveld & Waring 2001): "only a small number of employers ... used AWAs to introduce work practices consistent with the 'high performance' model of workplace relations" (Mitchell & Fetter 2003: 320).

The results from AWAs are consequently very much in line with experiments in labour market deregulation in Victoria, Western Australia and New Zealand.