

4 Projected Outcomes: How Will Labour Market and Regulatory Arrangements Change?

One of the key objectives of these reforms is clearly to engineer a switch in the mechanisms through which employment is regulated – from state to federal jurisdiction, from awards and collective agreements to individual agreements and from employment to commercial contracts.

Our projection is that these reforms are indeed likely to succeed in substantially reconfiguring the way in which wages and employment conditions are determined. In developing a map of wage-setting arrangements, precise data does not currently exist but our best estimate from a variety of sources is as follows:

Table 4.0: Projections of Changes to Regulatory Arrangements

Instrument	Current (%)	Medium-Term (5-10 Years)
Awards	20	5-10
Over-Awards	10-15	5-10
Certified Agreements	40	35-40
. Union	35	20-25
. Non-Union	5	15
Individual Common Law Contracts	20-25	25-30
AWAs	2.5	15-20

Source: ABS (2004) *Methods of Setting Pay*, 6206.0; Department of Employment and Workplace Relations (DEWR) (2002)

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Unpacking this table, our key projections are as follows:

1. The coverage of employees by awards will fall substantially in the medium-term, primarily as they are switched to AWAs but also non-union collective agreements;
2. Steady growth in individual common law employment contracts will continue as a consequence of employment growth in professional occupations outside the award system;
3. The coverage of certified agreements will experience moderate falls but the composition will change as the reach of union certified agreements will decline and non-union collective agreements will rise. As in other nations with deregulated labour markets, coverage of certified agreements is likely over time to gradually become increasingly confined to union members. Presently, around 15 per cent of employees are covered by union-negotiated certified agreements but are not union members. There are significant opportunities for union recruitment and organising here as these employees will lose legal protections previously available. It is not inconceivable that union membership will be more or less steady whilst union agreement coverage falls. Collective bargaining will also probably become even more concentrated in the public sector;
4. The number of employees will fall significantly as employers increase their usage of contractors, primarily at the expense of the certified agreement stream but also award-dependent employees.

4.1 *The End of Awards?*

Whilst these reforms notionally retain awards, they will set in motion changes which will almost certainly lead to the withering away of awards.³ It is important to understand the role of awards extends significantly beyond the award-dependent workforce which is the focus of the annual safety-net case. There is also a significant group of employees who are substantially dependent on awards but whose employers pay them over-award wages. The last survey conducted by the Department of Employment, Workplace Relations in 2002 found around 20 per cent of employees fitted into this category but more recent ABS data (cat. no. 6206.0) suggests this group has probably declined to somewhere between 10-15 per cent of employees. Awards also underpin employment standards for most of the 40 per cent of employees who are regulated by a certified agreement.

The following profile of the award workforce focuses on the purely award-dependent because of the absence of publicly-available data on the over-award workforce. However, it should be borne in mind that the reforms to change the NDT and the award safety net are likely to impact significantly on 30-35% of employees (award dependent and over-award employees) and potentially affect the 40 per cent of employees covered by a certified agreement.

³ The Prime Minister, John Howard, has pointed to the retention of awards as evidence that these reforms will not disadvantage workers. However, the Minister for Workplace Relations, has more accurately (or truthfully) noted: 'I can't see why anyone would be on awards in 5 to 10 years' (Skully & Davis 2005).

Why will awards wither away? Let's start by looking at where the awards-only workforce is located.

Table 4.1: Where is the Awards-only Workforce?

Occupation (%)		Industry (%)		Employer Size (%)	
Elementary Clerical, Service & Sales (CSS)	39.9	Accommodation, Cafes & Restaurants	60.1	<20 Emp'ees	27.5
Labourers	37.9	Retail	31.3	20 – 49 Emp'ees	30.9
Intermediate CSS	25.8	Health & Community Services	26.6	50 – 99 Emp'ees	31.5
Trades	22.5	Personal & Other Services	23.5	100-499 Emp'ees	20.7
Intermediate Production & Transport	17.3	Property & Business Services	19.7	1000+ Emp'ees	4.5
Total	20.0	Total	20.0	Total	20.0

Table 4.1 highlights the vulnerable character of the awards-only workforce and its preponderance in small businesses:

- around 40 per cent of low-skill white-collar and blue-collar employees remain completely dependent on awards for their employment conditions and the annual safety net case for a wage increase;

- . the bulk of these employees are located in small/medium enterprises. Around 1/3 of employees here are on awards compared to less than 5 per cent of employees in big business;
- . They are mostly concentrated in service industries – hospitality, retail, health/community services – though blue-collar industries such as manufacturing also have significant minorities (15%) on awards;
- . They are also consequently often casuals, mostly women and often students. One-quarter of women workers are award-only. There is also high turnover in many parts of the award-only workforce.

There are two fundamental reasons why employees remain covered by awards instead of agreements:

1. The employees lack the bargaining power, skills or knowledge to negotiate better wages and conditions. An increasing gap has opened up between awards and agreement rates (illustrated by the fall in the ratio between the minimum and average pay rates; AIRC 2005) so there is more than adequate 'incentive' for employees to negotiate agreements. At the bottom end of the labour market, it is employers who set arrangements for determining pay and conditions.

2. Employers, especially small businesses, continue to use awards because the administrative costs of making an agreement outweigh the benefits. If they have thought about this at all – many are too busy running their businesses and surveys have consistently found most small businesses are quite satisfied with the award system precisely because it sets wages and conditions for them – they have decided the time and expenses of negotiating an agreement outweigh the gains. Small business owners, in particular, often lack the resources and expertise for bargaining and an agreement covering a handful of employees will only deliver marginal increases in efficiency which do not compensate for the time and expense of negotiating and certifying an agreement.

That will now change for many of these businesses. The replacement of the no-disadvantage test with the five statutory minimums will radically alter the cost-benefit calculations of award-only employers. As agreements no longer have to meet a no-disadvantage test – indeed they will take effect upon lodgement - the process for registering an agreement will be greatly streamlined. More significantly, the opportunity to make enormous cost savings are available because employers can strip out a raft of common award conditions without compensating, or only part-compensating, employees. Common award conditions which can now be stripped out include overtime rates, shift penalties, weekend penalties, casual loadings, leave loadings, on-call allowances, payments for dangerous work, study leave and lunch/tea breaks. The so-called ‘protection’ of some award conditions such as public holidays and penalty rates is no

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such thing. It merely requires the new agreement to expressly change or remove these awards conditions for existing employees. Allowing the 38-hour week to be 'averaged' also enables employers to alter employee working hours as they wish without paying overtime and penalty rates.

The shift away from awards will occur through the following processes:

1. *Inter-Generational Effect.*

New employees engaged in what are now award-workplaces can be offered AWAs on a take-it-or-leave-it basis as a condition of employment. Major award-only sectors such as hospitality and retail have high levels of casualisation and turnover. Just under 25 per cent of the workforce in general left their job during 2003-04. The highest rates of turnover, the largest proportion of the workforce who have been in their current job for a year and the smallest proportion of long-term employees are in the major award-only sectors such as accommodation, cafes & restaurants and retail (ABS 2005a). The exemption of employers with up to 100 employees from unfair dismissal remedies is also likely to increase 'churn'.

Existing employees on awards will simply be replaced over time with new employees on AWAs. Applicants for jobs, especially those applying for low-skill positions in non-union small/medium businesses, have little bargaining power. Many don't carefully read their

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conditions or indeed understand what they're entitled to under the award. Notionally they are entitled to use a bargaining agent but in practice it is improbable that the unemployed, the young and the unskilled will seek out and hire a bargaining agent. New employees will no doubt often sign agreements without realising what they're signing away. Over time, many award employees will be superseded by employees on AWA's which remove penalty and overtime rates for a single, lower hourly rate. Casual employees, especially non-union casuals, will be especially vulnerable. Casual loadings vary between 15 and 33 1/3 per cent (Watson 2004: 13). The incentives to place casuals on AWA's removing or diluting these casual loadings are clearly substantial and many will have little effective capacity to resist. But again it is something which will mostly occur substantially over time as new casual employees are engaged.

If there were to be a recession or significant economic downturn, this process would be greatly accelerated. The early 1990s recession was the catalyst for the substitute of permanent, full-time jobs with a flexible, disposable workforce comprising casuals, labour hire and contractors in many workplaces. If a recession were to occur in the next five years, it would be a major catalyst for the spread of AWAs as new employees were re-engaged on individual agreements as business picked up again.

2. *Take-It-Or-Leave-It-Bargaining.*

AWA's can be offered to award-based employees on a take-it-or-leave-it basis. Whilst they cannot legally be compelled to sign, the employer can make signing the AWA contingent on receiving a pay increase, a promotion or a transfer. An employer can even lockout their employees, refusing them entry to work and pay, to coerce their employees into signing AWAs.

In reality, these measures are often un-necessary because more subtle pressures which make signing the AWA a test of loyalty or a factor in future prospects are equally effective. Additionally, even though it is not legal, the loss of protection against unfair dismissals is also likely to make employees less likely to resist signing an AWA even where they do have doubts or believe they'll be worse off. The employer can also initiate a bargaining period for a non-union collective agreement on a similar basis that pay increases will only be available through the employer's chosen form of agreement.

3. *The 'Race to the Bottom': the Post-Award Dynamics of Product Market Competition*

It's unlikely to happen overnight, it may take some time, but sooner or later the competitive advantages gained by employers who do manage to lower their labour cost structures will drive other employers to follow suit. In sectors where small/medium businesses are competing against each other for contracts and customers, especially where margins are thin and labour represents a significant component of their cost structure, once a competitor manages to cut their labour costs by removing penalty rates,

loadings etc. then others will have little choice to do likewise if they are to survive in the marketplace.

Consider the example of the Western Australian cleaning sector. Contract cleaning is an extremely competitive sector which across Australia employs over 90,000 – mostly women, often from a non-English speaking background. Labour costs account for between 60-80 per cent of contract costs. Where awards exist they place cleaning contractors on a level playing field. When the Western Australian legislation was introduced, the initial response of employers was to reject using WPA's to lower labour costs because it would lead to 'unhealthy competition' – a downward spiral in which companies would have to offer lower and lower wages, work their employees harder leading to poor morale, turnover and ultimately lower profits because margins are derived as a percentage of total costs. However, when a number of cleaning companies from outside Western Australia started to win tenders with lower labour costs, they had little choice but to follow suit. The ordinary hourly rate under the award was \$11.75 and \$12.85 and \$16.76 - \$27.93 on weekends but under workplace agreements cleaning companies offered a flat hourly rate of \$9 - \$11. Once the award floor is removed, product market competition drives wages and conditions down in sectors like contract cleaning with adverse effects for already low-paid workers (Watson et. al. 2003).

The OEA and intermediaries such as consultants, employer associations and solicitors will facilitate the process. The OEA places 'template' AWA's on its website for entire

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sectors such as fast food and hospitality. Consultancies, offering fee-based services for organising the transition of employees onto AWAs, will design agreements from the OEA template. In all likelihood, whilst anti-pattern bargaining statutes are applied to union-negotiated agreements, there will be pattern AWAs (and non-union collective agreements) diffused through sectors such as hospitality. In a sign of things to come, the President of the Pharmacy Guild, John Bronger, told Workplace Express (2005b) his organisation was working with the OEA on a 'template' AWA to be applied to the 30,000 assistants and 15,000 pharmacists employed by their members.

The effect of these reforms will be to entice or induce employers with little interest in agreement-making off awards. These employers have displayed little interest in agreement-making because they don't have the resources for bargaining or the scope to realise efficiencies through bargaining. These reforms will encourage employers to move off awards because by removing the safety-net and the no-disadvantage test they will be able to make major labour cost savings still without having to commit major time and resources to bargaining. These employers will now also start to set standards for the bargaining or agreement sector.

4.2 *The Certified Agreement Sector*

Our projection is for modest decline but significant recomposition within the certified agreement stream. There are three strata of employees within the certified agreement

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stream: union members, non-union members covered by union agreements and those covered by non-union collective agreements.

Non-union collective agreements will grow. Some of the employers who switch their workers from awards are likely to choose non-union collective agreements in preference to AWAs. Non-union collective agreements have some administrative advantages over AWAs. For instance, whereas AWAs have to be signed individually, and then applied individually with each new commencement, non-union collective agreements apply across entire sites and encompass new employees. Non-union collective agreements are especially preferred to AWAs by employers in areas with high turnover. Monitoring AWAs can also be a complex logistical exercise with serious administrative costs. The usage of Non-union collective agreements will probably increase steadily in absolute terms and as a proportion of certified agreements.

The strata of non-union members covered by union agreements may prove to be of vital importance. Exactly how managers will approach these employees is uncertain. In some workplaces, they may prefer to 'let sleeping dogs lie'. But over time it is probable that managers will seek to move increasing numbers onto AWAs or LK agreements. There will also be organising opportunities for unions because these 'free-riders' will lose some of the statutory protections, notably unfair dismissal protections, and become more vulnerable to managerial discretion. The experience of other deregulated labour markets suggests that the coverage of certified agreements will fall towards union membership.

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For trade unions, it will be extremely important they pick up members here, in workplaces where they already have a presence, if they are to effectively withstand these reforms.

Some commentators predict little change for the unionised sector. Labour and skill shortages will certainly discourage a significant number of employers from revisiting their bargaining arrangements and entitlements. However, it is unlikely nothing will change. Key aspects of the reforms such as the exemption from unfair dismissal protections significantly tilt bargaining power towards employers and enhance their ability to evade or undermine trade unions through AWAs, non-union collective agreements or contractors. For purposes of illustration, it is useful to think of scenarios in 'Up-Market' (high-wage) and 'Down-Market' (low-wage) union agreements where employer militancy may occur.

4.2.1 Down-Market

Just as competitive pressures are likely to drive award-only employers to use AWA's, so competitive pressures are also likely to drive firms with union agreements to re-examine their bargaining arrangements and labour cost structures. There will undoubtedly be other firms which look for ways to weaken union bargaining power or de-unionise through the use of contractors, non-union collective agreements or AWAs. AWA lockouts, a technique already used sporadically by some manufacturing firms

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experiencing competitive difficulties, will remain uncommon but probably increase. For firms squeezed between competitors who negotiate significantly lower labour cost structures and organised workforces, AWA lockouts might well become a more attractive option. Amongst firms which remain unionised, the likelihood is an increase in concession bargaining or low-wage agreements to retain representative status (as occurred in New Zealand).

4.2.2 Up-Market

Labour and skill shortages do place some unions and workers in traditional union heartlands in a good position to weather these changes, notably mining and blue-collar trades. However, it would be foolish to assume employers will not seek to take advantage of the new bargaining system. Take the mining sector as an example. The flipside to booming business and labour shortages is a heavily indebted workforce and firms well-positioned financially to try and buy-out workers from unions through generous AWAs. This is a strategy mining firms have already used with some success. If mining companies take the view that this is an historic opportunity to weaken trade unions, backed by a supportive government and a favourable Act, there may be renewed efforts to switch unionised workers to AWAs.

The removal of the award safety net, the downward pressures on wages and conditions, the loss of unfair dismissal protections will probably lead to renewed interest in joining

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unions. But whilst there will be opportunities for unions to organise and represent new groups of employees, the capacity for unions to take advantage of these opportunities will be challenged by resource-intensive, defensive struggles to maintain their representative status, wages and conditions amongst their existing membership. Most unions will in all likelihood have to make hard, unpleasant choices about where to allocate their resources. Much here will depend on the approaches employers choose to take and the effectiveness of union counter-strategies - but it is probable there will be further de-unionisation, especially in private sector services, leading to a further concentration of union membership in the public sector.

4.3 *Individual Contracts*

Individual, common law employment contracts have been increasing as a proportion of employment growth outside the award system upmarket in the professions and downmarket in informal, local service employment. These trends are likely to continue.

AWA's currently cover just 2.5% of employees – notwithstanding millions of dollars of public money, a statutory body to promote and encourage their usage and major campaigns by the Federal Government and some large corporations in mining, finance and telecommunications. However, these reforms will see a substantial increase in the uptake of AWAs mostly in the non-union award sector but also union workplaces where the union is weak or where employer militants successfully confront unions.

4.4 Contractors

Our projection is for rapid growth in contractors, dependent and independent, following the amendments to the *Workplace Relations Act* and *Independent Contractors Act*. By increasing the usage of contractors, employers can evade financial responsibilities such as superannuation, shift personnel, administrative and labour costs to the contractor, engineer cultural change and undermine union membership and bargaining power.

The areas in which contractors could be expected to grow can be grouped into three categories:

- . Extending the use of contractors in sectors where there is already a significant presence e.g. mining, construction, transport
- . Using contractors in areas where deeming provisions apply in state jurisdictions e.g. cleaning
- . Using contractors in areas where certified agreements and unions currently inhibit employers e.g. manufacturing

The prohibition of agreement provisions on contractors, the removal of deeming and unfair contract provisions in State jurisdictions and statutory activism to counter the

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development of tests to determine whether contractors are genuinely independent give employers enhanced freedom to engage both independent and dependent contractors.

4.5 *Into the Quagmire: New Complexity, Risks and Costs for Employers*

One of the key objectives of the IR reforms is to simplify employment matters for employers, especially small businesses. The major ways in which simplification could occur is the removal of dual federal/state award regulations in some workplaces/organisations, exemption from unfair dismissals and simplified procedures for making and registering agreements. However, in reality there will still be multiple systems of employment regulation and there are going to be added complexities, risks and costs for employers as a consequence of these reforms.

4.5.1 A Single System?

In the immediate future, the Commonwealth Government will not be able to create a single system of employment regulation. As the Corporations Power is going to be the vehicle for over-riding the state systems, there are three categories of employee who will not be covered by the Federal system:

1. Unincorporated small businesses in the state systems
2. Unincorporated agencies in the state public sector (crown employees)

3. Unincorporated small businesses in the Federal system that will drop out of the system.⁴

Consequently, the exemption to unfair dismissals and other reforms to the Federal IR system will still not apply to unincorporated entities. These unincorporated entities will then face a choice: incorporate to join or remain in the Federal system, which will have tax implications and lead to other compliance costs such as increased reporting requirements, or remain unincorporated outside the Federal system.

Unless the State governments hand-over their industrial relations responsibilities, there will continue to be dual federal-state systems and state legislation will fill the gaps. Somewhere between 15 to 25 per cent of employees will remain or fall outside of the Federal System.

The Minister for Workplace Relations, Kevin Andrews, said recently there was a 'very real possibility' of one or two page AWAs. However, State statutory entitlements would apply where the AWA was silent on a matter. The Queensland and Tasmanian State Government have committed to legislating for statutory minimum standards and other State Governments may follow suit. As Andrew Stewart recently noted:

⁴ The Commonwealth Government would have to use the conciliation and arbitration power in parallel to the corporations power to prevent unincorporated businesses dropping out of the federal system.

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For example, if an AWA were silent on severance pay, and there was a minimum state standard on severance pay, that would be triggered. It's not going to be as simple as lodging an AWA with four conditions and a wage rate with the OEA and thinking that's that (Workplace Express 2005a).

Projections of dramatically streamlined employment regulation may therefore be somewhat optimistic. In the immediate future, there will still be multiple systems of employment regulation and new areas of interface between federal and state regulations. Proponents have also in any case probably over-sold the potential gains. The Productivity Commission (2005) recently concluded there would be 'little pay-off' from a single national industrial relations system and the Federal Government should focus on other areas of Federal-State relations (see also Wooden 2005).

4.5.2 The Complexity of the Federal System

Employers roped into the Federal system who are used to operating under state systems are going to find it is much more complex and that navigating it will require greater use of expensive legal representation. In its determination to limit the autonomy of the tribunals and control the outcomes of workplace bargaining, the Coalition has produced an extremely technical, detailed and complex legislative framework – as noted by Andrew Stewart (2005):

... the Workplace Relations Act 1996 is bloated, convoluted and in parts almost unintelligible ... It forces employers and unions to seek legal advice at almost every turn, adding cost to what ought to

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be simple transactions or proceedings ... At every turn, rather than creating a framework for the sensible application of broad guidelines, the legislators seek to anticipate and provide for every eventuality they can foresee ... This desire to pin down every detail does not just make for a longer and more complex statute. It also, paradoxically, creates doubt and uncertainty. The vagaries of language, the cleverness of lawyers and the pedantry (or creativity) of judges ensure that for every loophole that is closed or doubt that is resolved, another will open or appear. Unforeseen ambiguities or outcomes abound, to the temporary benefit of some, but to the long-term cost of most.

WorkChoices will add immense new layers of regulation, complexity and produce extensive litigation to determine complex questions of laws around their usage of the corporations power, new distinctions between contractors and employees, secret ballot regulations (see below) and so on. An already 'bloated' Act is going to be super-sized.

4.5.3 Unfair Dismissals

Nor will the exemption from the unfair dismissal remedies be the clean break envisaged by many businesses. Exempting firms up to 100 employees from unfair dismissal remedies will significantly diminish the job security, legal remedies and standards of management behaviour for many employees. The perception amongst many businesses and employees is that this is the end of any right to challenge dismissals. That in itself is a powerful effect. However, as solicitors and barristers consulted for this report noted,

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there are significant other avenues to pursue claims currently pursued through unfair dismissal remedies.

1. Unlawful Dismissals

The redirection of unfair dismissal applications into unlawful dismissals will have added risks and costs for employers. The qualifying exclusions which apply to unfair dismissals such as casuals employed for less than 12 months do not apply to unlawful dismissal claims. The onus of proof is reversed so employers have to prove they did not dismiss an employee for an unlawful reason. As they are adjudicated upon in the Federal Court, the process will be longer, legal costs will be higher and where employers are found to have unlawfully dismissed an employee, the penalties and compensation will be greater.

2. Discrimination

There will also be some increase in claims challenging dismissals on the grounds of unlawful discrimination. With the alternative of unfair dismissal remedies, discrimination claims are less attractive because it's a lengthy process requiring conciliation by HREOC before proceeding to the Federal Court. Discrimination claims will however now be another avenue further explored by employees seeking redress after dismissal. Discrimination cases could lead to negative, costly publicity as well as the costs associated with unlawful dismissal claims.

3. Implied Contractual Terms

Dismissals can also be challenged insofar as they constitute a breach of implied contractual terms such as reasonable notice and the implied duty to act in mutual trust and confidence. Unlike the 21-day limitation on unfair dismissal claims, cases alleging contractual breaches can be brought up to six years after the event. Whilst it will be more expensive to pursue such actions – prohibitively so for many employees - there may also be compensating developments to facilitate the capacity of individuals to undertake such cases. Solicitors are likely to take claims on a contingency basis, individuals can take small claims to the Chief Industrial Magistrate and kits could be developed to assist individuals, pro-bono lawyers and community legal centres to run cases. Unions may also run some cases where they see significant ability to set useful precedent establishing common law rights.

4.5.4 Industrial Action and Dispute Resolution

There will probably be fewer work stoppages but they will be harder to settle, more volatile and more costly for some employers. Firstly, employers in state systems will now operate in a jurisdiction with protected industrial action with the potential for longer strikes. Secondly, the introduction of mandatory secret ballots is also likely to add significantly to the complexity and legalism of dispute resolution. The role of lawyers

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will be greatly enhanced. The ballot process, getting or stopping the majority vote, may become the focus of the dispute – rather than settling the issues. Once industrial action has been approved by ballot, the experience of the United Kingdom is that after such a time-consuming process the effect can be to polarise the parties and lengthen the industrial action.

It is worth noting just how low work stoppages are as it stands. Only 2-3 per cent of employees have been involved in a stoppage in any given year for the past five years and almost 90 per cent of stoppages last less than 2 days (ABS 1999-2004). The effect of the ballot process may be to make it harder to access protected action but also to drag disputes out for weeks. Some employers may gain a short-term advantage out of mandatory secret ballots but other employers will be pulled into the quagmire with their unions.

The other unknown is the extent to which the reforms themselves lead to disputes. *WorkChoices* places basic rights to organise and take industrial action at stake. In that context, some unions may use civil disobedience. Industrial action broadly will have a political edge as it may become part of a campaign to resist *WorkChoices*. The open-ended powers of the Minister to suspend or terminate strikes almost certainly sets the scene for strikes to become political disputes. Labour disputes could also result from the pressures on employers to match competitors who lower their labour cost structures. Downward

flexibility sets the scene for some bitter disputes in workplaces with well-organised unions.

Another contingency which should be kept in mind is that if the restrictions on industrial action do start to significantly inhibit the use of protected industrial action, they are likely to encourage the trend for unions to use alternatives to industrial action such as 'corporate campaigns' and 'shareholder activism'. These techniques apply pressure to companies by targeting public perceptions of brands instead of stopping work. The costs can therefore be much greater and lasting for businesses.

4.5.5 Competitive Disadvantages and Loss of Remedies for Unfair Contracts

Some employers are going to be disadvantaged, perhaps fatally, by the downward flexibility now available. For some employers in areas with labour shortages and who are experiencing difficulties sourcing labour, there may be little scope to reduce labour costs through removing penalty rates and the like. However, they may find themselves squeezed between local labour market conditions and lost-cost competitors in other areas able to take advantage of the downward flexibility, unable to respond.

4.5.6 Transitional Arrangements: Complexity and Costs for Employers and Employees

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There will be an extended transition period involving extensive litigation to settle complex questions of law, uncertainty and transition costs for business whilst there will be employees who lose benefits and entitlements and/or find their wages frozen. Leaving aside the inevitable High Court challenge to the constitutionality of the use of the Corporations power in *WorkChoices* – and the technical matter of determining which employers are or are not Constitutional Corporations – there are transitional arrangements for corporations entering and exiting the Federal system. Constitutional Corporations now in the state system have three years to shift into the Federal System. Current state awards and agreements will become transitional agreements. Non-constitutional corporations currently in the Federal System will remain in the Federal System for up to five years.

Aside from the significant adjustment costs for firms, representative bodies and public institutions, the design of the transitional arrangements will lead to employees losing entitlements and wage increases in the change-over. For employees of constitutional corporations in the state system, as Taylor notes (2005), as the only way to gain a wage increase will be to make a federal agreement (including an AWA), they could suffer a three-year wage freeze if their employers refuse to bargain (leaving employees in low-skill occupations with little bargaining power particularly vulnerable). State employees will also lose some benefits in the transition because some entitlements are non-allowable matters under Federal awards. Employers may be able to evade state awards if they are determined to have made a 'genuine effort' to negotiate an agreement in which case the

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lesser AFPCS would apply. In this context, employers transferring into the Federal System will also therefore enjoy considerable bargaining power.

Consequently, whilst *WorkChoices* is designed for the benefit of employers, there will also be new risks, complexities and costs for many employers under these changes. Although there is a perception amongst small business people that they now have an open-ended right to sack at will, there will be some redirection of claims into unlawful dismissal, discrimination and breach of contract cases. There will be fewer claims but those that proceed will be lengthier, more costly and proceed under legal rules where the onus of proof is placed on the employer. There will be an extended transition period of uncertainty and employers will be roped into a notoriously complex system which requires them to pour more money into the pockets of lawyers. Employers used to the State system will now be exposed to protected action, the complexities of the secret ballot process and labour disputes will be more volatile and unpredictable.

5 Projected Outcomes: the Growth of Low-Pay Jobs, Inequality and Fragmented Hours

In relation to the non-bargaining sector, there are two broad policy alternatives. The first policy model is a 'living wage' strategy in which minimum wages are kept at a level which allows wage earners to be self-reliant and not dependent on government transfers to protect them from poverty. The second policy model is a 'low wage sector' strategy in which the earnings of the low-paid are allowed to fall to very low levels, and government transfers are then used to lift some people out of poverty. Tax transfers and the social security system have been used to offset the growth of wage inequality throughout the 1990s in Australia but Australia still adheres to a living wage policy through the maintenance of the award safety net. *WorkChoices* will cement a shift to a low-wage sector strategy.

5.1 Wage Inequality and Low-Pay: Australia in International Perspective

Labour market deregulation in the English-Speaking nations is universally acknowledged to have accelerated the growth of inequality and low-pay jobs. The OECD (2004: 166), in its last year's *Employment Outlook Report*, concluded their review of evidence on wage-setting and earning trends:

Confirms one robust relationship between the organisation of collective bargaining and labour market outcomes, namely, that overall earnings dispersion tends to fall as union density and

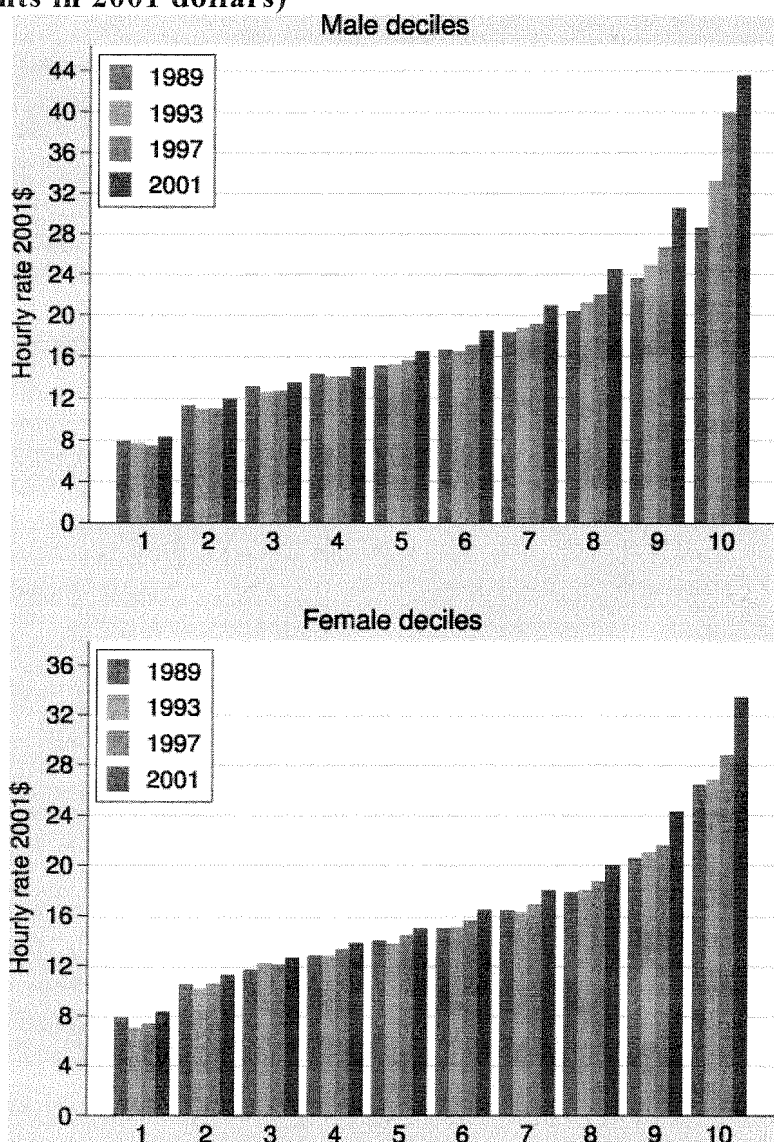
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bargaining coverage and centralisation/coordination increases. It follows that equity effects need to be considered carefully when assessing policy guidelines related to wage-setting institutions.

The OECD failed to confirm significant differences in the economic performance of different bargaining systems – though some of the evidence was suggestive that systems of coordinated flexibility combining multi-employer bargaining with decentralised flexibility delivered superior outcomes. However, on the impact of collective bargaining, coordinated wage-setting and minimum standards the evidence was unequivocal: the deregulated systems of English-Speaking nations such as the United States and the United Kingdom were associated with higher levels of low-pay, inequality and poverty.

Australia already has much in common with other English-speaking nations, notably the growth of wage inequality arising from a highly fragmented and decentralised bargaining system, but the award system and annual safety net adjustments have moderated the impact. Figure 5.1 illustrates changes in hourly rates by decile from the poorest 10 per cent (1) to the richest ten per cent (10) for men and women between 1989-2001:

Figure 5.1: Changes in median earnings by deciles, Australia 1989 to 2001 (Absolute amounts in 2001 dollars)



Source: Reproduced from Watson et. al. (2003). ABS. (1989) *Confidentialised Unit Record Data from How Workers Get Their Training Survey*; ABS (1993, 1997) *Confidentialised Unit Record Data from Survey of Education and Training*; ABS (2001) *Confidentialised Unit Record Data from Survey of Education, Training and Information Technology*.

Figure 5.1 graphically illustrates the growth in wage inequality throughout the 1990s as the top two deciles experienced phenomenal growth, the middle experienced moderate growth and the bottom deciles experienced stagnation. However, figure 5.1 also shows that the decline in real median earnings of the bottom three deciles for men between 1989-1997 was overturned between 1997-2001 primarily reflecting the healthier safety net

adjustments. In the case of women, trends were more varied between these three deciles but real median earnings generally grew between 1997-2001 after decline or stagnation between 1989-97. Using another measure, hourly rates of pay as a ratio between deciles, Table 5.1 also illustrates earnings amongst the bottom decile have stabilised in relation to median earnings since 1997 after falling through the 1990s:

Table 5.1: Percentile ratios for hourly rates of pay, Australia, 1989-2002

Year	10/50	90/50	90/10
<i>Male</i>			
1989	0.70	1.60	2.28
1990	0.66	1.64	2.48
1993	0.66	1.69	2.55
1994	0.67	1.72	2.55
1997	0.64	1.78	2.77
2001	0.64	1.84	2.87
2002	0.64	1.80	2.80
<i>Female</i>			
1989	0.71	1.53	2.17
1990	0.67	1.58	2.37
1993	0.67	1.61	2.40
1994	0.70	1.58	2.28
1997	0.71	1.61	2.27
2001	0.69	1.68	2.43
2002	0.70	1.62	2.31

Source: STE, IDS, HILDA. Population: All employees in non-agricultural industries. Weighted by cross-sectional weights.

There is no more recent data for 2002-04 but it is probable that the healthy minimum wage increases of these years have also more or less maintained the relative share of wage-earners in low-pay jobs.

Consider now the incidence of low-paid employment in Australia by comparison with the UK and the USA in Table 5.1.1.

Table 5.1.1: Incidence of low-paid employment by occupation, age and sex (%)

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

Source: OECD (1996, p. 72–

Reproduced from Briggs, Buchanan & Watson (forthcoming).

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

Australia has a much lower incidence of low-paid employment by comparison with the UK and the USA. The differences are particularly marked for women, as almost twice as many women are in low-paid employment in the UK and the USA than Australia, and for low-skill occupations such as clerical, sales and labourers. These figures give some indication of how wage inequality and low-pay jobs can grow once the bottom end of the labour market is deregulated. Over time, the incidence of low-paid employment and the working poor in Australia will rise towards the levels found in the UK and the USA under the reforms proposed by the Coalition.

5.2 *How will the Low-Wage Sector be Expanded?*

There are five mechanisms through which low-pay jobs will expand under these reforms:

1. 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. The *Independent Contractors Act* will make 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

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employees can be presented with take-it-or-leave-it AWAs which undercut existing rates and conditions. Liberalised transmission of business arrangements, greenfield agreement options and unfair dismissal provisions will also 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 the statutory protections 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. Minimum wage-setting will pass from the AIRC to the AFPC whose personnel lack the same independence because they are only fixed-term appointments. The objects of the Act which shape their wage rulings have also been rewritten, removing the requirement to 'provide fair minimum standards for employees in the context of living standards generally prevailing in the Australia' (Workplace Relations Act, s.88B (2) (a)) from the principles. There is also no specification on how regularly minimum wages

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should be increased and no mechanism for triggering a review which could lead to less frequent adjustments. The clear objective is to further widen the gap between minimum wages and average wage rates.

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.

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.

5.3 *Welfare to Work Reforms: Constituting Labour Supply for Low-Wage Jobs*

In the 2005 Federal budget, the Coalition announced major reforms to welfare-to-work arrangements focused on those receiving parenting and disability allowances. Ostensibly, these reforms are directed at solving labour shortages - dealing with the demographic 'time-bomb' of an aging population by prodding single parents and

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disability pensioners into work. However, these changes fail to tap into the richest sources of unutilised labour – married women with children and mature-aged workers. Their real impact is likely to be in generating a labour supply for low-wage jobs rather than as a genuine solution to labour and skill shortages in other more skilled occupations.

From 2006 onward, new welfare recipients on supporting parents benefits and disability benefits will be expected to undertake job seeking activities. Those who are assessed as being able to work will be moved from disability and single parent allowances to unemployment benefits which are lower and subject to tighter eligibility criteria. They will also become subject to the policing of both Centrelink and Job Network providers. The latter will be given, for the first time, the power to breach their clients.

If the object is to address labour shortages, de-regulating the bottom of the labour market and punitive welfare-to-work measures are mis-directed as the biggest sources of untapped labour are married mothers with children. As Ross Gittins (2005a: 8) notes:

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

Comparative analyses of the employment rates of women with children clearly illustrate Australian policy settings and workplace practices constitute an abnormally high disincentive to work for married mothers.

Table 5.3: Employment Rates for Women Aged 25-54 by Presence of Children, Australia and OECD

	No Children	One Child	Two or More Children
Australia	68.4	55.3	43.2
OECD	73.7	70.6	61.9

Source: OECD 2002 cited by Campbell & Charlesworth 2004: A2-12.

Note: The employment rate is the number of employed persons expressed as a percentage of the working-age population.

Employment rates for women fall moderately as women enter motherhood across the OECD but extremely sharply in Australia. As Campbell & Charlesworth (2004: 12) conclude: "These data suggest that there is something distinctive about the labour market transitions in relation to motherhood in Australia. The balance of rewards and costs from employment may be loaded against mothers."

There are three primary reasons – tax/welfare disincentives, difficulties accessing quality and affordable childcare and poor quality jobs (lower pay and entitlements) in workplaces where the uptake of family friendly practices is rare outside professional and skilled occupations.

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The tax welfare system – especially the Family Tax Benefits system - creates powerful disincentives to work for mothers (Apps 2005; Apps & Rees 2002). Social security benefits in Australia are paid according to very precise means-testing guidelines. One of the consequences of this is that ‘poverty traps’ are common. When low income recipients earn additional money, they lose a very large percentage of that extra income by way of tax payments and reduced benefit payments. In this context, the Family Tax Benefit System is particularly important as it amounts to a system of joint taxation, raising effective marginal tax rates on the earnings of a second earner – often women with children looking for part-time work. For part-time second earners in the bottom quintile of earnings, there is an effective marginal tax rate of just under 45 per cent (Apps 2005). Importantly, these calculations also do not include the cost of childcare. Under the 2002-03 system, once childcare payments were also included, Toohey and Beer (2004) found when mothers worked between 10-19 hours the family’s disposable income barely increased and would actually fall in some cases.

When there are young children present, the output of household production becomes a close substitute for market output. The most important example of this is child care, which can be provided at home or bought on the market. If the second earner, typically the mother on a lower wage, faces a high effective tax rate and quality child care is not available at an affordable price, she is likely to switch from market to domestic work. This substitution contracts measured GDP and expands the domestic sector. Jobs go from the market place to the home. Employment and the tax base of the economy contract (Apps 2004).

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Families doing cost-benefit analyses simply conclude it is not worthwhile for mothers to work.

Compounding these disincentives is the absence of supportive arrangements inside and outside the workplace. Enterprise agreements have a low and very uneven incidence of family friendly entitlements (Whitehouse 2001). At least 40 per cent of the female workforce has no access to paid maternity leave which is a standard entitlement throughout the OECD - a figure which rises substantially for low-skill clerical, sales and service workers (82 per cent) compared to professional workers (46 per cent). The quality, cost and accessibility of childcare to support women combining paid employment and motherhood is also poor (Taskforce on Care Costs 2005; Pocock 2003).

The industrial relations reforms will worsen these disincentives. De-regulating minimum standards will lower the quality and earnings of part-time jobs and allow for more irregular and unpredictable hours. The impact of removing the award safety net and the NDT is likely to be strongest in areas with high proportions of part-time, female employment such as retail, hospitality and health/community services. Lowering the earnings and the quality of these jobs can only discourage women with children from working. As one-in-four women are award-only employees, the impact will be felt much more sharply amongst women than men.

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Nor is there any evidence that greater usage of AWA's will address this shortcoming. Only 7 per cent of AWA's provide for paid maternity leave and only 4 per cent for unpaid maternity leave (Baird & Todd 2005). Past studies have found the presence of unions has a more significant effect on the earnings of women than men and the wider wage differential on AWA's also fits with this research. Over-riding the State systems will also remove the scope to mount pay equity cases which have allowed some female-dominated occupations to significantly realign pay rates.

However, the work-to-welfare reforms dovetail with the industrial relations reforms because they constitute a policy for reorganising the unemployed and others dependent on welfare into a large-scale, low-paid workforce. The hypothetical example of 'Billy' in the *WorkChoices* (Commonwealth of Australia 2005) booklet makes this clear. Billy is offered a job contingent on him accepting an AWA which removes public holidays, rest breaks, bonuses, annual leave loadings, allowances, penalty rates and shift/overtime loadings. If Billy were to reject the job, his welfare payments would be frozen. Squeezed by the double-bind of industrial relations laws which allow for take-it-or-leave-it AWAs and welfare reforms which remove his welfare payments, Billy clearly doesn't have much of a choice. Coercive and punitive IR and welfare laws in this way will generate a supply for low-wage jobs, undercutting the wage and employment standards of existing workers, and even facilitating replacement strategies to substitute new for existing workers.

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Clearly, a low wage strategy cannot also work unless the standards of the welfare system are eroded. Entitlements will have to be either withdrawn or lose their purchasing power in order to maintain the incentive to work. As Briggs, Buchanan & Watson (forthcoming) note:

Such an approach is very disturbing. For those most immediately affected, it promises to load onto their already disadvantaged lives a greater burden of disadvantage. From a labor market perspective, this approach ignores the fact that most employers don't want to hire them. Welfare policy should focus on the challenges faced by all citizens in managing risk and in smoothing the transitions between the different stages in their working lives. Family formation, child care resources, tax disincentives and issues of female labour supply should be the major starting point for contemporary debates, not whether the disabilities suffered by aging factory workers are genuine or not.

The end-product will be to deepen poverty whilst leaving intact disincentives to work for those with some degree of choice.

5.4 *Labour Shortages and an Aging Population: Countervailing Factors?*

One common response to the Federal Government's IR reforms has been to say: low unemployment and labour shortages will prevent employers from exploiting the removal of the NDT and the award safety net to lower the entitlements and earnings of employees. An aging population will intensify these labour shortages. The Prime Minister, John

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Howard, and Minister for Workplace Relations, Kevin Andrews have repeatedly claimed it's a 'workers market'. Labour market conditions will protect employees (and indeed necessitate legislation enhancing the bargaining power of employers).

Labour shortages are a significant countervailing factor. Employers experiencing chronic skill shortages certainly are not in a position to be cutting wages and entitlements if they are to attract scarce labour. But loose, generalised statements about labour and skill shortages obscure their uneven character: labour shortages in some areas and some sectors co-exist with surplus labour in other areas and sectors where the unemployed report they can't find work because of too many applicants, lack of jobs, their age or skills mismatches. The effect in the short-to-medium term will be uneven development, increased inequality and the accelerated emergence of low-pay/single hourly rate jobs.

The official unemployment rate is at its lowest level since the 1970s but, as the ABS illustrates, this figure over-states the level of labour utilisation. The unemployment rate does not incorporate either:

- the under-employed (i.e. part-time employees who wish to work more hours) who as a group are roughly the same size as the unemployed;



- . those who are 'marginally attached' to the labour force (i.e. actively seeking work but not available to start in the week of the survey or not actively looking for work but available to start within the next four weeks).

As of September 2004, the ABS (2005b) measured the 'extended labour underutilisation rate' to be almost 2 and a half times the official unemployment rate at 12.2%.

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

. . . the proportion of the 15+ population in employment is at historically high levels. But if we take into account the changing mix of full-timers and part timers in the workforce, and their average hours of work, and derive a measure of average hours worked per head of the whole population of working age (15+ years) . . . labour utilisation does not look so high by historical standards . . . we have been at or around present levels on a number of occasions in this cyclical expansion (Henry, 2005, p. 3)

Nor do these figures account for the extraordinary growth in discouraged job-seekers and disability pensions. If we add to this, the involuntary exodus from the labour force of mature age workers—particularly men in their late 50s and early 60s with backgrounds in blue-collar occupations—we glimpse still higher levels of unemployed labour. As Evan Thornley observed in his Alfred Deakin Innovation Lecture:

We used to have about a million unemployed and about 100,000 disability pensions. Now we've got half a million unemployed and 600,000 disability pensions. We've just rearranged the deck chairs, and declared victory (Thornley, 2005).

ABS data on the reasons the unemployed can't find work also highlight the uneven character of labour shortages. The latest ACCI/Westpac (2005: 7) survey of industrial trends found 18 per cent of employers reported labour was 'harder to find'. Table 5.4 illustrates similar proportions of the unemployed report the 'main difficulty' experienced in finding work is too many applicants or no vacancies:

Table 5.4: Main Difficulty of Unemployed People in Finding Work

Main Difficulty	Percentage of Unemployed
Insufficient Work Experience	13%
Too many applicants for available jobs	12%
Considered Too Old by Employers	11%
Lacked Necessary Skills or Education	10%
No Vacancies in Line of Work	8%
Too Far to Travel/Transport Problems	8%
Own ill Health or Disability	7%
No Vacancies at All	6%
Other reasons	25%

Note: Other reasons were unsuitable hours, other difficulties (ethnic background, considered too young), childcare/family responsibilities, no feedback from employers, language difficulties, no difficulties.

Source: ABS (2005b: 28).

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Aside from young workers coming up against 'insufficient work experience', the most common reasons were 'too many applicants' (the number one reason for 35-44 year olds), being considered 'too old' (number one reason for over-45 year olds), lacking necessary skills or no vacancies. Just as a significant number of employers report difficulty in finding labour, so a significant number of the unemployed report a surplus of applicants, no jobs, skills mismatch or employer age-ism.

These results are not contradictory. They reflect variations in labour market conditions between and within sectors and regions. Labour shortages may stop employers in some areas or sectors from removing award conditions such as penalty rates but conditions of labour surplus will allow many other employers to take advantage of the removal of the award safety net and no-disadvantage test. There are also major regional imbalances between supply and demand: labour shortages in affluent parts of the major cities and some regional areas currently co-exist alongside a paucity of jobs in many regional areas and outlying suburban areas.

The projections of an aging population are not in question. However, much commentary on labour shortages appears to assume incorrectly all other factors will remain constant. The economy is softening as three of the 'strong tailwinds' which have been propelling growth will ease up sooner or later in the short-to-medium future – low interest rates, the highest terms of trade in 30 years and falling savings/rising household debt (Hughes 2005). As Reserve Bank Governor, Ian McFarlane, recently said: 'we will have to get used

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to seeing GDP growth rates starting with the numbers 2 or 3 rather than 3 or 4 for a time'. There are also policy mechanisms available to increase labour supply, notably immigration policy (one can expect proposals for 'guest workers' to re-surface after being raised for the first time earlier this year) but also measures to better utilise mature-aged workers and women with children.

In short, Australia is not about to 'run out of workers' and it is more than likely labour and skill shortages will co-exist with labour surpluses. It is worth noting that these reforms will do little to solve skill shortages. The link between low levels of training and casualisation has been 'overwhelmingly documented' (see Buchanan 2004). Opening up pay differentials between permanent and casual jobs and encourage competition on the basis of labour costs hardly creates an environment conducive to lifting our training performance and addressing skill shortages. The intensity of competition already has led to a preoccupation with deploying labour eroding the capacity to develop labour through skill formation at enterprise level. However, the character of shortages is already highly uneven and work-to-welfare measures will boost the supply of labour for low-wage jobs. The potential for growing inequality and social divides, especially between affluent and poorer areas of cities and between the cities and regional areas, are obvious.

5.5: Low-Wage Jobs and Labour Productivity

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Australian productivity growth has stagnated since 1999 after strong growth from the early/mid 1990s. During the 1990s, some championed the emergence of a 'miracle' or 'new economy' on the basis of all-time high productivity growth rates (Banks 2003). After a period in which it was claimed productivity was merely 'taking a breather', the productivity slowdown is now acknowledged - sometimes used as justification for the IR reforms. What will be the effect of these IR reforms on productivity?

It should be clearly understood that the causes of productivity growth are complex, multi-faceted and contentious. There are a multitude of factors outside labour markets which are arguably more important in determining productivity levels such as capital investment and usage of information and communications technology. Additionally, a vigorous debate is still in progress over Australian productivity trends over the past decade. During the 1990s, there were technical criticisms of the new multi-factor productivity index and the new ABS concept of 'productivity cycles' (as productivity tends to move in line with business cycles). Productivity growth figures for the 1994-99 cycle were also subsequently revised downwards from the all-time high of 2.4% per annum to 1.8% which is comparable with the 1960's (Parham 2002; Quiggins). Commentators who argued at the time the 90's productivity surge would prove to be temporary, as it was significantly caused by unsustainable work intensification are now claiming some vindication – though they also agree the debate is yet to be conclusively settled.

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Notwithstanding these caveats, there are serious reasons to doubt that these reforms will contribute positively to productivity growth. There is no convincing evidence individual contracts will lift productivity. Peetz (2005b: 16) concludes from a review of the academic literature and ABS data:

The most appropriate conclusion to draw from the quantitative studies appears to be that there is no consistent relationship between unionism and productivity, but that unionism can raise productivity. And equally, there is no consistent relationship between individual contracting and productivity.

Some workplace will increase productivity following the introduction of individual contracts but others will experience productivity declines through the loss of trust, voice and morale. Studies of AWA content have to date found they are focused on cost-reduction through wage cuts, work intensification and casualisation rather than high-performance work models centred on a skilled workforce in collaborative work systems with high levels of investment in staff development (Cole et. al. 2001; Mitchell & Fetter 2003). Using OEA survey data, Peetz (2002) illustrated that 'ordinary', non-managerial employees on AWAs were less satisfied with their pay and conditions than non-AWA employees. As Wooden (2005) notes, by delivering unilateral managerial control, AWAs could effectively abrogate managers from having to manage which is likely to lead to lower employee commitment and productivity.

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Removing the safety net at the bottom of the labour market enhances incentives and pressures for firms to compete on the basis of lowering labour costs instead of innovation and productivity. An effective floor of employment and minimum wage standards acts as a 'productivity whip' because it maintains pressure on firms to invest in labour-saving technology and find efficiency improvements in how they utilise labour to offset cost increases. Enabling firms to cheapen labour through the removal of entitlements such as penalty rates operates much like a subsidy much like a tariff. It allows inefficient firms to survive by passing on the costs of its inefficiency to its workers where they would otherwise be displaced by more efficient rivals. Even worse, by gaining short-term competitive advantages, these firms can pull other firms down the low-cost road with them. The focus on short-term cost-cutting can displace efforts for long-term strategies based on skill development, investment, better products and services (Brosnan 2005).

Consider again the example of New Zealand. Figure 5.5 compares labour productivity for Australia and New Zealand from the 1970s:

Figure 5.5: Labour Productivity, Australia and New Zealand, 1978-98

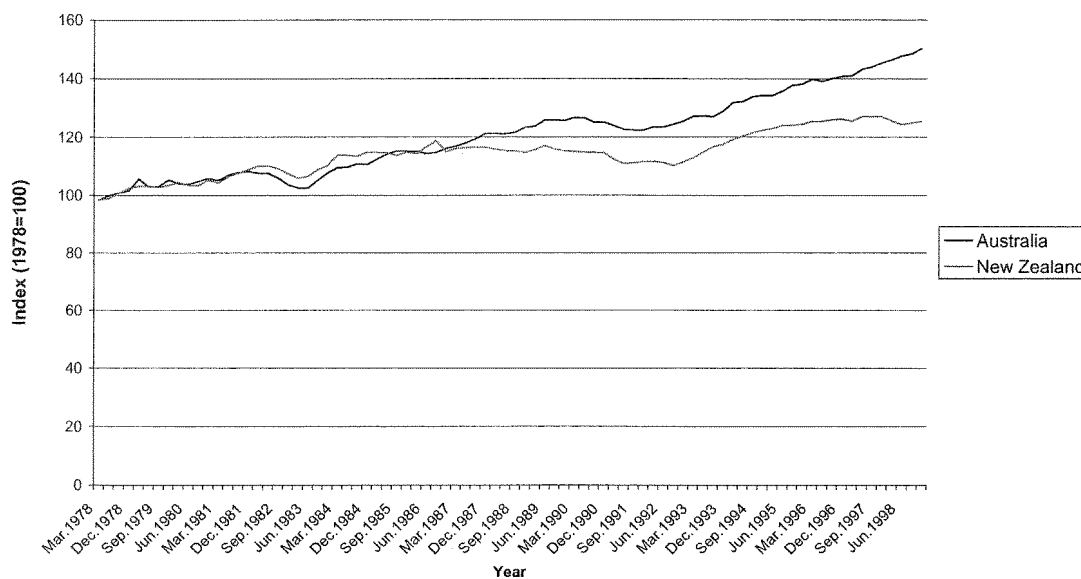


Figure 5.5 illustrates that labour productivity increased at roughly the same rate for Australia and New Zealand from the late-1970s and 80s until the introduction of the *Employment Contracts Act* – from which point Australian labour productivity was demonstrably superior. As Dalziel (2002: 42) concludes:

The introduction of the Act appears to have marked the end of a long period of strong comparability between New Zealand and Australian labour productivity growth, to New Zealand's great disadvantage.

Australia circa 2005 is not New Zealand circa early 1990s. Our economy is much more diverse, modern, better integrated into global capital flows and more sophisticated in its usage of new technologies such as ICT. New Zealand also moved almost overnight from an award system to a deregulated labour market at the depth of a recession so the

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magnitude of the change was greater. But just as deregulating the bottom-end of the labour market led to a focus on cost rather than innovation and productivity, so the same effect on a smaller scale is likely in Australia.

The danger is that a low-wage/low-productivity cycle could be forged. Low-wage jobs are low-productivity jobs with low capital investment, low skills training and export performance (see ABS data in ACTU 1998). Again, the USA is instructive. The emergence of a large pool of low-wage jobs in the service sector has had a serious and adverse impact on productivity growth. In the US manufacturing productivity growth between 1979 and 1990 was 2.9 percent and between 1990 and 1996 it was 4.2 percent. In non-manufacturing, it was 0.3 percent and 0.2 percent respectively. These latter growth rates were a tenth of those prevailing in German non-manufacturing over the same period (Brenner, 1998, p. 241). Labour productivity growth rate per annum from 1979 – 96 was just 0.8% - well beneath the OECD average (excluding the United States) of 1.9% (Mishel et. al. 1999: 360). As Robert Brenner concluded:

The upshot has been a truly vicious circle, in which low wages have made for low labour productivity growth which has in turn rendered 'unrealistic' any significant growth of wages and thereby provided the basis for continued low productivity growth (Brenner, 1998, pp. 206-07).

The assertions by the Federal Government that these reforms will lead to higher productivity are not backed by international or Australian evidence; in fact, no major

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industrial relations academic has supported these claims (see Lansbury 2005; Gregory 2005; Wooden 2005).

6 Projected Outcomes: Social and Community Impacts

The effects of these far-reaching reforms will not stop in 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 emergence of social exclusion, dis-connected areas and welfare dependency (including employers) will also grow over time.

6.1 *Fragmented Hours: the End of Common Time?*

There have been three major trends in relation to working time since the 1970s: lengthening hours for full-timers (now amongst the longest in the OECD), less standard and more irregular hours and increased work at 'family unfriendly' hours. Greater variability in working hours often meets the needs of business for flexibility and of workers for greater diversity. However, working time preference data also now clearly illustrates a growing proportion of under-employed workers who cannot find sufficient hours, rising dis-satisfaction with irregular and erratic hours and rising dis-satisfaction with extended hour jobs with 'long hour cultures' (Watson et. al. 2003: 87-91).

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These trends will be intensified by these reforms. Researchers such as Bell and Freeman (1994) and Bosch (1999) have noted that as earnings inequality increases, so the quality of hours worked decreases as full-timers work longer hours to maintain income and part-time hours become more erratic and fractured. Removing award entitlements to penalty rates for long or unsociable hours will accelerate and deepen the trend to jobs with single-hourly rates. The removal of financial disincentives to weekend and evening work will lead to greater variation in hours and the structure of the working week⁵ – undermining and fracturing working time standards but also families, friendships and communities: ‘this change in the timing of work, assaults common family and recreational time’ (Pocock 2003).

6.2 *Work/Family Balance, Family Relationships and the Quality of Parenting*

The endemic ‘collision’ between work and family is by now universally acknowledged by academic researchers and in public debate. John Howard has referred to it as the ‘barbeque stopper’. The changing nature of work and changing patterns of workforce participation are making it harder to balance work and family life in terms of reconciling time pressures, caring and parenting responsibilities, intimate and close relations and health and well-being (Buchanan & Thornthwaite 2000: 61). Long-hour working cultures

⁵ Part-time employees will also lose entitlements to minimum hours. Employees could find themselves called in at short notice. Refusal to work as requested could also lead to dismissal so the removal of unfair dismissal protections leaves employees vulnerable to unreasonable requests.

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leads to absentee fathers who feel they have too little involvement with their children (Russell et. al. 1999). Both parents worry about the absence of male role models for their children, especially boys. Work, inadequate support networks and increased travel times leads to mothers who are constantly rushed (ABS 1999). One-third of all workers say work leaves them with little energy or time to be the parent they want to be and just under half say work leads them to miss out on some of the rewarding aspects of being a parent - for employees who work more than 45 hours a week these figures increase to just under half and nearly two-thirds respectively.

As ex-Director of the Australian Institute of Family Studies, Don Edgar (2005), notes:

Sitting sadly in the middle of this tug of war (between work and family) are the nation's children, hurried from one carer to another, missing out on both quantity and quality time with either parent, unsure where they stand in the priorities of Mum's and Dad's busy lives

These pressures also erode the quality of intimate and work relationships for mums and dads. Time spent together is poor quality time because they are tired and irritable. This too has indirect effects on children. Indeed, whilst factors such as family income and housing quality affect the development of children, it is parental satisfaction with working arrangements and social relationships which are the biggest influence because otherwise 'their unhappiness carries over to the children' (Edgar 2005).

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The IR reforms are likely to deepen these trends and work-family pressures. As Don Edgar continues:

Yet in Australia, we have a government hell-bent on resisting paid maternity leave, let alone parental leave; a government insisting that only paid work – not caring work – is of value to the economy; not seeing that the work of carers is crucial to the good society; a government driving everyone into a paid job, regardless of its pay level or its suitability for meeting family and community needs, yet pretending to be in favour of ‘family values’. In my mind, this is hypocrisy at the highest level ... proposed new industrial relations laws are likely to damage the fabric of family life and make it even more difficult for Australia’s parents to raise their children to become competent, confident citizen’s in a globalising future (Edgar 2005).

Certainly, there is no encouragement to be gained from other experiments with labour market deregulation. As Buchanan & Thornthwaite (2001: 12) noted from a review of international studies:

In the international comparative literature we did not find any references that reported market based initiatives (such as those that prevail in the US) delivered superior outcomes in terms of the general choices for workers or the quality of care for children.

Professional families also feel these strains and pressures but they are better equipped to cope. These reforms are going to make life much harder for low-income families.

6.3 *Work-Life Balance and Community Participation*

Similar pressures will affect work-life balance and the strength of community. The locus of community has already shifted from the neighbourhood towards the workplace because of long and variable working hours and increased mobility with more short-term employment in different locations. Friendships, social bonds and community participation suffer:

most employees working long hours describe giving up hobbies, sport and voluntary work because of lack of time, because they come home from work exhausted, or because they cannot predict when they will be available ... voluntary work in social clubs, charities and organisations like the army reserve is also constrained for those working long hours and their partners, many of whom describe a 'closing in' of their social circle and community: a work/eat/sleep cycle which constrains their days and leaves their personal community impoverished (Pocock 2003: 56).

Australians are still strongly committed to volunteer work and community participation but long and fractured working time lowers the capacity to participate:

6.4 *Welfare Dependency, Poverty and Social Exclusion*

An associated by-product of a growing low-wage sector will be increased welfare dependency.

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In their submissions to annual safety net hearings, business lobbies and the Federal Government have consistently advocated shifting the emphasis for poverty alleviation from minimum wage increases to transfer payments. As Chris Richardson observed:

The problem is that we have been using our industrial relations system like a welfare system, using companies to try and achieve fairness when that's not what they're good at . . . They're good at making money, and we should let the tax and welfare systems get the fairest system we can make (quoted in Garnaut (2005b: 7).

So although the effect of welfare reforms will be to prod disability and single parent allowance holders in short-hour, low-pay jobs, the countervailing effect will be a larger group who rely on transfer payments to supplement their incomes. The use of tax credits or transfer payments are widespread in the US as a consequence of low-wages. In New Zealand, also, the number of persons on income support and tax credits to supplement income from paid work increased by over 100,000 from 1991-99 (Conway 2001)

There are important social changes involved in excessive use of the welfare system to offset stagnant wages. A living wage can underpin a society of self-reliant individuals in a way in which government subsidies to low wage employment can never do. The recipient, despite a partial income from paid employment, remains 'dependent' on welfare. A secure livelihood, based on a living wage, earned in the workplace, remains

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a far preferable basis for citizenship and social inclusiveness. The balance has already shifted in Australia but further shifting the balance would have negative equity and social consequences (Briggs, Buchanan & Watson, forthcoming).

The effect will be to ratchet downwards earnings for low-income earners, swelling the numbers of the working poor and placing a ceiling on welfare benefits to retain incentive to work. A common response from business economists and lobbyists is to say these criticisms are mis-guided because the real source of poverty is unemployment. The implicit assumption is that falling wages at the bottom end of the labour market is a positive development – though this is rarely explicitly stated for political reasons - because it will increase unemployment. Although this is an article of faith for many economists, based on abstract modeling and aprior assumptions about the elasticity of labour demand (i.e. the responsiveness of employment to changes in wages), there is a vigorous but unsettled debate based on empirical evidence (see AIRC 2005). Put simply, opponents of minimum wage standards and increases have been unable to empirically prove the safety net increases of recent years have cost jobs. Pulling out the ‘floor’ to the labour market is a leap into the unknown with serious risks – as the OECD (2004: 142) notes.

Allowing downward flexibility for the wages of low-skilled workers could do very little to increase employment should labour supply elasticity be high for this workforce segment. In many OECD countries, the interaction of the tax system and income-tested benefits is such that the net income returns to working become very low (or even vanish) once wages fall below a certain level. In such



a context, the main impact of downward wage flexibility may be to worsen inactivity, unemployment and low-pay traps.

This is especially so for low-income mothers as these reforms will encourage higher rates of complete withdrawal from the paid workforce which can have lasting effects:

If you subscribe to the stepping stone argument – that a low paid casual or part time job now may lead on to a higher paid job with more hours in the future – then this result should be worrying. The very people who stand to benefit from greater participation in the workforce are the ones who face the highest financial disincentives to do so. This may contribute to long-term reliance on welfare: if low income mothers are discouraged from taking the first step, then they are much less likely to make the second and subsequent steps on the path to a more self-reliant future (Apps 2002: 68).

These reforms will land on the most vulnerable members of society and will have noticeable regional dimensions. Conditions of surplus labour exist in affluent parts of the major cities but the reverse is often the case in outer-suburban areas. Labour shortages also exist in some regional areas whilst others are becoming 'black holes'. These IR reforms will accelerate these processes of uneven development, the growth of zones of social exclusion and, broadly, stimulate the drift of young people away from small regional centres to bigger regional centres and the cities in search of better quality jobs.

6.5 *The Social Gradient: Inequality, Work and Health Outcomes*

The linkages between IR reform and the health of a society are not commonly made. It may seem far-fetched to assert IR reform could worsen life expectancy and rates of morbidity (illness). However, epidemiologists have amassed a compelling body of scientific evidence across Europe, North America and Australia of a 'social gradient' (Marmot 2004: 2) in population health linked to income distribution, the quality of work and community. 'In the developed world', as Professor Wilkinson (1996: 3) notes, 'it is not the richest countries which have the best health, but the most egalitarian.' The Hon. Kevin Andrews says there should be no place for 'fairness' in designing an industrial relations system. But inequality has health costs: unequal societies usually have lower life expectancy, higher rates of 'excess' mortality and morbidity and worse physical and mental health for low and middle-earners.

It is well-established that persons of 'low' socio-economic status have higher mortality rates for most major causes of death and higher rates of morbidity, both in Australia and internationally. In relation to Australia, Turrell & Mathers (2000: 434):

With few exceptions, the evidence shows unequivocally that people of 'low' SES (socio-economic status), however defined, have higher mortality rates for most major causes of death, experience more ill-health (both physiological and psychosocial), and are less likely to take action to prevent disease or detect it at an asymptomatic stage. Socioeconomic differences in health are evident for

both men and women at every stage of the life course, and the relationship exists irrespective of how SES and health are measured.

This much would probably not come as much of a surprise to many people.

However, the startling insight of contemporary social epidemiologists is that there is a social gradient which operates along the entire occupational and social hierarchy – for life expectancy and rates of morbidity across a range of conditions such as stroke, heart disease, cancer, mental illness and gastrointestinal disease. So persons at the top of the occupational and social hierarchy on average live longer and are less likely to develop illnesses than those in the middle whose life expectancy and rates of morbidity are in turn better than those at the bottom. The social gradient even operates in white-collar workplaces where employees are not poor or exposed to dangerous or hazardous work environments. The social gradient, as Marmot (2004: 14) is at pains to stress, is not just an affliction for the poor: widening inequality will also impact on ‘people in the middle of the hierarchy’ as the gradient steepens.

ABS data on the ‘probability of dying’ offers one particularly stark illustration of the social gradient.

Figure 6.5: The Probability of Dying, 25-64 Years, by Socio-Economic Area, Australia, 1996



Source: Turrell & Mathers 2000: 434.

Note: data limitations require the calculations to be made using area-based data instead of smaller more socio-economically homogenous areas of individual-level data. These 'almost certainly' understate the 'true extent' of health inequalities (Turrell & Mathers 2001: 237).

There is a linear relationship between socio-economic status and the probability of dying. Consequently, as Turrell & Mathers (2000) observe, 'mortality differentials are finely stratified from top to bottom of the socioeconomic hierarchy, suggesting that in Australia ... health inequalities are not confined to a single disadvantaged under-class.'

This is what Marmot refers to as the 'social gradient' – and it can be observed in relation to most sources of mortality and morbidity which afflict wealthy nations:

Which diseases follow the social gradient? The easy answer is: most. In general, the lower the social position the higher the risk of heart disease, stroke, lung diseases, disease of the digestive

tract, kidney diseases, HIV-related, tuberculosis, suicide and other 'accidental' and violent deaths (Marmot 2004: 23).

Once societies reach a certain level of economic development, the distribution of wealth and the level of egalitarianism is a more powerful determinant of health outcomes than economic growth. Absolute wealth is vital for improving population health in poor societies because extra income and resources allow them to tackle malnutrition and poor sanitation. However, in wealthy societies, where degenerative diseases take over from malnutrition and poor sanitation as the major causes of mortality, improvements in mortality rates and life expectancy appear to be largely unrelated to economic growth. The United States is the wealthiest nation but it only ranks 26th in terms of life expectancy (Wilkinson 1999). International studies generally find mortality, especially infant mortality, in wealthy nations is more closely related to the distribution of income within these societies than differences in income between nations (Hales et. al. 1999; Kawachi & Kennedy 2002; Marmot 2004; Waldmann 1992; Wannemo 1993; Kaplan et. al. 1996; Kennedy et. al. 1996; Le Grand 1987; Rodgers 1979; Stainstreet et. al. 1999; Van Doorslaer et. al. 1999)⁶: 'There is a strong relationship between income distribution and national mortality rates. In the developed world, it is not the richest countries which have the best health, but the most egalitarian' (Wilkinson 1996: 3).

⁶ For a summary of the dozen projects which have found such a relationship see Wilkinson (1996). Some scholars have mounted methodological challenges, claiming the extent of the relationship between inequality and health outcomes has been over-stated, question whether it is universal and may be offset but more evenly distributed social investments in public health. None, however, challenge the basic relationship between inequality and health outcomes. As two such critics note: 'would anyone seriously anyone seriously argue that the decades of greater general social (and income) equality of the Nordic countries has had nothing to do with generating better population health profiles? ... Redistribution works, especially in those countries like the UK and US where income deprivation is a particularly salient component of the multiple deprivations that exist in those countries. Lets take up the challenge and see how well it really works' (Lynch & Davey-Smith 2002: 550).

Why is this so? It appears there are economic factors and social or psychosocial factors at work. Economically, there are diminishing health gains at the individual and societal level from additional income. The relationship between health outcomes and income is not linear but curved. In simple terms, this means every extra dollar of income has a bigger impact on the health of the poor than the rich. An unequal distribution of income therefore leads to worse population health – as Subramanian & Kawachi (2004: 81) usefully explain in this hypothetical example:

In a hypothetical society consisting of just two individuals, that is, a rich one and a poor one, transferring a given amount of money from the rich to the poor will result in an improvement in the average health because the improvement in the health of the poor person more than offsets the loss in health of the rich person. Indeed, it is possible ... there may be no loss in health for the wealthy.

However, the social gradient is not just the product of income distribution. It is also the product of the quality of working life, community and social cohesion. Inside the workplace, Marmot and other epidemiologists have found those in routine jobs with less control over their work, autonomy and satisfaction and their lives have higher rates of heart disease, depression and other health problems. The absence of reciprocity at work, rewards for effort, and outlets to control stress and balance work-life affects health risks such as coronary heart disease. Lifestyle and risk factors such as smoking, lack of exercise and alcohol consumption only account for a small percentage of the social

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gradient (and are also linked as persons with low control and satisfaction are more likely to engage in unhealthy behaviours). Low self-esteem, chronic stress and sustained activation of stress mechanisms from an absence of social participation and control over work and life lead to physiological changes that in turn lead to increased risk of contracting degenerative conditions such as heart disease. Studies across western nations and Eastern Europe have consistently found strong linkages between control over life and health outcomes (see Marmot et. al. 1978; Marmot et. al. 1997; Bobak et. al. 1998; Bobak et. al. 2000).

We found the link between inequality and poor health was low control. The study suggested a causal chain: the greater the degree of inequality, the less control people had over the lives; the less control the worse the health (Marmot 2004: 214).

Unequal societies tend to be characterised by lower levels of trust, fraternity, social cohesion, supportive networks, community involvement and participation. Unequal societies tolerate higher levels of social exclusion, economic insecurity and less control over their lives for the low-skilled – all of which are psychosocial health risk factors:

In the age of the genome and high-tech medical care, thinking about health typically turns to biology and technology. The discovery of how important control and participation are for health leads in a different direction: to the circumstances in which we live and work ... these social inequalities in health – the social gradient – are not a footnote to the ‘real’ causes of ill-health in countries that are no longer poor; they are heart of the matter (Marmot 2004: 3).

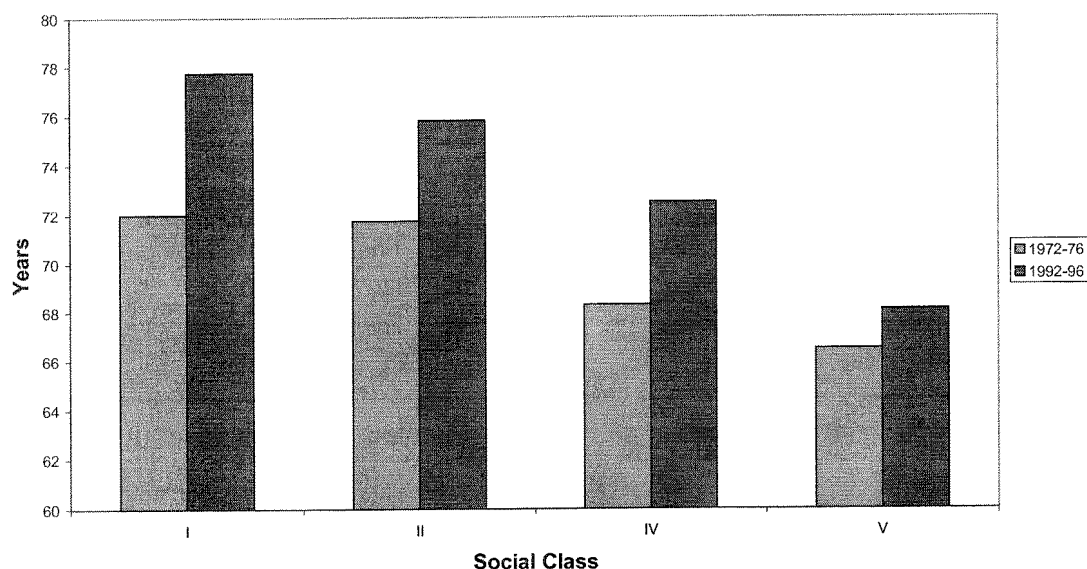
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A 'culture of inequality' is not conducive to good health.

Aside from its effects on the distribution of income and quality of working life, there are direct linkages between some aspects of IR policy and health outcomes, especially in relation to infant/child mortality and development. Notably, international studies have found the statutory provision of paid parental leave 'significantly decreases' infant and child mortality (Ruhm 2000; Tanaka 2005). Australia virtually stands alone amongst the OECD in not legislating for paid maternity leave – effectively tolerating a higher level of infant and child mortality (Pocock 2005). A 10-week increase in paid leave could result in a 2.3 to 2.5 per cent decline in infant death rate, 4.1 per cent for babies aged between 28 days and 1 year and 3 per cent for children aged 1 – 5 years. Paid maternity leave is only offered by just under one-in-four workplaces, primarily higher-income earners, which reinforces the social gradient.

It is, therefore, reasonable to infer the proposed industrial relations reforms are likely to worsen overall population health, especially for those on the lower side of the labour market and the social gradient. An insight into how these reforms might influence health outcomes can be gauged from Thatcher's Britain. Figure 6.5.1 compares changes in life expectancy by social class from before and after the Thatcher Government.

Figure 6.5.1: Life Expectancy for Men by Social Class, England & Wales



Source: Marmot 2004: 27

The factors shaping rates of mortality and morbidity are of course complex and multi-causal. In the United Kingdom, other factors drove rising life expectancy but rising socio-economic inequality meant persons in the lower and middle rungs missed out on most of these gains (life expectancy rose only 2 years in the bottom one-fifth compared to 6 years for the top fifth) and there was a rising gap between the top, the middle and the bottom. Even the second quintile fell back behind the top quintile where they had been previously equal.

This is what is known as 'excess' morbidity and mortality - the 'mortality burden' attributable to socio-economic inequality calculated by determining rates of mortality and morbidity if the whole population enjoyed the health of the advantaged. For Australia, Turrell & Mathers (2001: 238) made the following calculations of the mortality burden in 1997 for men and women aged 25-64:

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(eliminating the) excessive all-cause mortality ... would have resulted in a saving of approximately 12, 418 premature deaths. The corresponding figures for circulatory system disease and cancer were 4190 and 2944 deaths respectively. For females in the same age group, the number of premature deaths attributable to socioeconomic inequality was approximately 14, 532 for all causes, 3504 for circulatory system disease, and 3038 for cancer.

The evidence from the epidemiologists is that there will be health costs arising from industrial relations reforms that will turbo-boost inequality. Excess morbidity and mortality can be expected to increase. Life expectancy for low to middle-income earners will be lower than it otherwise would be, rates of morbidity will be higher and mental and physical health will be lower. Low and middle income earners will benefit less fulsomely from any advances leading to increases in life expectancy and health, especially the growing army of low-paid and working poor which will be generated in the longer-term by these reforms. As Wilkinson puts it: "the poor pay the price of increased social inequality with their health."

The Federal Government has publicly spoken against 'fairness' as a criterion for designing an industrial relations system. The inference is usually it's better to focus on efficiency which will leave us all better off even if does lead to increased inequality. This is not the case with mental and physical health. As Marmot (2004: 18-19) further notes: 'Many politicians, however, preach the virtues of inequality (set the wealth producers

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free). If bigger social and inequalities, i.e. a steeper social gradient, are related to bigger health differences, this might give the politicians pause.'

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