



Australian Government

Department of Education, Employment and Workplace Relations

Senate Standing Committee on Education, Employment and Workplace Relations

*Inquiry into the Workplace Relations Amendment (Transition to Forward
with Fairness) Bill 2008*

Submission of the Department of Education, Employment and Workplace Relations

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WORKPLACE RELATIONS AMENDMENT (TRANSITION TO FORWARD WITH FAIRNESS) BILL 2008

1. Introduction

- 1.1 The Minister for Employment and Workplace Relations, the Hon Julia Gillard MP, introduced the Workplace Relations Amendment (Transition to Forward with Fairness) Bill 2008 (the Bill) into the Australian Parliament on 13 February 2008.
- 1.2 The Bill provides the framework for sensible and measured transition arrangements from Work Choices to the Government's new fair, flexible and productive workplace relations system which will be fully operational from 1 January 2010. The key changes that it will introduce are to:
 - prevent the making of new Australian Workplace Agreements (AWAs) while providing for the limited use during the two year transitional period of new Individual Transitional Employment Agreements (ITEAs) by employers who currently use AWAs;
 - put in place a new no-disadvantage test for all workplace agreements made after the commencement of the legislation; and
 - enable the Australian Industrial Relations Commission (AIRC) to undertake the process of modernising industrial awards.
- 1.3 There is no body of evidence that the provisions of the Bill will have any adverse impact on productivity growth. This view is based on two factors. First, there is evidence that collective bargaining contributes to productivity growth which, in turn, supports responsible, non-inflationary, wage increases. Second, there is an absence of evidence to demonstrate that individual statutory agreements and in particular AWAs improve productivity.
- 1.4 A key priority of the Government is to reduce inflation to the Reserve Bank's target band. The Government has outlined a five point plan to achieve this. The transition arrangements in the Bill were developed in this context.
- 1.5 In addition, the strong protections in the *Workplace Relations Act 1996* (WR Act) and the *Trade Practices Act 1974* that prevent the taking of unlawful industrial action and secondary boycotts remain unchanged, as do the special arrangements and legislation in the building and construction industry.
- 1.6 There is no evidence that the abolition of AWAs will lead to a decrease in employment or an increase in unemployment. The removal of AWAs and the introduction of a no-disadvantage test will also prevent the undercutting of minimum employment standards for employees. The Bill, therefore, strikes the right balance between generating productivity and employment growth and providing fair employment standards.
- 1.7 In referring the provisions of the Bill to the Education, Employment and Workplace Relations Committee, the Senate sought particular reference to:

- economic and social impacts from the abolition of individual statutory agreements;
- impact on employment;
- potential for a wages breakout and increased inflationary pressures;
- potential for industrial disputation;
- impact on sectors heavily reliant on individual statutory agreements; and
- impact on productivity.

1.8 This submission addresses each of these terms of reference.

2. Overview of the Bill

- 2.1 The Bill gives effect to key Government commitments to the Australian people before the last election as outlined in *Forward with Fairness* and the *Forward with Fairness Implementation Plan*.
- 2.2 The transition arrangements in the Bill recognise the importance of providing employers and employees with certainty and time to work through their employment arrangements before the new workplace relations system commences in order to avoid major disruption or confusion.
- 2.3 A major commitment of the Government is to implement a fair and productive workplace relations system to be fully operational from 1 January 2010.
- 2.4 The new system will include:
 - a strong and simple safety net comprising ten legislated National Employment Standards and up to ten further minimum conditions in new, modern awards;
 - a simple and fair collective bargaining system underpinned by majority rules bargaining, good faith bargaining and fast and simple collective agreement making arrangements;
 - a workplace relations system with no individual statutory agreements;
 - a new independent umpire called Fair Work Australia to replace the multiple workplace relations agencies currently in existence;
 - protection from unfair dismissal for employees and a new process for resolving unfair dismissal claims which balances the needs of employees and employers with special arrangements for small business including a Fair Dismissal Code; and
 - a uniform national system for the private sector.

Individual statutory agreements

- 2.5 The Bill prevents the making of new AWAs. This is consistent with the Government's pre-election commitment that there will be no place in the new workplace relations system for AWAs or any other form of statutory individual employment agreement.
- 2.6 However, the Government also recognises that Australian employers and employees who currently use AWAs need certainty in their workplace arrangements and that it would create concern and confusion if AWAs were suddenly terminated.
- 2.7 The Bill, therefore, provides that AWAs made prior to the implementation date of the proposed legislation will remain in force until terminated or replaced.
- 2.8 To provide transition arrangements for employers who currently use AWAs, the Bill will create a special instrument called an ITEA.

- 2.9 ITEAs will have a nominal expiry date of no later than 31 December 2009 which will give these employers and employees time to transition to the Government's new workplace relations system.
- 2.10 On and from 1 January 2010, the National Employment Standards and new modern awards will be in operation. From this date there will be no need for any individual statutory employment agreements for the purpose of circumventing a complex or prescriptive safety net.
- 2.11 The Bill will replace the former Government's fairness test with a new no-disadvantage test for all workplace agreements made after the commencement of the Bill.
- 2.12 Under the test, an ITEA must not disadvantage an employee against an applicable collective agreement, or where there is no collective agreement, the applicable award. The Australian Fair Pay and Conditions Standard (the current Standard) will continue to apply. Collective agreements must not disadvantage employees in comparison with an applicable award and the current Standard.

Award modernisation

- 2.13 A modern award system will form an integral part of the safety net in the Government's new workplace relations system.
- 2.14 The Bill includes the framework for modern flexible awards, enables an award modernisation process to commence and requires this process to be substantially finalised by 31 December 2009.
- 2.15 The proposed award modernisation request is an attachment to the Explanatory Memorandum to the Bill.
- 2.16 Modernised awards will be able to contain up to ten allowable matters and build on the ten National Employment Standards with industry relevant detail.
- 2.17 All modern awards will contain a flexibility clause enabling employment arrangements to meet the genuine individual needs of employers and employees, provided the employee is not disadvantaged. The AIRC will develop a model flexibility clause as part of the award modernisation process.
- 2.18 A simple, modern award system which provides scope for accommodation of individual flexibilities will remove the need for individual statutory agreements and the complex bureaucracy associated with those instruments.
- 2.19 The Government's policy is that employees earning above \$100,000 per annum will be free to agree their own pay and conditions without reference to awards. This will provide greater flexibility for common law agreements which have previously been required to comply with all award provisions, no matter how highly paid the employee. At the same time, those employees will be protected by the National Employment Standards.
- 2.20 The Government has released an exposure draft of the proposed ten National Employment Standards, together with a discussion paper which calls for public feedback by 4 April 2008. All submissions will be carefully considered by the

Government in developing the final version of the National Employment Standards, which will also inform the AIRC's award modernisation process.

Substantive legislative proposals

- 2.21 The transition arrangements introduced by this Bill will be followed by the introduction of the more substantial workplace relations legislation into the Parliament later in 2008.
- 2.22 The Government will continue to consult with key stakeholders in the development of this legislation including with the National Workplace Relations Consultative Council, the Committee on Industrial Legislation, the Business Advisory Group, Small Business Working Group, the Australian Council of Trade Unions and the Australian Council of Social Services.
- 2.23 The Government has also committed to providing the public and other interested parties with an opportunity to comment on the terms of the legislation.

3. Economic and social impacts of the abolition of AWAs (including on those sectors with a high reliance)

AWA coverage

- 3.1 The Workplace Authority and the Australian Bureau of Statistics (ABS) are the two main sources of estimates of the number of employees paid according to an AWA.
- 3.2 The most recent ABS data come from the biennial *Employee Earnings and Hours* (EEH) survey released in May 2006. The estimates from the ABS EEH survey are produced from a sample survey of employers conducted in May 2006. In the survey, the ABS collected data for approximately 57,000 employees.
- 3.3 In comparison, the Workplace Authority's 'live' AWA methodology is based on the number of AWAs approved/lodged over the last three years. This methodology reflects the legislative provisions in the WR Act prior to March 2006 which provided for a nominal expiry date (NED) of AWAs of no later than three years from the date the agreement was approved.
- 3.4 The ABS estimated that as at May 2006, 241,900 (2.9 per cent) of employees were covered by AWAs
- 3.5 In comparison, the Workplace Authority estimated that around 560,000 (6.7 per cent) of all employees were on AWAs at this time.¹
- 3.6 The significant discrepancy between the ABS and Workplace Authority estimates is not surprising, given the imprecision of the Workplace Authority's methodology. The Workplace Authority's methodology does not account for the dynamism in the labour market and, therefore, overstates the extent of AWA coverage in Australia. For example, as noted by Peetz,² the Workplace Authority's methodology overestimates the number of current AWAs, by assuming that no employee on an AWA resigns, gets promoted, is dismissed or is otherwise replaced within the three year period.
- 3.7 Caution should therefore be taken in relation to the Workplace Authority's data as a measure of the growth in AWAs between May 2006 (when the latest official ABS estimates were published) and December 2007 (most recent data available from the Workplace Authority).
- 3.8 As at the end of December 2007, the Workplace Authority estimated that around 880,000 employees (9.6 per cent) were on AWAs. This represents an increase in 'live' AWAs of 57.1 per cent between May 2006 and December 2007 on the Workplace Authority's model.
- 3.9 Other estimates of AWA coverage are available. For example, van Wanrooy et al estimated that 5.6 per cent of employees were covered by an AWA between

¹ Workplace Authority estimates of 'live' AWAs are rounded to the nearest ten thousand.

² D. Peetz, "Assessing the Impact of 'WorkChoices' – One year On" A report to the Victorian Department of Innovation, Industry and Regional Development, 19 March 2007, pp 9-10.

March and July 2007, up from 4.2 per cent in March 2006.³ This figure is based on data from a survey of over 8,000 employees.

- 3.10 Taking into account the various estimates of AWA coverage and the methodological shortcomings of the Workplace Authority's figures, the department estimates that approximately 5-7 per cent of Australian employees are currently covered by AWAs.

AWA coverage by industry

- 3.11 Table 3.1 below presents estimates of employees on AWAs by industry based on both ABS and Workplace Authority data. The table contains ABS and Workplace Authority data for May 2006 and Workplace Authority data for December 2007. As noted above, the department considers that the Workplace Authority's methodology overstates the number of employees on AWAs.
- 3.12 Both data sources are, however, consistent in showing that, as at May 2006, the Mining and Communication Services sectors had the highest proportion of their employees on AWAs while Manufacturing and Accommodation, Cafes and Restaurants had above average proportions. The large discrepancy between the ABS and Workplace Authority estimated proportions for Accommodation, Cafes and Restaurants could be partly explained by a higher turnover of staff on AWAs in this industry.

³ B. van Wanrooy, S. Oxenbridge, J. Buchanan and M. Jakubauskas, *Australia@Work: The Benchmark Report*, September 2007, Workplace Relations Centre, p 34.

Table 3.1: AWA-reliant employees by industry – ABS data compared with Workplace Authority data

Industry	ABS		Workplace Authority		ABS	Workplace Authority ^(d)	
	Non-manual employees on AWAs in May 2006 ^(a)	Non-manual employees on AWAs at the end May 2006 ^(b)	Estimated 'live' AWAs as at the end May 2006 ^(b)	Estimated 'live' AWAs as at the end December 2007 ^(b)		% of non-manual employees on AWAs in May 2006 ^(c)	Estimated 'live' AWAs as at the end May 2006 as a % of all employees within each industry ^(e)
Agriculture, forestry and fishing	NA	8,300	13,900	13,900	NA	4.6	7.8
Mining	15,500	36,000	63,300	63,300	16.2	28.4	46.5
Manufacturing	27,200	67,100	82,900	82,900	3.6	6.8	8.2
Electricity, gas and water supply	300	1,600	3,400	3,400	0.5	1.9	4.0
Construction	4,700	29,600	51,300	51,300	1.2	5.0	7.6
Wholesale trade	9,400	9,800	13,000	13,000	2.3	2.4	3.1
Retail trade	61,600	97,900	156,600	156,600	5.5	7.3	11.4
Accommodation, cafes and restaurants	15,100	76,400	126,700	126,700	4.3	17.3	26.6
Transport and storage	22,900	18,200	34,700	34,700	6.8	4.5	8.2
Communication services	16,900	46,100	50,200	50,200	17.1	28.6	28.8
Finance and insurance	9,500	12,500	19,000	19,000	3.4	3.5	5.0
Property and business services	29,200	73,900	95,200	95,200	2.8	7.3	9.0
Government administration and defence	5,500	25,200	45,600	45,600	1.4	5.5	9.5
Education	2,800	4,300	13,200	13,200	0.4	0.6	1.8
Health and community services	3,100	27,300	37,700	37,700	0.3	2.8	3.7
Cultural and recreational services	1,600	10,800	15,000	15,000	0.9	4.8	6.3
Personal and other services	3,300	15,400	56,200	56,200	1.1	4.9	17.1
All industries	228,800	560,400	877,900	877,900	3.1	6.4	9.6

Notes:

(a) The ABS *Employee Earning and Hours* (EEH) publication (Cat. No. 6306.0) provides an estimate of the coverage of AWAs for all employees at the aggregate level only (2.9% of the 8,341,800 employees in May 2006 were on AWAs). However, the department's more detailed unpublished EEH data are for non-manual employees rather than all employees, hence there is a small discrepancy between the ABS data in this table and those published in the publication.

(b) All AWAs that did not disclose an industry and/or sector have been excluded from the count, hence the totals will differ.

(c) The ABS EEH publication shows that there were 7,496,100 non-manual employees in May 2006.

(d) Due to the volatility of the quarterly ABS Labour Force data (Cat. No. 6291.0.55.003), the Workplace Authority averages the preceding four quarters of ABS data to produce an estimate of the number of employees. For consistency, the department has adopted the same approach in this table.

(e) The average number of employees over the 4 quarters to May 2006 is 8,760,100.

(f) The average number of employees over the 4 quarters to November 2007 is 9,185,900.

Fairness and flexibility

- 3.13 It is important to note that the Government's workplace relations system and transitional arrangements promote significant flexibility in employment arrangements while ensuring fairness for employees and employers.
- 3.14 Parties will have the flexibility to determine their workplace arrangements in a variety of ways including through greenfields agreements, collective agreements, multiple business agreements, modernised awards, common law contracts and legislated minimum standards.
- 3.15 For employers and employees who wish to continue their current arrangements, they will be free to do so and their workplace agreements will continue to operate until replaced or terminated.
- 3.16 The changes in the Bill, detailed in section 2 of this submission, are the first step in the implementation of the Government's commitment to provide balance, fairness and flexibility in the Australian labour market, including through the commencement of the creation of a new safety net of modern awards and ten legislated National Employment Standards.
- 3.17 While the National Employment Standards will provide key entitlements and essential provisions to give effect to these entitlements, awards will be able to build upon the National Employment Standards to provide a genuine safety net in a particular industry or to provide industry relevant detail on the National Employment Standards. This approach allows for flexible working arrangements which are not reduced to a 'one size fits all' basis and are instead tailored to particular industries and occupations. For example, a modern award can provide industry relevant detail on the National Employment Standards for maximum hours of work by providing for rostering arrangements relevant to that industry.
- 3.18 For award covered employees, all modern awards and collective agreements will contain flexibility clauses enabling working arrangements to be tailored to suit the individual needs and requirements of employees and employers. Where employers and employees have used AWAs to accommodate genuinely individual arrangements, the Government's system continues to provide employers and employees with scope to make and implement individual arrangements provided the employee is not disadvantaged.
- 3.19 In addition, modern awards will allow for further flexibility to address matters such as rostering, hours of work and all up rates of pay on an industry specific basis.
- 3.20 From 2010, employees earning above \$100,000 per annum will have the flexibility to agree pay and conditions of employment with their employers without reference to award provisions.
- 3.21 Fairness will also be provided for employers and employees by providing greater certainty in the approval process for new workplace agreements during the transition period. Most new agreements will only commence operation once they have passed the new no-disadvantage test conducted by the Workplace Authority. This will remove the confusion and cost implications of the previous

Government's 'fairness test' provisions. However, the Government recognises that it is important that some agreements such as greenfields agreements or ITEAs for new employees commence on lodgement with the Workplace Authority, to provide certainty and consistency in terms and conditions of employment for new employees.

Quantitative evidence

- 3.22 The most readily available, high quality data on the earnings of employees on AWAs is from the May 2006 ABS EEH survey.
- 3.23 The May 2006 EEH data show that some employee groups receive lower hourly rates of pay under AWAs than under collective agreements. Table 3.2 shows that for permanent full-time employees, males receive the same average hourly total earnings under both AWAs and collective agreements. However, females receive on average \$2.30 (8.5 per cent) less under AWAs than they do under collective agreements.
- 3.24 It should be noted, however, that the majority of AWAs appearing in the May 2006 survey had been registered prior to March 2006 which was the commencement date of the Work Choices legislation. The legislation did not include a 'no-disadvantage test' and allowed AWAs and other workplace agreements to remove or modify award conditions without providing any compensation to affected employees.

Table 3.2: Average hourly total earnings for non-managerial permanent full-time employees by method of setting pay by gender, May 2006

	Male	Female	Persons
Award only	\$17.60	\$18.10	\$17.80
Collective Agreements (CAs) ^(a)	\$29.30	\$27.00	\$28.40
Australian Workplace Agreements (AWAs) ^(a)	\$29.30	\$24.70	\$28.00
All methods of setting pay	\$27.20	\$24.20	\$26.00
Difference between AWAs and CAs	\$0.00	-\$2.30	-\$0.40
	0.0%	-8.5%	-1.4%

Source: ABS *Employee Earnings and Hours* (Cat. No. 6306.0), May 2006, Table 20.

Notes:

(a) CAs and AWAs in this table refer to both state and federal registered agreements.

- 3.25 In relation to casual employees, Table 3.3 shows that both males and females on AWAs have considerably lower average hourly total earnings than their counterparts on collective agreements. In particular, female casual employees on AWAs earned \$4.70 (or 21.4 per cent) less per hour on average than their counterparts on collective agreements.

Table 3.3: Average hourly total earnings for non-managerial casual employees by method of setting pay by gender, May 2006^(b)

	Male	Female	Persons
Award only	\$19.00	\$18.70	\$18.80
Collective Agreements (CAs) ^(a)	\$24.10	\$22.00	\$23.00
Australian Workplace Agreements (AWAs) ^(a)	\$20.70	\$17.30	\$19.20
All methods of setting pay	\$22.00	\$19.90	\$20.90
Difference between AWAs and CAs	-\$3.40	-\$4.70	-\$3.80
	-14.1%	-21.4%	-16.5%

Source: ABS *Employee Earnings and Hours* (Cat. No. 6306.0), May 2006, Table 20.

Notes:

- (a) CAs and AWAs in this table refer to both state and federal registered agreements.
- (b) The adult/junior mix may differ across gender and method of setting pay for casual employees, and thus impact on these results.

3.26 The department has calculated the percentages of cohorts of employees who receive Average Hourly Ordinary Time Earnings (AHOTE) up to and including \$17.00 and \$20.00. The cohorts used are full-time permanent and part-time casual, both by gender, and by AWAs and collective agreements. The results are presented in Table 3.4 below.

3.27 For all cohorts, the proportions earning up to and including \$17 and \$20 are higher for AWAs than they are for collective agreements, and higher for females compared with males. This indicates that AWAs are regularly used for low paid, low skilled employees.

Table 3.4: Proportions of adult non-managerial employees earning up to and including \$17 and \$20 an hour by gender by pay-setting, May 2006, per cent

	Up to and including \$17		Up to and including \$20	
	CA	AWA	CA	AWA
Full-time permanent				
Males	7.8	15.2	22.2	39.1
Females	13.0	20.8	27.7	40.7
Part-time casual				
Males	10.7	14.7	34.5	97.1
Females	7.1	23.0	43.5	88.2

Source: ABS *Employee Earnings and Hours* (Cat. No. 6306.0), May 2006, unpublished data.

Note - CAs and AWAs in this table refer to federal registered agreements.

3.28 Peetz also analysed earnings by occupation, concluding that workers with low bargaining power arising from low skill levels were most adversely affected by individual bargaining through AWAs, while occupations with higher skills were able to maintain high wages under AWAs.⁴

3.29 Contrary to the view that AWAs in the Mining sector have lead to significant wage improvements, Peetz and Preston found that non-managerial Mining employees on AWAs earned 3.6 per cent less than non-managerial Mining

⁴ D. Peetz, "Assessing the Impact of 'WorkChoices' – One year On" A report to the Victorian Department of Innovation, Industry and Regional Development, 19 March 2007, p 27.

employees on collective agreements. Further, by disaggregating the Mining industry data, Peetz and Preston also found that:

‘Workers in metal ore mining, mainly non-union and dominated by individual contracts, work 5 per cent more hours but earn 21 per cent less per week than workers in largely unionised coal mining, where collective agreements dominate.’⁵

3.30 Unpublished ABS data show that Western Australian employees on collective agreements in the Mining industry earned a total of \$2,020.60 per week in May 2006 compared with \$1,784.10 for employees on registered individual agreements.⁶ This is a difference of 15.7 per cent.

Removal of award conditions

3.31 In addition, many AWAs signed after 26 March 2006 did not contain protected award conditions, as evidenced below.

3.32 Data compiled by the Workplace Authority⁷ show that of the 1,748 AWAs lodged between April and October 2006:

- 89 per cent removed at least one protected award condition;
- 71 per cent excluded four or more protected award conditions;
- 52 per cent excluded six or more protected award conditions;
- 70 per cent removed shift work loadings;
- 68 per cent removed annual leave loadings; and
- 65 per cent removed penalty rates.

3.33 It is not clear from these data, however, whether or not those employees who had award conditions removed were compensated with a higher rate of pay or if their previous workplace agreement (if they were previously covered by an agreement) contained these award conditions. However, there is no evidence that the reduced hourly rates of pay for AWA employees when compared with employees covered by collective agreements referred to above, was compensated for in an agreement-making stream which permitted award protections to be modified or removed without a requirement to pay any compensation in lieu.

3.34 Analysis of a sample by the then Office of the Employment Advocate⁸ of 250 AWAs out of the 6263 lodged between 27 March and 30 April 2006 showed that:

⁵ D. Peetz & A. Preston, “AWAs, Collective Agreements and Earnings: Beneath the Aggregate Data,” A report to the Victorian Department of Innovation, Industry and Regional Development, March 2007, p 22.

⁶ ABS *Employee Earnings and Hours* (Cat. No. 6306.0), May 2006, unpublished data. This includes both registered and unregistered collective agreements. This also includes both federal and state registered individual agreements.

⁷ Media Release – The Hon Julia Gillard MP, Media Release “AWA Data the Liberals Claimed Never Existed,” 20 February 2008.

⁸ Senate Employment, Workplace Relations and Education Legislation Committee – 29 May 2006, p 138-139.

- All AWAs sampled expressly excluded at least one protected award condition
- 16 per cent of the sample expressly excluded all protected award conditions;
- 52 per cent of the sample expressly excluded four or more protected award conditions;
- The three most commonly excluded protected award conditions were leave loading (64 per cent), penalty rates (63 per cent) and shift work loadings (52 per cent);
- The three most commonly retained protected award conditions were declared public holidays (59 per cent), days to be substituted for public holidays (54 per cent) and incentive-based payments (43 per cent); and
- The three most commonly modified protected award conditions were overtime loadings, (31 per cent), rest breaks (29 per cent) and public holidays (27 per cent).

3.35 Table 3.5 sets out the percentage of AWAs that did not contain a provision for each protected award provision between 2004 and 30 April 2007.

Table 3.5: Percentage of AWAs without protected award conditions – 2004 to 30 April 2007, per cent

Protected award condition	Percentage of AWAs that exclude the condition
Incentive based payments and bonuses	79
Days to be substituted for Public Holidays or a procedure for such substitution	68
Shift work loading	52
Public holiday work loading	50
Annual leave loading	47
Overtime penalty rates	44
Declared public holidays	44
Rest breaks	23

Source: DEEWR AWA Workplace Agreements Database (AWAD) – The AWAD was established in 2006. It is based on representative samples of AWAs which were received from the Workplace Authority for coding into the AWAD under delegation from the Workplace Authority Director. The AWAD currently holds data on approximately 9,000 AWAs, of which 2,500 are pre Work Choices AWAs covering the period 2004, 2005 and the March quarter 2006 and 6,500 are Work Choices AWAs up to April 2007.

3.36 Of those AWAs that do contain protected award conditions, many provide for the conditions at reduced levels compared with the relevant award as the Work Choices legislation permitted protected award conditions to be ‘modified’ without the requirement to pay compensation in lieu. Consequently, of all the AWAs in the sample for Table 3.5, in addition to the 44 per cent of AWAs which exclude provision for overtime payments at penalty rate levels, a further 24 per cent explicitly provided for payment at ordinary time rates. Therefore, 68 per cent of AWAs sampled, in effect, provided no additional rate of pay for overtime hours.

Qualitative evidence

- 3.37 In some instances employees on AWAs, for example high skilled workers in high paid jobs, are well remunerated. Conversely, a comprehensive body of research indicates that many other employees, including low skilled vulnerable workers, are worse off under an AWA than under other pay-setting methods, in terms of both their conditions of employment and their remuneration.
- 3.38 Ms Barbara Bennett, Director of the Workplace Authority, reported to a recent Additional Estimates hearing of this committee that a sample analysis of 670 of the 5,259 AWAs that failed the fairness test after being lodged between May 7 (the date the fairness test was announced) and July 2007 showed that:
- 45 per cent underpaid employees by between \$1 and \$49-a week;
 - 50 per cent underpaid employees by between \$50 and \$199-a-week;
 - 5 per cent underpaid employees by between \$200 and \$499; and
 - 0.5 per cent underpaid employees by more than \$500 below what was required.⁹
- 3.39 A number of researchers have presented qualitative research which examines the impact of AWAs on low skilled, low income employees. There is a particular focus on women, reflecting the relatively high proportion of positions in low paid sectors filled by females.¹⁰ Typically, this research has taken the form of interviews and individual case studies, detailing individuals' experiences after signing statutory individual contracts.
- 3.40 Stanton and Young described the impact of AWAs in the hospitality industry in a 2008 paper.¹¹ One hotel introduced pro forma AWAs for new workers which removed penalty rates normally applicable to work during weekends and public holidays by providing a flat rate of pay. This resulted in wage reductions of approximately \$90 per fortnight for the permanent staff who remained within the award framework and retained award entitlements to weekend and holiday rates of pay because their working time on weekends and public holidays was cut as a result of the employer engaging AWA covered employees at these times on lower wages.
- 3.41 Concerns about the impact of AWAs on employees in vulnerable positions which have been identified across several studies include:

⁹ Sample of 670 of the 5,259 AWAs which failed the fairness test. Workplace Express, 'AWAs paid more than \$500 below the required rate', 21 February 2008.

¹⁰ See, for instance: J. Elton et. al., *Women and WorkChoices Summary Report*, Centre for Work + Life, University of South Australia, August 2007; M. Baird et. al., *Down and Out with Work Choices: The Impact of Work Choices on the Work and Lives of Women in Low Paid Employment*, Report to the Office of Industrial Relations, NSW, University of Sydney, June 2007; S. Charlesworth and F. Macdonald, *Going Too Far: Work Choices and the Experiences of 30 Victorian Workers in Minimum Wage Sectors*, Industrial Relations Victoria, Melbourne, July 2007; T. Jefferson et. al. *A Study of Low Paid Work and Low Paid Workers in Western Australia*, Women in Social and Economic Research, August 2007; J. Elton and B. Pocock, *No Fair, No Choice*, Report to SafeWork SA and the Office for Women, July 2007.

¹¹ P. Stanton and S. Young, Workers, Corporations and Community: *Facing Choices for a Sustainable Future*, Proceedings of the 22nd Conference of the Association of Industrial Relations Academics of Australia and New Zealand, p 238.

- pressure to sign individual agreements against employees' will;
- employers unilaterally reducing pay or changing hours and the consequent effects on family life balance and other non-work obligations;
- feelings of personal insecurity;
- feeling insecure in employment;
- negative effects on personal and family finances; and
- negative family and community consequences.

3.42 Most research reveals consistent concerns about the social effects inside and outside the workplace among those employed under AWAs. Baird et al noted that:

‘[...]significant changes have occurred in the workplaces of these women and in their employment relationships. For the most part, these changes have been negative and deleterious, reducing decency and democracy at work and in society. These changes have included reductions in pay for already low paid workers, less certainty about wage rates and pay rises, intensification of work, weakening of job security, less financial independence, less money for children and basic household costs, less representation and say at work and in the community, and poorer health and wellbeing. All of these outcomes weaken the capacity of these women to participate in the workforce and in their communities. This is not their choice and it is not a desirable outcome for society at large.’¹²

3.43 Jefferson et al focused specifically on the lack of bargaining power for low skilled workers who had been offered AWAs in Western Australia, a state with a particularly high take-up of AWAs. They found participants had:

‘A reluctance or unwillingness to engage in direct or individual negotiations to determine their employment conditions. Their reluctance or unwillingness appears to stem from a lack of confidence in their bargaining power [...]. Some participants spoke of their preference to change employment rather than work under the provisions of AWAs or to address other concerns at work. Those who were prepared to negotiate did not appear to be expressing a preference for individual bargaining’.¹³

3.44 A participant in the Western Australian study noted that:

‘[...] They told us around the time the AWAs first came in that the new salary structure incorporates the leave loadings, your public holidays and lieu days and that sort of thing, but when you work it out once again it doesn't, it certainly doesn't include 17% leave loading’.¹⁴

3.45 Respondents in the Baird et al study reported a climate of apprehension associated with the elimination of protected conditions and the secrecy and

¹² M. Baird et al., *Down and Out with Work Choices: The Impact of Work Choices on the Work and Lives of Women in Low Paid Employment*, Report to the Office of Industrial Relations, NSW, University of Sydney, June 2007, p 3.

¹³ T. Jefferson et al. *A Study of Low Paid Work and Low Paid Workers in Western Australia*, Women in Social and Economic Research, August 2007, p iii.

¹⁴ *Ibid.*, p 24.

pressure surrounding AWAs, along with an unproductive workplace atmosphere and a reduction in trust between employees and employers.¹⁵

- 3.46 There were marked impacts on the family lives of participants in these studies. Unsociable and inconvenient hours impacted on the ability of employees to spend time with family and to participate in community events. Interviewees reported difficulties in arranging their transportation when their work arrangements changed at short notice, the inability to transport children and family members to and from school or other events and their inability to attend religious services.
- 3.47 The financial effects of lower wages and more work also impacted on family commitments, with the need to make savings in already stretched household budgets.
- 3.48 Health complaints arising as a result of changes in workplace arrangements were commonly reported. Participants spoke of depression, increasingly frequent minor ailments and trouble sleeping. Many participants reported ‘feelings of self-doubt, emotional stress, powerlessness, and a sense of embarrassment at the way they had been treated.’¹⁶
- 3.49 The provisions contained in the Bill provide that all agreements must pass a new no-disadvantage test, ensuring that the agreement does not disadvantage employees. In addition, the Bill ensures that, where a workplace agreement is terminated, the employee will not fall back to the five minimum conditions in the current Standard and any applicable protected award conditions. Rather, the employee will be entitled to the benefit of the collective agreement applying in their workplace if their AWA or ITEA is terminated. Where a collective agreement is terminated, the employees will have the benefit of the entire award safety net.

¹⁵ M. Baird et. al., *Down and Out with Work Choices: The Impact of Work Choices on the Work and Lives of Women in Low Paid Employment*, Report to the Office of Industrial Relations, NSW, University of Sydney, June 2007, pp 34-5.

¹⁶ *Ibid.*, p 44.

4. Impact on productivity

- 4.1 Labour productivity has been the key component of Australia's rising living standards over the past 40 years. As detailed in the Commonwealth Treasury's second Intergenerational Report, labour productivity has contributed 1.8 percentage points of a total 2.1 percentage points to growth in real GDP per person (the measure commonly used by economists to gauge changes in living standards).¹⁷
- 4.2 Sustained productivity growth is, therefore, the key to building Australia's long term prosperity. Businesses that foster productivity growth will stay competitive in the domestic and global marketplace and generate more wealth for the business, their employees and the national economy.
- 4.3 According to the Productivity Commission, the benefits of stronger productivity growth also include better wages and conditions for the workforce, higher profits to shareholders and superannuation funds, and increased revenue (through taxation) to fund social and environmental programs.¹⁸
- 4.4 Continued productivity growth underpins the future economic prosperity of all Australians. Whether Australia can achieve these higher outcomes over time will depend, amongst other things, on the policy frameworks of successive governments.

Productivity growth

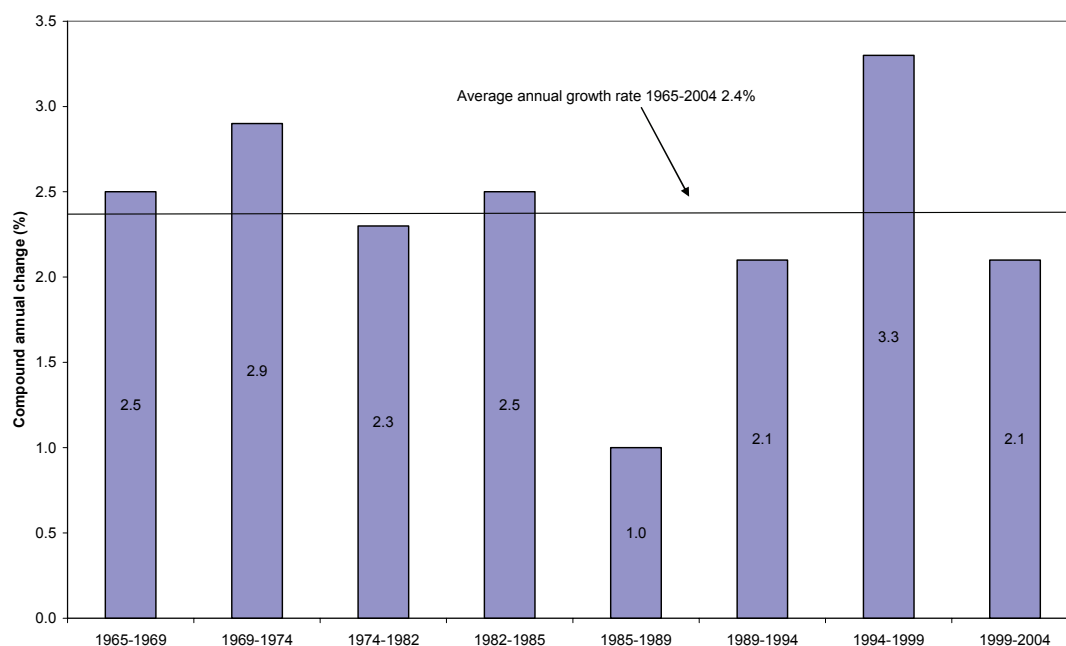
- 4.5 In considering the impact of AWAs on productivity, it is important to remember that the department estimates that only around 5-7 per cent of employees are currently covered by AWAs. Nevertheless, the available evidence does not indicate that AWAs have led to productivity gains. While there is likely to be some lag between changing workplace relations arrangements and any impact on productivity growth, AWAs have been in the Australian workplace relations system since 1997, yet recent productivity growth has been disappointing, with growth over the last completed productivity growth cycle below the long-term trend.
- 4.6 In addition, productivity growth did not increase with the Work Choices changes. While aggregate data are of limited value in determining the impact of AWAs on productivity growth, the most recent ABS *National Accounts* data show that productivity growth in the market sector was flat between March 2006 and September 2007 compared with annual average growth over the past two decades of 2.3 per cent.¹⁹

¹⁷ Australian Government *Intergenerational Report 2007*, p 31.

¹⁸ Productivity Commission "Productivity Primer: Why is Productivity Important?" www.pc.gov.au/productivity/primer/importance, accessed 26 February 2008.

¹⁹ ABS *Australian National Accounts: National Income, Expenditure and Product* publication (Cat No. 5206.0), September 2007, released 5 December 2007.

Chart 4.1: Labour productivity growth for growth cycles, 1964-65 to 2003-04



Source: ABS *Australian System of National Accounts* (Cat No 5204.0).

4.7 The most reliable estimates of productivity growth are those based on the basis of productivity growth cycles.²⁰ Chart 4.1 shows that during the most recent growth cycle of 1998–99 to 2003–04, annual growth in labour productivity averaged 2.1 per cent. This is 1.2 percentage points below the record average growth of 3.3 per cent recorded over 1993–94 to 1998–99, and 0.3 percentage points below the long-term average growth rate of 2.4 per cent. While there is no completed productivity cycle since 2003–04, average annual growth since June 2004 has been just 0.7 per cent, with growth of 0.5 per cent over the year to the September quarter 2007.

The impact of AWAs on productivity

4.8 Peetz provides a detailed analysis of the impact of AWAs on productivity.²¹ Peetz argues that any productivity gains as a result of AWAs should be clear after more than a decade of operation but finds no supporting evidence of this at the macro level. He also argues that workplace-level studies have been unable to demonstrate productivity gains as a result of individual agreements.²²

²⁰ ABS *Australian System of National Accounts* publication (Cat. No. 5204.0) 2006-07, released 2 November 2007, Table 23. According to the ABS, the most recent growth cycle ended in 2003-04.

²¹ D. Peetz, "Assessing the Impact of 'WorkChoices' – One year On" A report to the Victorian Department of Innovation, Industry and Regional Development, 19 March 2007.

²² These include: T. R. L. Fry, K. Jarvis and J. Loundes, *Are IR Reformers better performers?*, Melbourne Institute Working Paper No18/02, MIAESR, Melbourne, September, 2002; D. Hull and V. Reid, *Simply the best: workplaces in Australia*, Working Paper 88, ACIRRT, University of Sydney, Sydney, December 2003, p 8; Y.-P. Tseng and M. Wooden, *Enterprise bargaining and productivity: evidence from the Business Longitudinal Survey*, Melbourne Institute Working Paper No 8/01, MIAESR, Melbourne, July 2001; M. Wooden, *The Transformation of Australian Industrial Relations*, Federation Press, Sydney, 2000, p 173; C. Gilson and T. Wagar, *The impact of the New Zealand Employment Contracts Act on individual contracting: Measuring organisational performance*, California Western International Law Review, vol. 28, 1997.

- 4.9 In a survey of members in 2007, the Australian Human Resources Institute found that, while nearly half of respondents had not made up their minds whether there was likely to be productivity improvement under Work Choices, more saw Work Choices as being unlikely to improve productivity within their organisation over the coming three years.²³
- 4.10 Hancock, et al, in a comprehensive literature review, also found that AWAs had not yielded productivity results superior to those obtained through collective bargaining or awards.²⁴
- 4.11 In a literature review, Wooden, while sceptical about the causality between workplace relations arrangements and productivity, argued that there is less evidence linking AWAs with productivity than linking collective agreements with productivity.²⁵
- 4.12 Theoretically, AWAs are more likely to be successful if there is a high level of trust between managers and workers. In a situation where agreements are forced upon workers, the most likely results are higher rates of labour turnover, declining morale and grudging performance in the workplace.
- 4.13 As noted previously in section 3 of this submission, a high number of AWAs cut pay and conditions of low paid employees. The qualitative research shows, in particular, that the climate of apprehension associated with the elimination of protected award conditions and the secrecy and pressure surrounding AWAs contributed to unproductive workplaces through a reduction in trust between employees and employers.²⁶

Collective agreement-making and productivity

- 4.14 Major economic reforms such as the move away from a centralised workplace relations system to one based on bargaining at the enterprise level, the reduction of external barriers to trade, floating of the currency and increased access to essential infrastructure led to the surge in productivity growth throughout much of the 1990s.
- 4.15 While there is no evidence linking AWAs with increased productivity, there is considerable evidence linking collective agreement making and productivity improvement. This research includes a number of cases studies with analysis at the workplace level. These case studies include work by the Productivity Commission and researchers from the Melbourne Institute.
- 4.16 The Productivity Commission undertook case studies in the whitegoods, automotive, textile clothing and footwear, NSW rail freight and wholesale and retail trade industries to investigate the drivers and outlook for productivity

²³ Australian Human Resources Institute, *Work Choices: Its impact within Australian Workplaces – Survey Findings*, 23 August 2007, p 24.

²⁴ K. Hancock, T. Bai, J. Flavel and A. Lane, *Industrial Relations and Productivity in Australia*, a report prepared for the Chifley Research Centre by the National Institute of Labour Studies (NILS), June 2007.

²⁵ M. Wooden, *Implications of Work Choices Legislation*, Agenda 13 (2006), pp 99-116.

²⁶ M. Baird et. al., *Down and Out with Work Choices: The Impact of Work Choices on the Work and Lives of Women in Low Paid Employment*, Report to the Office of Industrial Relations, NSW, University of Sydney, June 2007, pp 34-5.

growth.²⁷ The studies showed that flexibility in work arrangements increased through collective agreements. Specifically, workplace bargaining was seen as providing a framework to assist the redesign of working arrangements to ensure that workers were employed in ways where they were most productive. Productivity improvement was therefore an explicit feature of many of these agreements.

- 4.17 Tseng and Wooden estimated that firms where all employees were on collective agreements had levels of productivity almost 9 per cent higher than comparable firms where employees relied upon conditions specified in an award.²⁸ However, they point out that their research did not show that collective bargaining necessarily caused higher productivity, only that collective bargaining and higher productivity were associated.
- 4.18 Fry, Jarvis and Loundes also found that organisations adopting workplace relations reform, such as entering into collective agreements with their workers, reported substantially higher levels of self-assessed labour productivity relative to their competitors.²⁹
- 4.19 Peetz compares productivity growth in Australia with New Zealand during the 1990s.³⁰ In the early 1990s, following the introduction of the Employment Contracts Act 1991 (which was subsequently repealed in 2000), New Zealand shifted from a highly centralised wage bargaining system to one based on enterprise level bargaining, with pre-eminence given to individual contracts. Comparatively, at the same time Australia moved to a system based largely on collective bargaining at the enterprise level. Using the productivity experience of Australia and New Zealand during this period as a basis for comparison, Peetz found no positive relationship between individual contracting and productivity. Peetz instead concluded that there are productivity gains for collective bargaining over individual contracts.
- 4.20 In a 2006 report on Australia, the Organisation for Economic Cooperation and Development noted the productivity benefits from direct bargaining between employers and their workforce at the enterprise level:

‘The increasing scope for direct negotiations between employers and employees has probably also helped to raise productivity, as enterprise bargaining allows firms to adopt productivity enhancing practices and promotes a more co-operative work environment where performance and reward are more closely linked.’³¹

Productivity enhancing conditions in AWAs and collective agreements

²⁷ Productivity Commission, *Microeconomic Reforms and Australian Productivity: Exploring the Links, Volume 2: Case Studies*, Research Paper, AusInfo, Canberra, 1999,; and A Johnston, D Porter, T Cobbold and R Dolamore, *Productivity in Australia's Wholesale and Retail Trade*, Productivity Commission Staff Research Paper, AusInfo, Canberra, 2000.

²⁸ Y-P Tseng and M. Wooden, *Enterprise Bargaining and Productivity: Evidence from the Business Longitudinal Survey*, Melbourne Institute Working Paper No. 8/01, July 2001, p 28.

²⁹ T. Fry, K. Jarvis and J. Loundes, *Are Pro-Reformers Better Performers?*, Melbourne Institute Working Paper No. 18/02, September 2002.

³⁰ D. Peetz, *Hollow Shells: The Alleged Link Between Individual Contracting and Productivity Growth*, *Journal of Australian Political Economy* 56(December 2005), pp 32-53.

³¹ Organisation for Economic Cooperation and Development, *OECD Economic Surveys: Australia*, OECD Publishing, 2006.

- 4.21 If AWAs were to enhance productivity, AWAs should, therefore, logically contain productivity enhancing provisions to a greater extent than other forms of agreement. The data do not support this contention.
- 4.22 There are two main types of productivity enhancing provisions – individual and organisational. Individual provisions include individual performance pay arrangements, conditional bonuses, profit sharing schemes, share acquisition plans and productivity linked remuneration. Organisational provisions include key performance indicators for the organisation, flexibility in working hours, the working of shifts, the timing of rostered days off and greater flexibility in remuneration arrangements.
- 4.23 Table 4.1 below contains data from the department’s AWA Workplace Agreements Database (AWAD) and collective Workplace Agreements Database (WAD).³² The table compares productivity enhancing provisions in AWAs with those in collective agreements over the period 2004 to April 2007.
- 4.24 In summary, a slightly higher percentage of AWAs offer individual productivity enhancing provisions, and AWAs are more likely to include flexible remuneration arrangements. On the other hand collective agreements are considerably more likely to include all other types of productivity enhancing provisions.

³² The AWAD, established in 2006, is based on representative samples of AWAs from the Workplace Authority. It currently holds data on approximately 9,000 AWAs, of which 2,500 are pre-Work Choices AWAs covering the period 2004 to the March quarter 2006 and 6,500 are Work Choices AWAs up to April 2007. The WAD is a census database of all collective agreements lodged or certified by the Australian Industrial Relations Commission since October 1991. It contains over 300 fields of data per agreement for approximately 70,000 agreements.

**Table 4.1: Percentage of organisational performance enhancing provisions—
AWAs and collective agreements – current as at 30 April 2007, per cent**

Provision	AWAs		Collective Agreements	
	Percentage of agreements		Percentage of employees	
Key performance indicators				
Key performance indicators ^(a)	6	13	13	15
Working hours flexibilities				
Ordinary hours to be worked Monday to Friday	18	42	27	
Ordinary hours to be worked Monday to Saturday	6	4	7	
No restriction on days to be worked	35	28	40	
Averaging of working hours over extended period (greater than 4 weeks)	12	11	10	
Flexible remuneration arrangements				
Annualised salaries	10	7	13	
Loaded hourly rates	11	8	3	
Salary-related allowances absorbed	12	21	6	
Shift work flexibilities				
12 hour shifts	20	28	19	
Swing shifts (eg 2 weeks/2 weeks off)	3	2	1	
Other shifts (eg split shifts)	5	4	11	
Rostered days off (RDO) flexibilities				
Mutual agreement to vary an RDO	1	34	9	
Banking/accrual of RDOs	2	35	20	
Payment in lieu of an RDO	1	22	9	
Time off in lieu arrangements when RDO is worked	<1	6	4	
Flexibilities in management of breaks				
Flexibility in timing of breaks	7	12	14	
Staggering of breaks	3	13	7	
Breaks to allow continuity of work	7	13	10	
Management may alter breaks	10	13	13	

(a) Key performance indicators include any performance indicator/s with specific measurable goals provided for in an agreement.

Source: DEEWR AWA Workplace Agreements Database (AWAD) and collective Workplace Agreements Database (WAD)

Note – Many smaller companies with AWAs or collective agreements may rely on informal arrangements to apply some of the above flexibilities. Also, non inclusion of particular performance provisions may be because they are not relevant to the individual, particularly in respect to AWAs.

Productivity growth and skills

- 4.25 The productive capacity of the Australian economy is a set of complex, inter-related factors. It is not solely reliant on the nature of the workplace relations framework, however this is important. Recognising this, the Government has developed a number of strategies to increase productivity growth in addition to a modern and flexible workplace relations system. Some of these strategies are detailed in the Government's policy document *Skilling Australia for the Future*.
- 4.26 The Government will establish an independent body, Skills Australia, to provide advice about areas of acute skills shortage. This advice will enable policies to be directed towards closing the skills gap – that is, the gap between the demand for and supply of skilled workers.
- 4.27 *Skilling Australia for the Future* is designed to increase and deepen the skills capacity of the Australian workforce and ensure demand for skills and training is matched. The Government is funding an additional 450,000 training places over the next four years, with most leading to a higher-level qualification, such as at Certificate III level or above.
- 4.28 In order to drive up productivity and compete internationally, both the number of Australians with skills and qualifications and the depth of skills within the workforce need to be increased. Up to 65,000 apprenticeships will also be supported under the policy over the next four years.
- New training places under the *Skilling Australia for the Future* policy will be allocated according to industry need, assisting in driving up productivity.
- 4.29 In addition, through the Council of Australian Governments, the Government is working with other governments in Australia to increase the productive capacity of the economy. The department has commenced discussions with the states and territories to ensure close co-ordination between governments in planning for, and funding, growth in training and skills development. A long term productivity agenda will assist in achieving high economic growth, low unemployment and low inflation.

5. Potential for a wages breakout and increased inflationary pressure

Pattern bargaining

- 5.1 Under a highly centralised wage setting system, it is possible that large wage increases achieved in industries and occupations experiencing high labour demand or strong economic conditions could flow through to other industries and occupations, leading to a wages breakout. This was the experience in Australia prior to the workplace relations reforms of the 1990s.
- 5.2 The provisions in the Bill do not re-centralise Australia's wage setting system. The primary focus for the determination of wages and conditions in the Bill and in the Government's workplace relations policies remains at the workplace level.
- 5.3 The Bill does not make any amendments to the current laws preventing pattern bargaining. Specifically, the WR Act will continue to:
- prohibit industrial action taken in support of pattern bargaining;
 - require the AIRC to suspend a bargaining period if a negotiating party is engaged in pattern bargaining; and
 - prevent the AIRC from granting an application for a secret ballot if the applicant is engaged in pattern bargaining.
- 5.4 The Bill, therefore, provides no mechanism through which a wages breakout could occur.
- 5.5 This contention is supported by the Reserve Bank of Australia (RBA). RBA Assistant Governor, Malcolm Edey, in an answer given during a speech to the Committee for the Economic Development of Australia following the introduction of the Bill into Parliament, stated that:
- '...over a period of 20 years or so, the labour market has become much more flexible than it used to be. I do not see that changing in any significant way. I think that we should expect to see that low unemployment can still be sustained without generating a significant lift in inflation.'³³
- 5.6 The latest ABS wages data show that, while wages growth has picked up overall, the strongest growth continues to be in those industries experiencing the strongest labour demand. Over the year to the December quarter 2007, the ABS Wage Price Index increased by 4.2 per cent, unchanged from the result recorded over the year to the September quarter 2007. Wage growth is strongest in those industries experiencing the highest labour demand such as Mining (5.1 per cent).

Productivity growth and inflation

- 5.7 The Government recognises the challenge posed by the current inflationary pressures within the economy. A key part of the Government's response to this

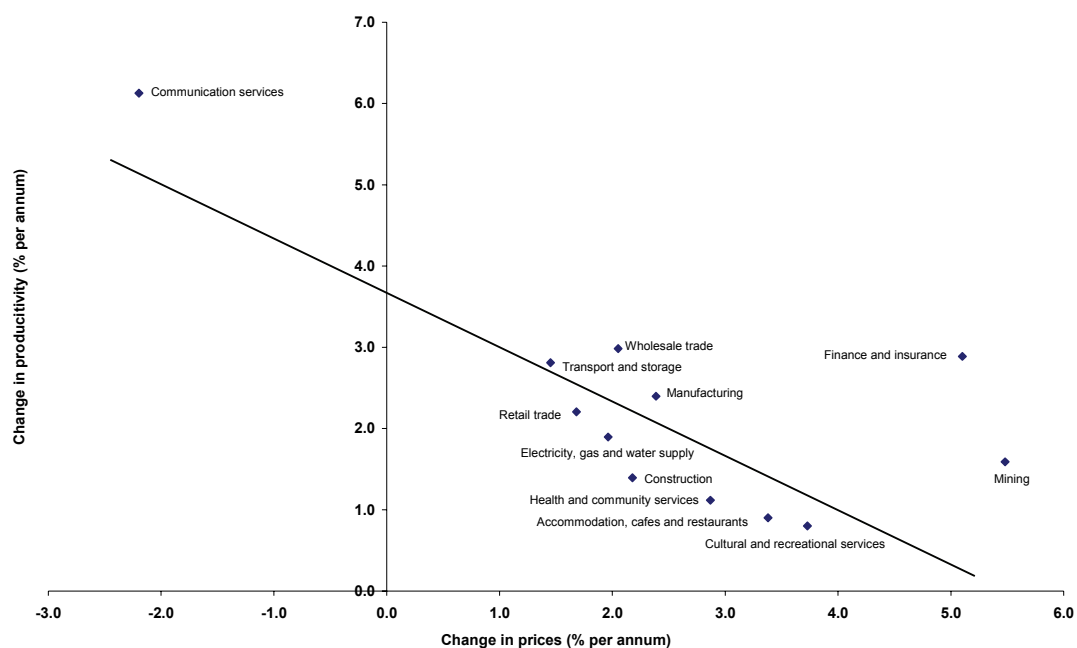
³³ G Winestock, 'Reserve Bank not too worried about jobs effect' *Australian Financial Review*, 20 February 2008.

challenge is to improve the productive capacity of the Australian economy, placing downward pressure on both real unit labour costs and consumer prices.

- 5.8 Higher productivity helps to control inflation. Wage increases are sustainable if they are linked to productivity improvements. Real wage increases that exceed productivity growth result in increased cost pressures on employers and upward pressure on prices. As discussed in section 4 of this submission, there is evidence collective agreement-making is correlated with higher productivity, but there is no such evidence in respect of AWAs. Hence the abolition of AWAs will not lead to a loss of productivity and increased inflationary pressure.
- 5.9 As demonstrated in Chart 4.1, the mid-1990s saw record levels of productivity growth in Australia. The gains of productivity growth can be distributed in three ways – higher profits for businesses, higher wages for employees or lower prices for consumers. The 1990s provide an important historical lesson on how the benefits of productivity growth are distributed through the economy.
- 5.10 Parham et al from the Productivity Commission have conducted research into the distribution of the economic gains achieved in the 1990s.³⁴ This research found that the productivity gains were mostly passed on in the form of lower prices. While there was little difference between the various industry sectors in terms of wage or profit growth, the authors found that the high productivity growth industries had smaller price increases and, in some cases, had price decreases. This research clearly demonstrates how higher productivity growth can reduce inflationary pressures.
- 5.11 Chart 5.1 below shows the relationship between industry level productivity growth and changes in prices since the introduction of enterprise bargaining in the early 1990s. The chart clearly demonstrates that industries recording high productivity growth during this period have also tended to record smaller price increases and, in the case of Communication Services, a price decrease.
- 5.12 These findings support the contention that, by emphasizing improved productivity, the Government's proposed workplace relations reforms will allow for sustainable and responsible increases in real wages, without putting upward pressure on inflation.

³⁴ D. Parham, P. Barnes, P. Roberts, S. Kennett, *Distribution of the Economic Gains of the 1990s*, Productivity Commission Staff Research Paper, Ausinfo, Canberra, 2000.

Chart 5.1: Average annual change in productivity and prices by industry, 1990-2007



Source: ABS, *Australian System of National Accounts 2006-07* (Cat No 5204.0), Tables 9, 11 and 25.

Note: Average annual industry price changes are estimated as the average annual change in industry gross values added in current prices minus the average annual change in the same measure but in chain volume terms.

Other Government initiatives to tackle inflation

- 5.13 Beyond the workplace relations arena, the Government has a five point plan to tackle inflationary pressures in the economy. The plan was detailed by the Prime Minister during an address in Perth earlier this year.³⁵
- 5.14 First, the Government will ensure that it takes the pressure off demand by running a strong budget surplus.
- 5.15 Second, in the period ahead the Government will examine all options to provide real incentive to encourage private savings.
- 5.16 Third, the Government will unfold its plan for tackling chronic skills shortages in the economy. This will assist to alleviate the wages pressure in industries experiencing higher labour demand.
- 5.17 Fourth, the Government will provide national leadership to tackle infrastructure bottlenecks.
- 5.18 Fifth, the Government will provide practical ways of helping people re-enter the workforce and remove disincentives to working hard, to lift workforce participation.
- 5.19 The Government has stated that the inflation challenge is its number one economic priority. The provisions in the Bill are entirely consistent with this aim.

³⁵ K Rudd, *Building Australia's Economic Future*, Address to Lord Mayor's Business Breakfast, 21 January 2008, Perth.

6. Potential for increased industrial disputation

- 6.1 The Bill retains the current limitations in the workplace relations system on taking industrial action.
- 6.2 Currently, employees may only take protected industrial action during the negotiation of collective agreements, and only if it is first authorised by a secret ballot.
- 6.3 As is currently the case, the Bill allows for employees who are on an AWA or ITEA that has passed its nominal expiry date to be on the roll for a secret ballot for protected industrial action and, as a result, are able to participate in protected industrial action. Amendments in the Bill will ensure that those employees are entitled to vote on a collective agreement without first terminating their AWA or ITEA.
- 6.4 To be regarded as protected, industrial action must be taken in support of claims proposed for a new collective agreement, or be in response to industrial action by another negotiating party. The AIRC will retain the power to stop or prevent unlawful industrial action. The AIRC also has the power to suspend or terminate a bargaining period in certain circumstances. If a bargaining period is suspended or terminated, industrial action will not be protected. The Minister will also retain the power to terminate a bargaining period to end industrial action in certain circumstances.
- 6.5 Industrial action cannot be taken in pursuit of pattern bargaining and the secondary boycott arrangements under the *Trade Practices Act 1974* remain. Industrial action in the Building and Construction industry is also subject to special legislation, which also prohibits unlawful industrial action.
- 6.6 Schedule 5 to the Bill will permit parties to vary pre-Work Choices certified agreements on application to the AIRC, both to extend their nominal expiry date and to vary them substantively. The AIRC needs to be satisfied that all parties bound to the agreement genuinely agreed to the extension or variation, including a valid majority of employees. Importantly, the AIRC will not be able to vary an agreement where a party has taken, or threatened to take, industrial action in relation to another party to the agreement after the introduction of the Bill into the Parliament.

7. Impact on employment

- 7.1 There is no evidence that the use of AWAs under the current workplace relations system has led to an increase in employment. Similarly, there is no evidence that the Bill, including the abolition of AWAs, will adversely affect the level of employment, particularly for the low skilled.
- 7.2 Measuring the impact of AWAs on employment is problematic. Many factors combine to contribute to increasing employment levels and, as noted earlier in section 3 of this submission, employees on AWAs make up a small proportion of total employment.
- 7.3 For instance, the Mining industry, which has the highest proportion of employees on AWAs of any industry, recorded the highest average annual growth in employment of all industries over the five years to February 2006 and the second highest average annual employment growth in the period since February 2006 (see Table 7.1 below). This strong growth, however, is due primarily to the resources boom, stemming from the strong demand for Australian resources.
- 7.4 To the extent that AWAs may have contributed to some employment growth, it is likely to be in the low paying sectors where the ability to reduce labour costs may have encouraged employers to hire more workers.
- 7.5 Two industries traditionally associated with low paid work are Accommodation, Cafes and Restaurants and Retail Trade. However, it is important to note that a number of factors influence employment growth in these and other industries beyond the take-up of AWAs. These factors include the strength of the overall economy, consumer demand and demand for labour.
- 7.6 Table 7.1 shows average annual employment growth in the Accommodation, Cafes and Restaurants and Retail Trade industries between February 2006 and November 2007. Employment in both of these industries increased strongly over the period. However, this trend was also evident in other higher paying industries. Therefore, it is impossible to determine from the aggregate data the impact of the take up of AWAs on employment growth.

Table 7.1: Average annual employment growth by industry - February 2001 to February 2006 and February 2006 to November 2007

Industry	Growth in employment			
	Feb 2001 - Feb 2006		Feb 2006 - Nov 2007	
	Average annual change (%)	Level change ('000)	Average annual change (%)	Level change ('000)
Agriculture, forestry and fishing	-1.2	-10.9	0.0	0.1
Mining	10.3	47.6	6.7	14.7
Manufacturing	-0.9	-45.5	1.3	23.3
Electricity, gas and water supply	6.6	23.1	0.3	0.4
Construction	8.4	202.5	6.4	70.7
Wholesale trade	0.2	4.8	1.8	12.4
Retail trade	3.0	185.0	3.4	81.7
Accommodation, cafes and restaurants	0.4	8.1	2.6	19.6
Transport and storage	2.7	50.8	4.3	30.9
Communication services	-0.4	-2.9	4.8	13.8
Finance and insurance	2.5	41.3	2.7	17.0
Property and business services	1.8	86.2	1.6	28.5
Government administration and defence	3.4	69.3	4.8	38.2
Education	3.3	103.0	5.1	61.5
Health and community services	3.5	158.5	2.7	46.5
Cultural and recreational services	3.3	31.8	7.4	28.5
Personal and other services	2.9	42.1	4.3	24.2
All industries	2.4	994.6	3.3	512.0

Source: ABS, *Labour Force, Australia*, Detailed, Quarterly (Cat. No. 6291.0.55.003) November 2007, original data.

- 7.7 The desirability of any increase in employment stemming from cuts in labour costs needs to be weighed against the potential exploitation of workers and increased unfairness and insecurity in the labour market. There must be a balance. The Government has made a commitment to move to a workplace relations system that ensures a fair safety net for employees rather than one that allows employers to cut costs by stripping away the conditions and take home pay of employees.
- 7.8 The changes in the Bill are the first step in ensuring a balance between fairness and flexibility in the Australian labour market. There is no evidence that the Government's proposed reforms to the workplace relation system, including the abolition of AWAs, will have an adverse impact on the level of employment.
- 7.9 What is clear, however, is that there will be fair and flexible employment arrangements underpinned by a strong and stable safety net of legislated minimum standards and modern awards which allow for flexible enterprise level collective bargaining to boost productivity.

8. Conclusion

- 8.1 The Bill provides the framework for sensible and measured transitional arrangements as the Government moves to implementing a new workplace relations system.
- 8.2 The changes outlined in the Bill also start the process of ensuring a modern workplace relations system for Australia which balances fairness and flexibility in the Australian labour market.
- 8.3 There is no evidence that the Bill will have any adverse impact on productivity. There is a clear body of evidence that collective bargaining contributes to productivity growth, which, in turn, supports responsible, non-inflationary, wage increases. In contrast, there is no evidence that individual statutory agreements improve productivity.
- 8.4 Pattern bargaining will remain prohibited under the proposed new system. The provisions in the Bill do not re-centralise Australia's wage setting system. The primary focus for the determination of wages and conditions will continue to be at the workplace level.
- 8.5 The Government recognises the challenge posed by the current inflationary pressures within the economy. A key part of the Government's response to this challenge is to improve the productive capacity of the Australian economy, thereby placing downward pressure on inflation.
- 8.6 The provisions of the Bill will not encourage an increase in industrial disputation. The Government is committed to ensuring that industrial action cannot be taken outside its clear, tough rules.
- 8.7 There is no evidence that the Bill, including the abolition of AWAs, will adversely affect the level of employment. The Bill strikes the right balance between the desirability to generate employment growth and the need for fair employment standards.