

Submission

to

Senate Education, Employment and Workplace Relations Committee

Workplace Relations Amendment (Transition to Forward with Fairness) Bill 2008

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February 2008

Prepared by

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ABOUT WiSER

The Women in Social and Economic Research (WiSER) unit was founded in April 1999 in response to a growing void - within Australia and internationally - in the gender analysis of economic and social policy issues that confront women. To most effectively address this void, WiSER was established as an inter-disciplinary research program, spanning two divisions of Curtin University, the Curtin Business School (CBS) and the Division of Humanities.

WiSER is committed to producing high quality quantitative and qualitative feminist research on a broad range of issues that women identify as undermining their ability to achieve equity and autonomy in the current context. Meeting this commitment is enabled by the breadth of experience and expertise brought to WiSER by an increasing range of researchers.

Through its academic and consultancy research into women's experiences of social and economic policies WiSER provides a meaningful gender analysis of policy. An analysis strongly put forward via active contribution to government policy debates.

Our broad objectives include:

- Identifying the cases and causes of women's disadvantaged social and economic status and to contribute appropriate policy initiatives to address this disadvantage.
- Demonstrating the way in which social factors, particularly gender, influence the construction of economic theory and policy.
- Extending current theory and research by placing women and their social context at the centre of analysis.
- Contributing an interdisciplinary approach to the understanding of women's position in society. In turn, this should enable the unit to better reflect the interrelatedness of the social, economic and political discourses in policy and their consequent implications for women.
- Fostering feminist research both nationally and internationally.
- Expanding linkages with industry.
- Establishing and supporting a thriving Curtin University postgraduate research community with a common interest in feminist scholarship.

For further details see: www.cbs.curtin.edu.au/wiser

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1.0 Introduction

The Women in Social and Economic Research (WiSER) unit at Curtin University of Technology in Perth, Western Australia, is a multidisciplinary research unit with a particular expertise in feminist economics, labour economics, industrial relations and social policy. We welcome the opportunity to make a submission about to the Senate Employment, Education and Workplace Relations Committee's Inquiry into the Workplace Relations Amendment (Transition to Forward with Fairness) Bill 2008.

We note that the terms of reference for this inquiry are to report on:

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

In preparing this submission we have organised the material as follows. In Section 2 we begin with a brief historical context to the proposed legislative reforms. Section 3 summarises key proposals as detailed in the Transition to Forward with Fairness Bill. Section 4 describes prevailing macroeconomic conditions drawing on key economic indicators of the labour market and broader economic performance. Section 5 focuses specifically on the terms of reference for this inquiry.

2.0 Background to the proposed legislative reforms

Historically Australia has been host to a highly centralised and regulated industrial relations system. Throughout most of the last Century wages were largely determined by industrial tribunals, with determinations enshrined in industry and occupational awards. Key principles guiding the wage setting decision of tribunal members included concepts such as fairness (comparative wage justice), need (cost of living adjustments), capacity to pay (by industry) and productivity (eg. national productivity sharing and later enterprise productivity agreements). The approach saw the development of a national wages system with agreed relativities within and between occupational classifications. National wage reviews to determine cost of living adjustments (or, in some cases, restrain wages growth) would see all wages simultaneously adjust by uniform amounts. It was a system which was later to be described as being highly rigid.

By the mid 1980s there was widespread recognition by parties in the system (eg. unions, employers and government) of the need for a new, more flexible, approach to wage determination. Under the Accord (a wages and prices agreement between the Australian Labor Party (ALP) and the Australian Council of Trade Unions (ACTU)) decentralised bargaining was gradually introduced. Initially decentralised bargaining

took place at the industry level and, from 1991 onwards, at the enterprise basis. In 1993 the ALP, using the Corporations Power in the Constitution, introduced the option of statutory non-union enterprise (collective) agreements. This was the first time non-union statutory agreements had been provided for in the federal IR system. In 1996, building on the Corporations Power in the Constitution, the new Coalition government introduced the *Workplace Relations Act 1996*. Via this Act Australian Workplace Agreements (AWAs) (individual agreements) replaced enterprise (collective) flexibility agreements. The new Act also reduced the role of the AIRC, awards and unions and established a new Office of the Employment Advocate (OEA). The changes introduced in the 1996 reforms mirrored those which had been earlier introduced by Coalition parties in some states, for example, Western Australia.

Although AWAs first came into effect in 1996 the emphasis within the IR system was on collective (union and non-union) enterprise negotiations. Employers wishing to enter into an AWA had to comply with a fairly rigorous no disadvantage test.

In November 2005 the Coalition introduced the *Workplace Relations Amendment (Work Choices) Bill* and the *Workplace Relations Amendment (Welfare to Work and Other Measures) Bill*. Both Bills received Royal Assent in December 2005, with the former coming into effect on the 27th of March 2006 and the latter coming into full effect on the 20th of September 2006.

A key change brought about via *WorkChoices* was the overriding of the separate State industrial relations systems by the Federal jurisdiction. Although all the State governments objected to this roping in the government's position was upheld in a High Court challenge. Using the Corporations Power of the constitution the government determined that all constitutional corporations would automatically come under the Federal jurisdiction and, therefore, the provisions of *WorkChoices*.

Other significant provisions within *WorkChoices* included the:

- Primacy given to individual bargaining (Australian Workplace Agreements – or AWAs) over collective bargaining.
- Pairing back of the minimum protected standards to five conditions. The five standards were: (i) a minimum hourly rate; (ii) ten days sick leave, (iii) four weeks annual leave (two of which can be cashed out); (iv) unpaid parental leave; and (v) a maximum number of weekly working hours.
- Secrecy of individual agreements (AWAs).
- Removal of the 'no disadvantage test' which was originally included to ensure conditions within formally registered AWAs were no worse than the award. (This test was subsequently re-introduced as a new 'Fairness Test', operable from May 2007 for collective agreements and for people earning less than A\$75,000 on an AWA.)
- Limits on the requirement to offer AWAs on the same terms to comparable employees (opening up potential for greater discrimination between workers doing similar work).
- Limits on pattern bargaining, union rights of entry and union involvement in negotiation.

Under *WorkChoices* the wage setting function in the Federal jurisdiction was passed from the Australian Industrial Relations Commission (AIRC) to a new institution

known as Australian Fair Pay Commission (AFPC). The changes also saw the removal of the skill-based career classification (and pay) structures from awards. These classifications were migrated over to a new instrument known as the Australian Pay and Classification Scales. The AFPC, not the AIRC, was vested with the responsibility for setting and adjusting rates in this new instrument.

At the time of introduction it was argued, by the Coalition Government, that the new regulations would improve productivity, increase wages, reduce unemployment and, through creating a more flexible workplace relations system, assist workers balance their work and family life (The Parliament of the Commonwealth of Australia, 2004/05).

3.0 Key features of the Forward with Fairness Transitional Bill

There are three important features of the Bill. These include:

- i) Abolishing AWAs and introducing new Individual Transitional Employment Agreements (ITEAs).
- ii) Replacing the fairness test with a new no disadvantage test (NDT).
- iii) Empowering the AIRC to start the award modernisation process with reference to a set of National Employment Standards
 - o By 30th June 2008 the AIRC should have identified a priority list of industries or occupations for award modernisation.

Importantly, the Bill *does not* make any changes to the unfair dismissal provisions. Existing prohibited content rules have, similarly, not been changed (although it should be noted that prohibited content may be changed by regulation, not legislation).

In relation to individual statutory agreements, the key changes proposed by the Bill include:

- AWAs for terms of up to five (5) years can continue to be made until the eventual commencement date of the Bill.
 - o No new AWAs are to be entered into by the Australian Public Service Sector.
- Abolition of creation of new AWAs after the commencement date of the legislation (intended from 1 January 2010).
- Establishment of a new statutory individual agreements to be known ITEAs
 - o ITEAs may not extend beyond 31st December 2009.
 - o The ability to enter into an ITEA is restricted to those employers who had at least one employee covered by a formal individual employment agreement (eg. AWA) at 1 December 2007.
 - o ITEAs can only be made with new employees (either before employment starts or within 14 days) or employees on an existing formally approved individually agreement.
 - ITEAs can be offered to new employees as a condition of employment.

- Existing AWAs may be replaced by an ITEA.
- Employees earning above \$100,000 will be free to agree to their own pay and conditions without reference to awards (“Flexible Common Law Contracts”.
- Existing AWAs can be varied limited circumstances (eg. to remove prohibited content) and will be subject to the new fairness test.
- Employees on existing AWAs which expire may enter into collective agreements or be covered by the full award.
 - Employees on existing AWAs may be allowed to vote on collective agreements without first having to terminate their AWA and may also take part in secret ballots for protected industrial action.
- AWAs will be subject to the minimum wage adjustment decisions of the AFPC.

There will be, as noted above, a new NDT. The NDT will be administered by the Workplace Authority Director. The key test is that the workplace agreement (individual or collective) will not reduce an employee’s overall terms and conditions when benchmarked against a reference instrument such as a designated award. An agreement will pass the NDT where there is no reference instrument, although all agreements must meet the Australian Fair Pay and Conditions Standard (AFPCS).

The award modernisation process, now to be undertaken by the AIRC, is an important plank of the Commonwealth Government’s commitment to introducing a national workplace relations system. The aim is to ensure no State-based differences in awards. The AIRC has until the 31st December 2009 to complete the process, with priority industries and awards identified by 30th June 2009. The modernisation process will be consultative allowing opportunity for employers and other parties to make submissions. Key matters to be noted include:

- The decision to create awards along industry lines (although capacity does exist to create awards with a more occupational / operational focus if required).
 - Priority to be given to developing awards for industries with a high number of AWAs and Notional Agreements Preserving State Awards (NAPSAS).
- No intention to expand award coverage to award-free areas such as managerial employees.
- Requirement to include a flexibility clause aimed at promoting flexible work practices at the organisational level.

The safety net of ten legislated National Employment Standards (NES) to be inserted into the modern awards will include: (i) maximum hours of work protecting the 38 hour week; (ii) parental leave; (iii) the right for parents to request flexible working arrangements; (iv) annual leave (including chasing out holidays); (v) personal, carers and compassionate leave; (vi) community service leave; (vii) public holidays; (viii) Fair Work information statement; (ix) notice of termination and redundancy; and (x) long service leave. These minimum entitlements, such as minimum redundancy

entitlements will be set by the AIRC (which, in some cases, may be higher than some State schemes).¹

The Government's industrial relations reforms will also see the creation of a new agency, Fair Work Australia (FWA). FWA will provide workplace relations services including provision of advice and handling of complaints. From the 1st of January 2010 FWA will also take over responsibility for determining the minimum wages to be contained in awards. In the interim the AFPC will continue to undertake annual minimum wage reviews.

Proposed changes to the industrial relations system will be monitored by the Department of Education, Employment and Workplace Relations (DEEWRs)

4.0 Economic context

The performance of the Australian economy in recent decades has been described by the Organisation for Economic Co-operation and Development as 'remarkable' (OECD, 2004). In 2007 the former Treasurer, The Hon Peter Costello, also commented on the strength of the Australian economy noting that "Australia is now in the longest period of continuous economic expansion ever recorded, unemployment at 30-year lows, and inflation is moderate" (Costello, 2007).

Drawing on various economic indicators this section offers an insight into some of the recent labour market developments including employment trends and wage outcomes. We also summarise key findings from recent qualitative research on the effects of the industrial relations system. The material in this section provides an important basis for our response to the key Senate Inquiry questions (see Section 5).

The remainder of this section is organised as follows. Section 4.1 discusses GDP growth, providing insights into the various components of GDP growth. Section 4.2 discusses recent patterns of employment growth, highlighting in particular the strong growth in part-time employment. Section 4.3 presents aggregate and disaggregate wage data and highlights recent trends in gender equity and outcomes for low paid workers. Section 4.4 focuses on the issue of productivity and the link between high performance management practices and productivity outcomes. A discussion of inflation outcomes and expectations concludes this section (Section 4.5).

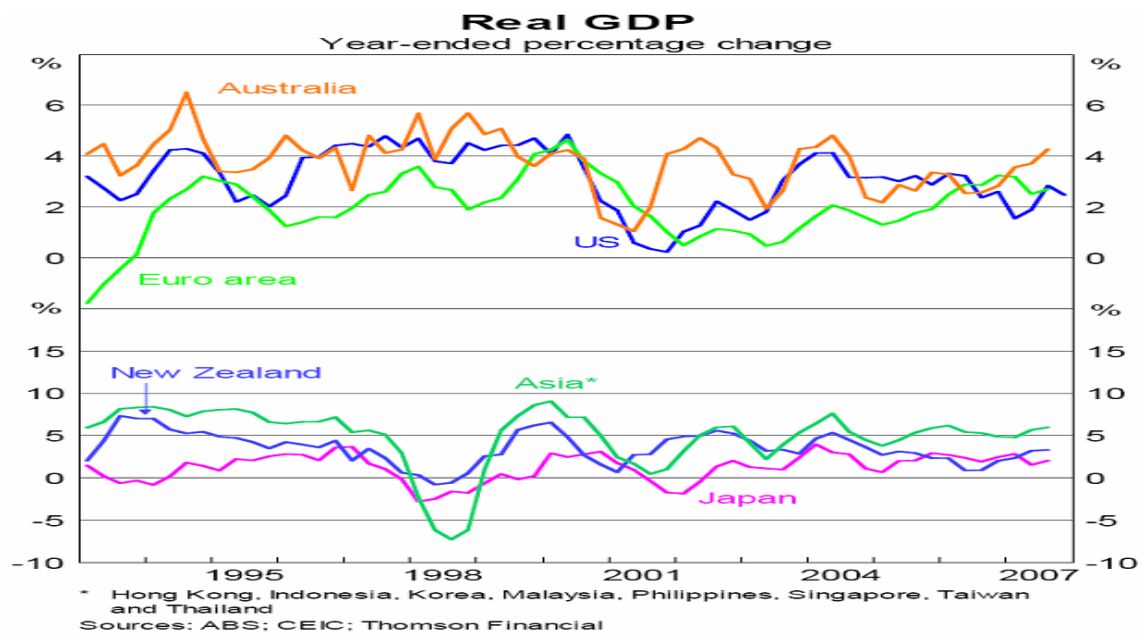
¹ Details of the proposed set of National Employment Standards, to apply from 1st January 2010, are contained in the National Employment Standards Exposure Draft Discussion Paper which is available from the following web-link. Submissions on the discussion paper are required by the 4th of April 2008.
<http://www.workplace.gov.au/workplace/Publications/WorkplaceRelations/DiscussionpaperonNationalEmploymentStandards.htm>

4.1 GDP growth²

The Australian economy, as noted earlier, has been in a strong expansionary phase for several years with capacity constraints (eg. infrastructure bottle-necks and skill shortages) now curtailing growth prospects. Over the next ten years (2007-2017) the forecast is for a growth rate 3.3 per cent, which is moderately strong and above that of the Eurozone (at 2.1 per cent) (see Figure 1). Importantly for Australia is the fact that growth projections for our major trading partners (eg. China) remain strong.

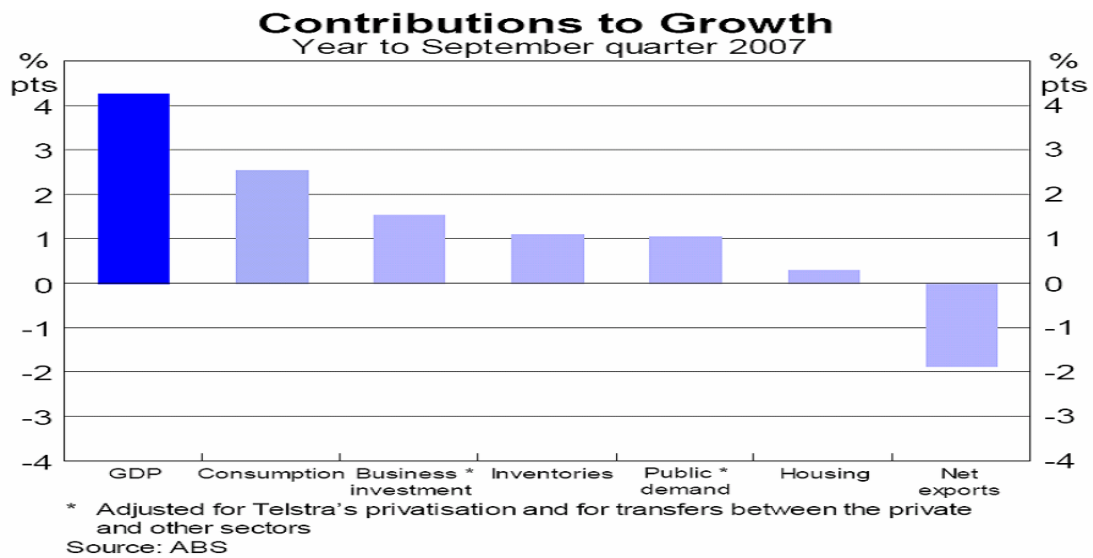
Consumption is the main driver of GDP with strong consumption indicators showing for retail sales and motor vehicles. Housing approvals remain steady (although weaker in NSW). Capital expenditure plans also show signs of on-going investment growth, particularly in mining, construction, finance and insurance and property and business services.

Figure 1



² The material in this section (Section 4.1) draws heavily on indicators compiled by Professor Peter Kenyon from the Curtin Graduate School of Business. We are grateful to Peter for making this material available to us.

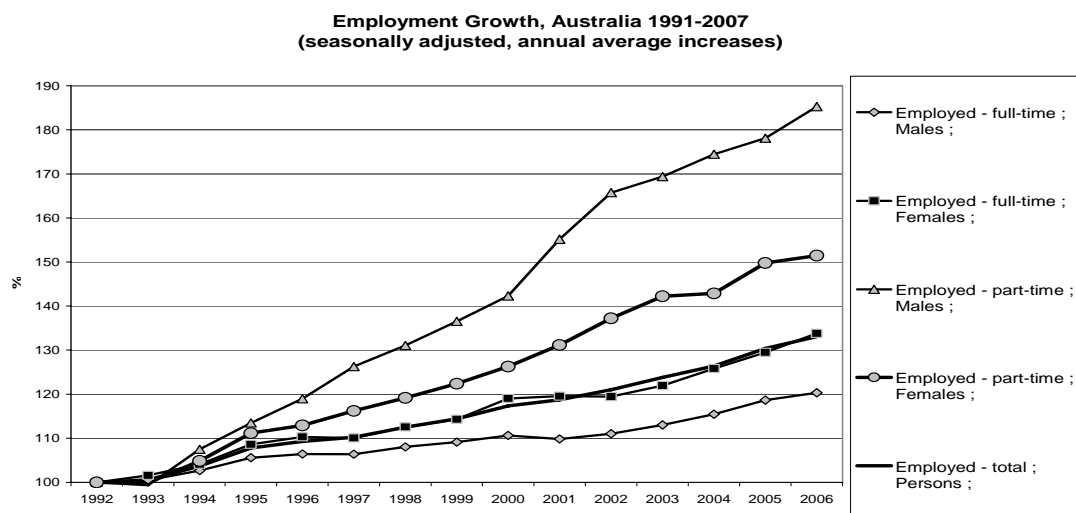
Figure 2



4.2 Employment growth

Figure 3 shows employment growth in recent years. Whilst total employment growth has been strong it is apparent that there has been a significant growth in the use of non-standard forms of employment such as part-time work. By May 2007 28 per cent of all jobs in Australia were part-time (see Table 1), the majority of which were casual.³

Figure 3



³ Drawing on 2005 data we know that, at August 2005 30 per cent of all (main) jobs in Australia were part-time and of those part-time jobs 58 per cent were casual (technically defined as 'employees without paid leave entitlements') (ABS 6310.0, 2005) .

Table 1: Employment shares in Australia, May 2007

	Employed - full-time, Males	Employed - part-time, Males	Employed - full-time, Females	Employed - part-time, Females	Employed - total, Persons
Australia					
Total ('000)	4908.8	853	2621.2	2070.8	10453.8
% share	47.0	8.2	25.1	19.8	100.0

Source: ABS 6202.0

When the data are further disaggregated we see that employment growth has been strongest in jobs of 15-29 hours duration per week (see Table 2).⁴ Evidence suggests that this isn't a complete supply side phenomenon. In 2001, for example, of women aged 25-34, 17 per cent of those working 16-29 hours wanted to work more hours; by 2007 this share had grown to 22 per cent.

Table 2: May 2007. Proportion of women employed part-time who would prefer to work more hours, by age and hours worked.

Hours worked per week	Aged 20-24	Aged 25-34	Aged 35- 44	Aged 45-54	Aged 55-64
	%	%	%	%	%
1-15 hours	30.8	27.1	30.2	28.7	27.2
16-29 hours	38.4	22.1	17.5	21.7	23.1
30-34 hours	32.4	15.8	11.6	9.2	16.6
Total (%)	34.5	22.3	20.6	21.0	23.9

4.3 Wages growth and outcomes

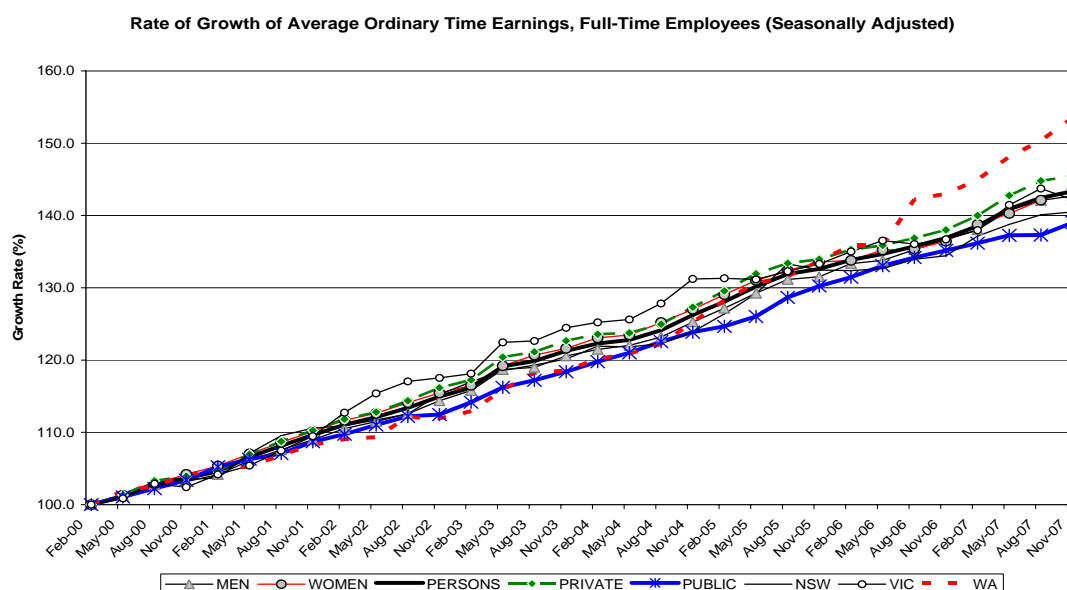
4.3.1 Full-time labour market

Figure 4 plots the recent earnings growth of full-time employees. The analysis is restricted to average ordinary time earnings (and is for seasonally adjusted earnings data). It is apparent from these data that wages growth has not been equivalent across all sectors. Wages growth has been stronger in the private sector (when compared to the public sector), strongest in Western Australia and, latterly, stronger for women in full-time employment.

The differentiated State outcomes are underpinned by sectoral differences such as public / private sector split and industry outcomes. When compared with New South Wales, for example, Victoria's share of wages and salaries deriving from the public sector is significantly lower (see Table 3). Industry composition is also important, with the resources sector an important driver of private sector expenditure in Western Australia.

⁴ Between 2001 and 2007 the number of part-timers working 15-29 hours per week increased by 30 %, this compares to an overall increase in part-timers of 23 %. (ABS 6291.0, e01_may01.srd).

Figure 4



Source: ABS 6302.0

Table 3
Distribution of Employers' Total Expenditure on Wages and Salaries by Sector and State, March 2007 (%)

	NSW	VIC	QLD	SA	WA	TAS	NT	ACT	Aust (Total)
Private	36.3	27	16.4	7	9.7	1.6	0.8	1.3	100
Public	34.7	19.3	19.5	6.8	8.8	2.4	2	6.6	100

Source: ABS 6345.0, Appendix A. Table A1

Table 4 further summarises recent aggregate trends in the total earnings growth of persons employed full-time. Public sector wage restraint has been particularly strong in Victoria. In the private sector wage restraint has been strongest in New South Wales. Western Australia, as indicated above, has seen particularly strong growth in private sector wages with growth significantly higher than the national average.

Table 4: Average Weekly Total Earnings Growth of Full-Time Employees by Sector.

	Public Sector		Private Sector	
	2007	Last 5 years	2007	Last 5 years
	%	%	%	%
NSW	4.0	27.0	2.8	18.9
VIC	2.9	19.6	4.1	19.4
QLD	5.0	24.7	4.1	21.6
WA	4.3	22.6	6.4	24.9
SA	5.0	23.4	4.9	20.5
TAS	4.2	22.3	4.2	20.5
AUS	4.1	24.0	4.3	20.3

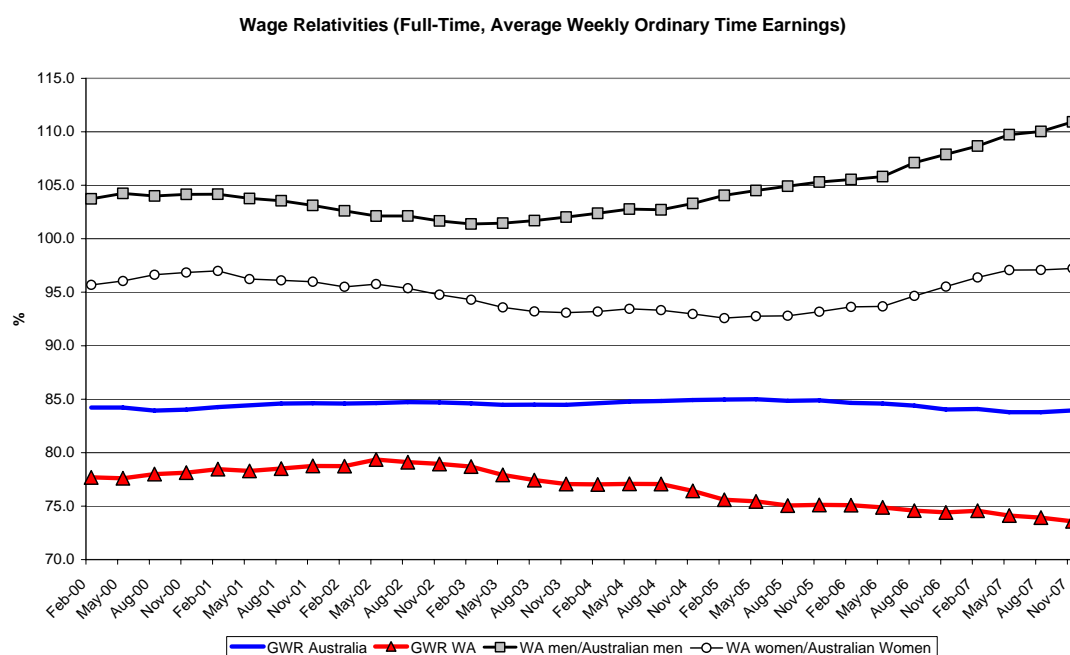
Source: Colebatch (2008), based on ABS 6302.0 data.

4.3.2 Gender pay gap

Figure 5 presents trends gender pay ratio (GWR) using average weekly ordinary time earnings of full-time employees. The data shows remarkable stability in Australia's GWR even through a prolonged era of significant labour market deregulation (see, also, Table 5).⁵ At November 2007 the national GWR in the full-time labour market was equal to 83.9 per cent (a gap of 16.1 percentage points). When the data are disaggregated across States the patterns change (see Table 5). In Western Australia (WA), for example, the GWR is equal to 73.6 per cent (a gap of 26.4 percentage points). The various State patterns are shown in Table 5.

Further insight into the State developments may be derived by comparing the earnings of men and women at the State level with their same-sex counterparts at the national level. Doing this for WA we can see that women in WA earn around three per cent less than their counterparts at the national level (see Figure 5). Two years ago this gap was around seven per cent. Earnings growth in WA has not been equivalent for men and women, mostly reflective of on-going patterns of occupational based sex-segregation which see women clustered into low paying sectors such as hospitality and retail trade while men are over-represented in high paying sectors such as mining. Consistent with this, Figure 5 shows an earning premium of 10.9 per cent for men in WA relative to men nationally.

Figure 5



Source: ABS 6302.0. (Note, all data are presented using a four quarter moving average).

⁵ For a more detailed commentary on this paradox see Preston and Jefferson (forthcoming).

Table 5
Annual Average Weekly Ordinary Time Earnings Gender Wage Ratio (in Full-Time Employment) by States and Territories, 1992 and 2007 (%)

	Aust	NSW	VIC	QLD	SA	WA	TAS	NT	ACT
Feb-92	83.7	82.4	84.7	83.2	90.6	81.2	84.4	81.3	82.6
Aug-07	83.7	84.5	83.9	84.8	86.1	72.9	90.8	88.3	85.4
Change 1992-07 (%- point)	0.05	2.09	-0.75	1.59	-4.57	-8.26	6.35	6.98	2.81

Source: ABS 6302.0. Seasonally adjusted Average Weekly Ordinary Time Earnings (AWOTE).

4.3.3 Wages and part-time employees

Thus far we have looked at earnings growth in the full-time labour market. Section 4.2 above, however, demonstrated the increasing importance of the part-time labour market. Data on earnings patterns in the full-time labour market are therefore only able to present a partial picture of wage developments generally (Preston and Jefferson, forthcoming).

The significance of the employment patterns is reflected in Table 6 which shows the methods of pay setting for non-managerial employees. Of all non-managerial employees at May 2006 (the latest available data), 21 per cent were dependent on the award for the determination of their pay and conditions. Only 3.2 per cent were covered by a registered or statutory individual agreement. Unregistered individual agreements (eg. verbal and informal agreements for over-award pay) covered 31.3 per cent of employees. Methods of pay setting also varied considerably between the full-time and part-time sectors, with part-timers less likely to be covered by a registered individual agreement and more likely to be dependent on the award (33.8 per cent).

Table 6: Methods of pay setting (Australia), Non-managerial employees, May 2006

	Male-FT	Male-PT	Male-Total	Female-FT	Female-PT	Female-Total	Persons-FT	Persons-PT	Persons-Total
- % -									
Award only	11.3	34.0	17.1	14.3	33.7	24.8	12.5	33.8	21.0
Registered collective agreements	41.0	32.8	38.9	45.0	42.2	43.5	42.6	39.3	41.3
Unregistered collective agreements	3.7	*	3.5	2.9	2.8	2.8	3.4	2.8	3.2
Registered individual agreements	4.3	*	4.0	2.9	*	2.5	3.8	2.4	3.2
Unregistered individual arrangements	39.7	27.3	36.6	34.9	19.2	26.4	37.8	21.7	31.3
All methods of setting pay	100	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

Source: ABS 6306.0; * indicates cell size is too small to report.

4.2.4 Earnings by industry

The significance of the differing patterns of employment growth (eg. strong part-time growth in some sectors) and associated differences in methods of pay setting shows up in differential wage outcomes across industries. Table 7 summarises recent patterns of employment and earnings growth by industry.

Many of the sectors exhibiting strongest employment growth (often fuelled by part-time growth) are also sectors where wages growth has been slowest. For example employment in property and business services has recently increased by 84 per cent while the average weekly ordinary time (nominal) earnings of men employed full time increased by 59.5 per cent. This compares with average growth in employment of 37 per cent and nominal wage increases of 69.1 per cent (Table 7). Similar trends occurred in the accommodation, café and restaurant sector. Total employment in this sector increased by 51 per cent, while male average weekly ordinary time earnings (AWOTE) in accommodation, cafés and restaurants increased by only 47.1 per cent (Table 7).

Research by the Australian Fair Pay Commission (AFPC 2008) similarly shows that wage increases in low skilled sectors have fallen behind wage increases for the rest of the economy (equal to 4.2 per cent for the period studied).

“Predominantly low-skilled industries, such as retail trade and accommodation, cafes and restaurants, recorded some of the lowest annual growth rates in total hourly rates of pay over the year to the September quarter 2007, at 3.5 and 3.3 per cent, respectively.” (AFPC, 2008: 20).

In other related research released by the AFPC studies show that low paid sectors such as retail trade, construction, property and business services, accommodation, cafes and restaurants and manufacturing account for 75 per cent of employers where the majority of employees are low paid (McGuinness, Webster and Mavromaras, 2006). McGuinness et al also found that 6.7 per cent of employers paid below the Federal Minimum Wage (FMW). When casual workers were included in this calculation the proportion of employers paying below the FMW increased substantially.

Table 7: Changes in Employment and Nominal Earnings: 1994-2006/07

	Total Employment Growth (Aug-1994 to May-2007)			Nominal Earnings Growth (1994- 2006)	
	Employed Full Time (%)	Employed Part Time (%)	Total (%)	Men (%)	Women (%)
Agriculture, Forestry and Fishing	102.8	101.1	102	-	-
Mining	167.1	107.7	165	75.9	96.8
Manufacturing	95.3	113.5	97	71.5	71.1
Electricity, Gas and Water Supply	94.6	164.0	97	91.1	87.7
Construction	193.1	156.0	187	62.3	71.6
Wholesale Trade	95.8	118.2	99	66.3	73.1
Retail Trade	128.1	146.4	136	61.1	68.8
Accommodation, Cafes and Restaurants	148.0	154.1	151	47.1	60.7
Transport and Storage	127.9	214.4	138	64.1	54.7
Communication Services	140.9	227.9	150	74.1	74.3
Finance and Insurance	125.0	155.8	130	97.0	89.9
Property and Business Services	183.0	187.2	184	59.5	71.7
Government Administration and Defence	130.7	220.7	140	80.9	77.8
Education	123.8	156.9	134	63.0	67.4
Health and Community Services	152.3	167.8	158	76.2	52.8
Cultural and Recreational Services	161.3	178.9	168	54.9	53.8
Personal and Other Services	132.1	158.5	139	60.1	70.2
Total all industries	131.0	155.6	137	69.1	68.8

Source: ABS 6291 and ABS 6203.0. Note: (a) part-time employment is defined in Australia as employment of 35 hours or less per week; (b) nominal earnings measures average weekly ordinary time earnings (AWOTE) of persons employed full-time. It includes managerial and non-managerial employees.

4.2.5 Earnings in AWAs and collective agreements

In this section we draw on findings from Peetz and Preston (2007) and summarise key wage outcomes under federal AWAs and Collective Agreements (CAs). Using unpublished data from the Australian Bureau of Statistics (ABS) *Employee Earnings and Hours* (EEH) Survey from May 2006, Peetz and Preston found that AWAs paid

significantly less than CAs. For men the earning's shortfall or gap was equal to 7.7 per cent in 2006 (i.e. the average man on a CA received 7.7 per cent more than the average man on an AWA). For women the corresponding shortfall was 11.3 per cent.

Table 6 Average hourly total cash earnings, CAs and AWAs, 2004 and 2006, non-managerial employees

	CAs			AWAs			AWA/CA ratio	
	2004	2006	change	2004	2006	change	2004	2006
Males	\$ 25.80	\$ 28.70	11.2%	\$ 25.80	\$ 26.50	2.7%	100.0	92.3
Females	\$ 23.30	\$ 25.70	10.3%	\$ 20.30	\$ 22.80	12.3%	87.1	88.7
Persons	\$ 24.60	\$ 27.30	11.0%	\$ 23.90	\$ 25.30	5.9%	97.2	92.7

Source: ABS 6306.0, unpublished data. (Table 5.1 in Peetz and Preston, 2007)

When median data were used the gaps were even more striking. In 2006 men on median AWA earnings earned 15.4 per cent less than men on median CA earnings. For women the corresponding gap was 18.7 per cent. The result derives from the fact that, for women in particular, many covered by formal AWAs are in low paid sectors.

Table 7 Median hourly total cash earnings, CAs and AWAs, 2004 and 2006, non-managerial employees

	CAs			AWAs			AWA/CA ratio	
	2004	2006	change	2004	2006	change	2004	2006
Males	\$23.40	\$26.00	11.1%	\$20.90	\$22.00	5.3%	89.3	84.6
Females	\$21.40	\$23.00	7.5%	\$17.30	\$18.70	8.1%	80.8	81.3
Persons	\$22.30	\$24.50	9.9%	\$19.00	\$ 20.50	7.9%	85.2	83.7

Source: ABS 6306.0, unpublished data. (Table 5.2 in Peetz and Preston, 2007)

The analysis presented by Peetz and Preston is designed to test various hypotheses about the purpose and use of AWAs. The proposition put is that AWAs in high paying sectors such as mining have been used as part of a union avoidance strategy. The attraction wage is designed to undermine union organising. In low paying sectors, and in sectors where organisation is typically difficult and union membership traditionally low (eg. hospitality), the proposition is that AWAs have been used as part of a cost minimisation strategy.

The wage outcomes predicted by these differing hypotheses are consistent with the data. In other words it would appear that the key purpose behind the use of AWAs in low paying sectors has been to minimise the wage bill. Further insight into the divergent usage of AWAs can be derived from an analysis of State level data (see Table 8).

In Western Australia where the uptake of AWAs has been strong, especially in the mining sector, the AWA pay *premium* for men (relative to male average earnings in CAs) was equal to 9.6 per cent in 2006. For WA females (who are significantly under represented in mining) the pay *disadvantage* was 11.7 per cent. In Victoria, where the private sector is strongly represented, men on average AWA earnings earned nearly 14 per cent less than their male counterparts on average CA earnings. As Peetz and Preston (2007: 15) note, in Victoria many of the low paid AWAs are in the manufacturing sector (a sector which accounts for around 14 per cent of the Victorian

workforce). AWA penetration was also high in the Victorian accommodation, cafes and restaurant industry.

Table 8 Average hourly total cash earnings, CAs and AWAs, by State, 2006, non-managerial employees

	CAs (\$)			AWAs (\$)			AWA/ CA ratio (%)		
	Males	Females	Persons	Males	Females	Persons	Males	Females	Persons
VIC	28.60	25.20	26.90	24.70	22.80	23.80	86.4	90.5	88.5
NSW	29.70	26.80	28.30	27.80	22.80	26.00	93.6	85.1	91.9
QLD	28.20	25.30	26.80	23.20	21.40	22.80	82.3	84.6	85.1
SA	26.60	24.50	25.60	22.70	22.40	22.70	85.3	91.4	88.7
WA	29.10	25.60	27.40	31.90	22.60	29.40	109.6	88.3	107.3
TAS	25.70	25.30	25.50	20.50	17.90	19.60	79.8	70.8	76.9
NT	28.40	25.40	26.80	26.50	22.00	25.30	93.3	86.6	94.4
ACT	31.10	28.10	29.40	31.70	32.30	32.00	101.9	114.9	108.8
AUST	28.70	25.70	27.30	26.50	22.80	25.30	92.3	88.7	92.7

Source: ABS 6306.0, unpublished data (Table 5.5 from Peetz and Preston, 2007)

4.4 Productivity

4.3.1 Flexible working arrangements

When the Coalition industrial relations reforms were introduced it was specifically claimed that the reforms would assist employees to negotiate flexible working arrangements that would help them balance their work and family conditions and improve firm productivity. Recent research by Jefferson and Preston (2007) casts doubt on the extent to which such flexibility (and thus productivity gains) have been achieved.

Table 10: Estimates of employees with access to selected forms of flexible working arrangements: Employees in main job, male and female, part-time and full-time employees Australia 2006

Form of flexible working arrangement	Males %		Females %	
	Full-time	Part-time	Full-time	Part-time
Had some say in start and finish times	40.8	31.4	41.3	38.8
Able to choose start/finish times on day to day basis	28.7	18.2	27.5	21.8
Times negotiated with employer in advance	8.7	9.4	10.9	13.9
Other	3.4	3.8	3.0	3.2
Had no say in start and finish times	59.2	68.6	58.7	61.2
Able to choose to work extra hours in order to take time off	40.9	22.1	42.5	32.2
Not able to choose to work extra hours in order to take time off	54.1	73.2	53.4	63.4
Did not know whether able to choose to work extra hours in order to take time off	5.1	4.8	4.1	4.4

Source: Australian Bureau of Statistics (2007) *Working Time Arrangements* 6342.0 Table 2

According to Jefferson and Preston, approximately 60 per cent of all employees do not have a say in start and finishing times at work. Hours flexibility is thus not a feature of the current Australian labour market (see Table 10, reproduced from Jefferson and Preston). This is particularly the cases in AWAs where flexibility provisions have focused much more on employer prerogative. Data from the former Department of Employment and Workplace Relations (DEWR 2007) show that of all AWAs examined, 34 per cent had no restrictions on days to perform ordinary hours while 11 per cent contained provisions allowing management to alter hours (see Table 11).

Table 11 Hours of Work Provisions in Collective Agreements and AWAs

Provision	2000/01	2002/03	2004/6	2004/2006		
				% of CAs (all employees)	% of AWAs (all ees)	% of Female Employees covered by provisions in: CAs ^(a) AWAs
Span of ordinary hours and how they are worked						
Average weekly hours ^(b)	38.1	37.4	37.3	38.6		
Specified weekly hours	51	70	81	53	76	49
Make-up time	7	5	8	2	23	2
Time in lieu at ordinary rates	11	11	15			
Time off in lieu at penalty rates	6	4	6	19	60	20
No restrictions on days to perform ordinary hours	11	12	25	34	41	37
Ordinary hours of work may be averaged over and extended period ^(c)	4	9	7	11	9	11
Compressed week	2	2	2	-	1	-
Hours of work decided by employee majority	8	5	10	-	4	-
Hours of work may be negotiated	12	6	5	4	15	5
Hours of work may be varied by employer in consultation with employee	6	7	5	-	5	-
Management may alter hours	3	2	4	11	3	10
Flexible starting and finishing times for ordinary hours of work	3	4	2	-	6	-
Flexitime	3	2	3	2	16	2
Shifts and rostered days off						
12-hour shifts	8	8	23	20	12	17
Rostered days off may be banked/accrued	40	44	36	2	16	0
Rostered days off maybe varied by mutual agreement	40	38	34	-	3	-
Time off in lieu maybe granted for working on a rostered day off	9	26	10	-	6	-
Public holidays may be taken on another day by mutual arrangement	9	7	14	4	28	5
Breaks						
Staggered breaks	14	8	14	3	6	1
Breaks not to interrupt continuity of work	10	5	11	7	7	7
Management may alter break	3	2	11	10	9	11

Source: Jefferson & Preston (2007)

Notes: (a) data showing coverage of provisions in collective agreements disaggregated by group (in this case share of female employees) are based on a sample of CAs where number of employees covered is known); (b) These figures refer to number of hours not percentage figures; (c) An 'extended period' in this provision usually means a period longer than a month. A dash is used to indicate that data was not reported.

4.3.2 High performance human resource practices

Favourable productivity effects from the industrial relations reforms were to also have derived from agreements which facilitated a stronger integration of remuneration and working arrangements with the strategic directions of the firm. In the management literature this is often referred to as strategic or quality pay (Bickley and Whiteley, 2004). Such high performance human resource and management practices are not, however, characteristic of most Australian organisations. Remuneration systems and organisational strategy are typically not integrated, reflecting the long historical practice of institutional and tribunal involvement in the determination of pay and conditions.

High performance human resource practices are not, however, simply constrained to pay setting. Drawing on principles of psychology and organisational behaviour they include strategies designed to motivate and empower employees and bring about a greater alignment of employee and organisational goals. In short the emphasis is on the soft skills of management.

There is, of course, debate around the extent to which recent regulatory reforms have engendered the practice of high performance HR practices. It is highly likely that the quality of outcomes varies considerably across industries and organisations.

A recent study of low paid work in Western Australia found little evidence to support the idea that the reforms had delivered improved HR practices (Jefferson, Preston, Chapple-Fahleson and Mitchell, 2007). Rather than support high performance management techniques the reforms appeared to foster low trust environments characterised by low morale and fear. Employees in these firms appeared reluctant to suggest business process improvements for fear of being labelled as a trouble maker and dismissed without recourse.

Aside from fostering a climate of fear and intimidation the removal of unfair dismissal protection undermined employee confidence and power in pay negotiations. Most participants interviewed described their pay as being set on a take it or leave it basis. When coupled with the welfare-to-work reforms (which would see single parents with a child aged six or more have their parenting payment breached if they failed to work a minimum of 15 hours per week) the low paid women interviewed had a heightened sense of vulnerability around their pay negotiations and work practices.

The research documented in Jefferson et al. (2007) has many parallels with cases recently documented by the Western Australian Fair Employment Advocate (FEA) The key issues identified by the FEA in a recent report (FEA, 2007) include:

- Insecurity at work
- Confusion over entitlements
- Limits on the bargaining power of employees (unequal bargaining)
- Concerns for regional WA

In terms of negotiation the FEA notes that template AWAs are commonly used in some sectors. In the hospitality sector AWAs appear to have been actively promoted by employer advisory firms and/or the industry association. The FEA also demonstrates cases of emotional blackmail, suggesting little evidence of good faith bargaining. Many employees find themselves in vulnerable circumstances, often

being short-paid or underpaid (being denied their overtime pay entitlements) (this finding is also supported by the research reported in Jefferson et al. 2007).

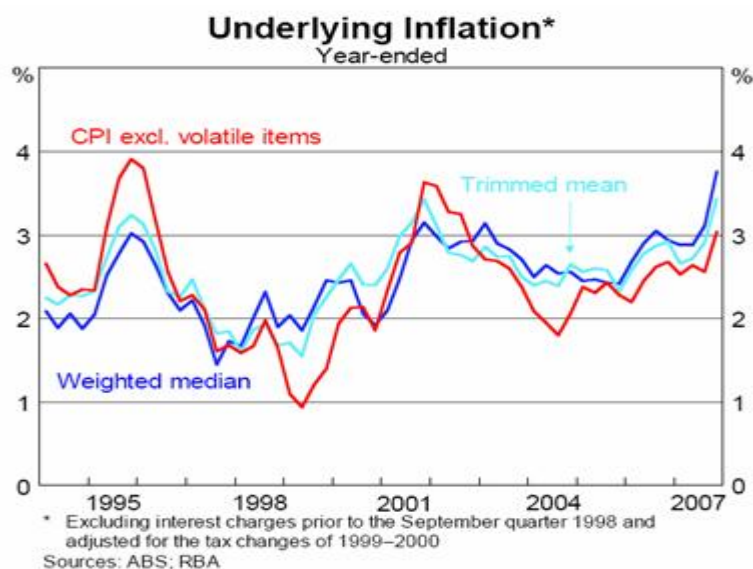
In regional towns workers appear reluctant to report on the poor employment practices experience for fear of reprisals and concern that they may jeopardise future employment prospects in their small town locations.

There is genuine concern amongst many low paid workers in Western Australia for their future in a less buoyant economy. Currently many workers opt to leave and pursue employment elsewhere rather than risk dismissal for asking for improved working conditions. In a slacker labour market there will be less opportunity to switch jobs and less pressure on employers to pursue high performance HR techniques.

4.5 Inflation outcomes and expectations

Inflation is arguably the most critical challenge facing the Australian economy. Controlling inflation is the core business of the Reserve Bank of Australia (RBA), with the target for consumer price inflation (or the CPI) equal to 2-3 per cent per annum. Recent CPI data for the December 2007 quarter show underlying inflation now “noticeably higher than expected” at 3.5 per cent for the year (RBA, 2008). Strong domestic and international (trading partner) demand together with the labour shortages have contributed to the pick up in prices. The wage price index (WPI) is also showing wages growing at above average rates.

Figure 6



The key challenge for the RBA is managing inflationary pressures in a two-speed economy. High wages growth and skill shortages are strong in resource rich states

such as Western Australia and Queensland and less prevalent in manufacturing based states such as Victoria.

The high exchange rate is also helping to moderate inflationary pressures by redistributing income from export industries towards those industries which buy imports.

Tax cuts over the coming years will add to inflationary pressures, although proponents of the tax cuts emphasise the positive participation (labour supply) effects. We remain less convinced about these supply effects, noting that a sizeable proportion of the workforce are currently underemployed (a demand constraint).

5.0 Inquiry questions

5.1 Economic and social impacts from the abolition of individual statutory agreements

Formally registered individual statutory agreements currently only apply to a small proportion of the workforce, estimated at between 3 and 7 per cent. They are prevalent in the mining sector although recent years have seen strong growth and penetration of AWAs into low paid sectors of the labour market such as accommodation, cafes and restaurants and property and business services.

In the low paid sectors of the labour market the strategic intent behind the promulgation of AWAs appears to be cost-cutting, with AWAs being used to restrict wages growth and intensify working hour arrangements.

The abolition of individual statutory agreements in these sectors of the economy will most likely have positive economic and social impacts, particularly amongst low wage workers, many of whom are women. Estimates presented above show a significant wage gap between AWAs and collective agreements and sizeable gender pay gaps for those covered by AWAs.

5.2 Impact on Employment

Employment growth in Australia has been particularly strong over the last fifteen years, increasing by more than 30 per cent since 1992. The strong employment growth has been largely fuelled by the resources boom and favourable global economic conditions. Much of the employment growth has been in the part-time sector and in non-standard forms of employment. It is worth noting that AWAs are not commonly utilised by employers of part-time labour. The more common form of agreement in these sectors is the award or an informal unregistered (often verbal) individual agreement.

It may be inferred from the above that abolishing individual statutory agreements will not significantly impact on employment growth in Australia.

5.3 Potential for wages breakout and increased inflationary pressures

The key question being asked here is whether the removal of AWAs will take the lid off wage pressures and in turn contribute to inflation.

In the low paid sector employees on AWAs do earn significantly less than their counterparts on collective agreements. Theoretically this means that moving workers from AWAs to CAs will see an increase in their average pay.

Removing the downward pressure on wages brought about by unequal individual bargaining is not likely to see a wages breakout. Many of the low paid are employed in low wage sectors of the economy (i.e. where wages growth has been below average). The growing gap between low wage workers and other workers shows that they have little industrial power through which to generate a wages breakout.

It should also be noted that the major contributors to inflation (headline CPI) are petrol prices (7 per cent in the December quarter) and housing. These are essential items. A failure to maintain the real wages of the low paid will subject many to financial distress and mortgage stress. This has the potential to put further pressure on rental markets and add to inflationary pressures in that sector.

5.4 Potential for increased industrial disputation

Many of the low paid employees on AWAs are employed in the small business sector where opportunities to join forces and bargain collectively (including engage in collective industrial disputes) are fairly limited.

Current unfair dismissal provisions (removing protection for employees in firms which employ less than 101 employees) also has the potential to undermine any industrial activity low paid workers might otherwise consider engaging in.

Pressure for industrial disputation may, of course, mount if minimum wage adjustments do not maintain the value of the real wage (necessary cost of living adjustments) and allow wage inequality to further deteriorate. In such a context it is possible that the unions use major demonstrations of industrial power to show that they can achieve fair increases when 'fair pay' institutions fail to do so.

The situation may be different in other high wage sectors where AWAs are more prevalent (eg. mining) although employers in these sectors can afford to offer remuneration packages that deter the need to organise and engage in disputation leading to a wages breakout.

5.5 Impact on sectors heavily reliant on individual statutory agreements

The transition period provided for in the Bill is very generous giving employers who are heavily reliant on individual statutory agreements ample time to re-think their HR strategies. AWAs will run for another five years and the option exists to offer ITEAs which will run through until 31st December 2009. Employers of high wage

employees earning more than \$100,000 can offer Flexible Common Law Contracts if they wish.

The major issue likely to arise is whether or not collective agreements are negotiated as union or non union collective agreements. This is a question for the managers of relevant organisations to negotiate with their own workforce. We would argue that it is not a government's role to keep unions out of workplaces if employees want their representation.

We note that the AIRC will give priority to updating (modernising) awards in sectors heavily reliant on individual statutory agreements. This will ensure minimum standards which meet community expectations are extended across industries and occupations. One potentially favourable effect will be a levelling of the playing field in sectors which predominantly compete on the basis of labour costs (eg. cleaning, child-care services etc.). The current arrangements have contributed to a 'race to the bottom' in some sectors of the labour market.

5.6 Impact on productivity

Australia's productivity growth is currently constrained by capacity concerns such as infrastructure and skill shortages. AWAs have, typically, not been used to overcome many of the employment challenges currently preventing Australia from efficiently utilising the productivity potential of the current workforce. Research shows that underemployment is a significant challenge for Australia with many part-timers wanting to work more hours, yet the penetration of AWAs amongst part-timers remains low. AWAs by and large have also not been used to tailor working time arrangements to the needs of the employees.

Australia currently has a large underutilised workforce. Women comprise the majority of undergraduate students yet most professional jobs continued to be offered on a full-time basis. With women taking on the majority of the family care responsibilities, the lack of full-time employment opportunities has seen many move into less fulfilling, lower skilled, part-time jobs simply as a way of meeting their hour requirements (Preston, 2007).

Far from encouraging and promoting productivity improvements, in some sectors individual bargaining (coupled with the removal of unfair dismissal provisions) has fostered low trust environments where individuals are afraid to suggest business process improvements. In other words, far from fostering high performance HR practices the current IR system has had the opposite effect.

Productivity improvements generally arise from changes in new technology and innovative management, not from paying low wages.

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