

SUBMISSION TO THE SENATE
INQUIRY INTO THE WORKPLACE
RELATIONS AMENDMENT
(TRANSITION TO FORWARD WITH
FAIRNESS) BILL 2008

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1. INTRODUCTION

David Peetz

The key feature of the Workplace Relations Amendment (Transition to Forward With Fairness) Bill 2008 is the abolition of the ability for parties to enter into new Australian Workplace Agreements (AWAs). This submission focuses almost entirely on that aspect of the Bill. In particular, it discusses published and unpublished data on AWAs, principally from the Australian Bureau of Statistics (ABS). This submission in turn is based upon a number of research papers and monographs undertaken by David Peetz over the past two years, in some cases jointly with other authors, Professor Alison Preston (Curtin University) and Dr Robin Price (Queensland University of Technology).¹ As a result, two chapters of this submission are co-authored: chapter 5 with Professor Preston, and chapter 6 with Dr Price. I have their permission to do this, however, I take final responsibility for the content of the submission.

This submission is organised as follows:

- chapter 2 outlines the principal ABS data source and the limitations of the data. For example, it shows the limitations of using ‘averages’, which may not indicate the position of the typical worker, and indicates that the wage increases obtained by most workers were less than the growth in average hourly earnings;
- chapter 3 details published and unpublished data on the incidence of AWAs, showing that even after a decade they still played only a small role in the Australian labour market;
- chapter 4 discusses the published data on wage rates under registered individual and collective agreements. With few exceptions, the published data refer to registered individual contracts and do not separately distinguish between Australian Workplace Agreements, created under federal law, and state individual contracts, that is registered contracts created under State law. AWAs represent 97 per cent of registered individual contracts and hence the data for

¹ These publications and reports included: D. Peetz, *Brave New Workplace: How Individual Contracts are Changing our Jobs*, Allen & Unwin, Sydney, 2006; D. Peetz, *Assessing the Impact of WorkChoices - One Year On*, Industrial Relations Victoria, Department of Innovation, Industry and Regional Development, Melbourne, March 2007a; D. Peetz, 'Brave New WorkChoices: What do we Know So Far?' *Diverging employment relations patterns in Australia and New Zealand? 21st AIRAANZ conference*, Association of Industrial Relations Academics of Australia and New Zealand, Auckland, data current up to 8 February 2007b; D. Peetz, 'How wide is the impact of WorkChoices', in *Work Choices: Evolution or Revolution*, eds K. Abbott, B. Hearn Mackinnon, L. Morris, K. Saville and D. Waddell, Heidelberg Press, Melbourne, 2007c, pp. 23-42; D. Peetz, *Submission to the South Australian Industrial Relations Commission Inquiry into the WorkChoices legislation*, SAIRC, Adelaide, June 2007d; D. Peetz and A. Preston, *AWAs, Collective Agreements and Earnings: Beneath the Aggregate Data* Industrial Relations Victoria, Department Of Innovation, Industry And Regional Development, Melbourne, July 2007; D. Peetz and A. Preston, 'Wages under AWAs and collective agreements', *Workers, Corporations and Community: Facing Choices of a Sustainable Future, proceedings of the 22nd conference* Association of Industrial Relations Academics of Australia and New Zealand, 2, Melbourne, 6-8 February 2008, pp. 306-315; D. Peetz and R. Price, *Profile of the retail and hospitality industries*, Report prepared for Office of the Victorian Workplace Rights Advocate Melbourne, August 2007. The purchase of unpublished data for analysis of earnings and incidence data, including in the retail and hospitality sector, were financially supported by Industrial Relations Victoria and the Office of the Workplace Rights Advocate.

registered individual contracts are often taken to be indicative of the situation for AWAs. However, state individual contracts have substantially higher wage rates and so, despite their small number, they impart an upward bias to the wages data if one takes registered individual contracts to be indicative of AWAs. Nonetheless, the published data demonstrate that, nationally and in almost all states, registered individual contracts pay less than registered collective agreements;

- analysing unpublished data, chapter 5 is able to compare AWAs and registered collective agreements. These data allow us to test some hypotheses about AWAs. The unpublished data demonstrate that the shortfall of earnings for a typical (median) worker on an AWA, by comparison with a typical worker on a collective agreement, is considerably greater than would be inferred from the published data on average earnings under registered individual contracts. The data also suggest that AWAs are primarily used for one of two purposes: cutting labour costs or union avoidance. They do not suggest generalised gains in productivity arising from AWAs are passed on to workers as higher wages. It is also important to note that most of the AWAs encompassed by the dataset would have been subjected to the ‘no disadvantage’ test;
- chapter 6 examines the situation in the retail and hospitality sector. In hospitality in particular we are able to meaningfully compare wage rates under AWAs with wage rates for award-reliant workers. In most industries, where only a minority of workers are award-reliant, such comparisons are meaningless because the wages of award-reliant workers, mostly at the lower end of the award pay scale, are not representative of average award rates of pay in those industries. In hospitality, however, a majority of workers are award-reliant and so average award-reliant wages are a reasonable, albeit imperfect, indicator of average award rates;
- chapter 7 examines data on conditions lost under AWAs during WorkChoices, using published and unpublished data from the relevant government agency. It shows the vast majority of AWAs excluded or modified a number of key ‘protected’ award conditions, and this is probably the most common method by which hourly pay rates under AWAs are reduced;
- chapter 8 briefly canvasses data on wage increases under AWAs, indicating that only a small minority of AWAs contain a guaranteed, quantifiable wage increase;
- chapter 9 offers some conclusions and recommendations.

2. THE EMPLOYEE EARNINGS AND HOURS SURVEY AND ITS LIMITATIONS

Most of this submission uses published or unpublished data from the Australian Bureau of Statistics (ABS) Employee Earnings and Hours (EEH) Survey for May 2006 (released March 2007). The EEH survey is based on data on 57,000 employees working for 9,000 employers around Australia.² The EEH survey was rightly deemed by the former federal government to be the most reliable source of data on earnings of employees under AWAs.³ However, the published data do not separately identify workers on AWAs, instead including them under broader aggregations of either 'registered individual arrangements' (which includes employees on individual contracts registered under more generous State government provisions) or all 'individual arrangements' (which includes 'unregistered individual arrangements', that is common law contracts which by law have to be at least as generous as the underpinning award or collective agreement – unless there is no award or collective agreement). Unregistered contracts have been around as long as the employment relationship, and they are of little interest to this submission, as they do not indicate anything about the effect of 'individualisation' policies, given the extensive minimum conditions they must generally comply with, and have not been substantially affected by legal reforms. Rather, our concern is with the instrument used by policy makers to encourage individualisation, the AWA. We wish to compare workers on AWAs with workers on collective agreements.

Hourly vs weekly earnings

The most representative data in the EEH survey are those concerning average total hourly cash earnings of non-managerial employees. The least useful of these data, when comparing employees on AWAs with employees on collective agreements, are those concerning average weekly earnings for all employees. This is for several reasons. First, AWA employees include a disproportionate number of managerial workers, especially in the public sector. Second, the average hours worked by workers on AWAs are longer than those on collective agreements. This is partly because there seem to be fewer part-time workers on AWAs, and partly because full-time workers on AWAs have longer hours than full-timers on collective agreements. Workers on registered individual agreements work about 2.3 hours longer per week, but receive 13 per cent less in overtime pay (including managerial employees), due to the reduction, absorption or abolition of overtime pay. Fortunately, these two data problems can be dealt with by using hourly earnings of non-managerial employees as our benchmark.

In the analyses that follow, unless otherwise stated, we use the average total hourly cash earnings of non-managerial employees. Hourly cash earnings include salary sacrificed amounts. This new definition of pay was introduced by the ABS in the 2006 EEH survey, but we have also obtained unpublished data on hourly cash earnings from 2004 for comparison purposes, where appropriate. Hourly earnings are calculated as weekly earnings divided by hours paid for. They therefore do not represent the 'base' or ordinary-time rates of pay. Rather, they represent average hourly wages over the whole week, and

² agriculture, forestry and fishing is excluded from the EEH survey

³ P. McIlwain, evidence to November Estimates hearing, Senate Employment, Workplace Relations and Education committee, Canberra, 2 November, 2006b 14.

so will reflect not only base rates but also changes in penalty rates, overtime rates and the like for those employees who receive them.

Registered individual contracts

The published ABS data mostly concern ‘registered individual contracts’. About 97 per cent of these are AWAs (the remainder being state agreements registered mainly in WA, but also in Tasmania and Queensland). As State individual contracts (reserved mostly for high income employees) paid, on average, 87 per cent more than AWAs, the registered individual contract figures exaggerate actual earnings under AWAs by several percentage points.⁴ To deal with this problem we make use of unpublished data in chapters 5 and 6, as these separately identify data relating to AWAs.

Non-union distortions in collective agreements

The apparent average pay of workers on registered collective agreements is depressed because some of them are actually covered by non-union enterprise agreements which, as shown elsewhere,⁵ have inferior wage increases to union collective agreements (and are, in reality, much more like individual contracts than collective agreements).⁶ Unfortunately the ABS does not distinguish between union and non-union collective agreements so at present there is no way around this problem in the EEH data.

Moreover, some two-fifths of workers on collective agreements are not union members but free riders on the gains achieved by unionists.⁷ In a workplace with a large number of free riders, their existence reduces the bargaining power of the unionists (by comparison with fully unionised coverage) and in turn holds down the benefits achieved in collective agreements.

Bivariate analysis

Unfortunately, the ABS does not release unit record data from the EEH survey. This means we are unable to undertake multivariate analysis and control for individual differences in qualifications, experience and the like, and this limits comparison of wage outcomes across groups and over years.

Difficulties with estimating award rates

The inability to apply multivariate techniques means that we have to be careful in interpreting the differences we observe between groups. This is particularly the case for

⁴ The equivalent section to this in the Victorian report used, for simplicity of presentation, the term ‘“AWA workers”’ to refer to employees on registered individual contracts. However, as pointed out there and here, average earnings of workers on AWAs are actually less per hour than those of workers on registered individual contracts. The data therefore overstated the earnings of people on AWAs. We avoid that here by using the term ‘registered individual contracts’.

⁵ Peetz, *Assessing the Impact of WorkChoices*.

⁶ Peetz, *Brave New Workplace*.

⁷ Australian Bureau of Statistics, *Employee Earnings and Hours, Australia*, Canberra, 6306.0; Australian Bureau of Statistics, *Employee Earnings, Benefits and Trade Union Membership, Australia*, Canberra, various years 6310.0; J. Teicher, A. Pyman, P. Holland and B. Cooper, ‘Employee Voice in Australia’, in *What Workers Say: Employee Voice in the Anglo-American World*, eds R. B. Freeman, P. Boxall and P. Haynes, ILR Press, Ithaca NY, 2007.

comparisons between award-reliant employees and other groups. For most industries and occupations, comparisons between award-reliant workers and workers on agreements are of little value in telling us about the effects of agreements on pay. This is because the award-reliant group does not constitute a representative control group, and is instead disproportionately concentrated at the lower end of the award pay structure, except possibly in the hospitality industry (this is discussed more in chapter 6). Outside of hospitality, then, we have no data about the award rates that were relevant to workers on AWAs. Hence, our interest is principally in comparing employees on AWAs with employees on registered collective agreements.

'No disadvantage' test and 'fairness test'

One important aspect of the data from this source is that, although the data were collected during WorkChoices (WC), a majority of agreement-covered employees will have been on agreements signed before WC took effect. For AWA employees, this means that the majority of AWAs will have been protected by the no-disadvantage test that purported to ensure that employees were no worse off under an AWA than under the relevant award – in particular, if they lost penalty rates, overtime rates or other conditions they were meant to be no worse off overall. This in effect meant that they had to have a higher base rate to offset the loss of such conditions. This protection does not apply to AWAs signed under WC before the 'fairness test' was implemented. Although the no-disadvantage test was not always properly applied,⁸ it still meant that employees signing AWAs were subject to higher minimum standards before WC took effect. Thus the figures here will provide an overly positive picture of earnings for employees under WC AWAs.

However, they provide a good indication of the likely pattern of earnings if pre-WorkChoices AWAs were re-instituted, a proposal that was being put forward at the time this Inquiry was called.

These data also present a picture that was most likely more favourable toward AWAs than that which would appear if the survey had been undertaken in the second half of 2007, as (a) a much higher proportion of AWAs applying in this period than in May 2006 have been signed without any award test being applied at all; and (b) the 'fairness test' that applies to those AWAs lodged after 6 May 2007 appears weaker than the 'no disadvantage' test anyway. The 'fairness test' only related to seven 'protected award conditions'. Hence, it required no compensation if an AWA removes or reduces entitlements to redundancy pay, notice of termination, superannuation or long service leave. There is evidence of redundancy pay being lost under AWAs, though no quantitative data.⁹ In addition, the subjective nature of the test – Parliament explicitly rejected an amendment that the test ensure that employees be *fully* compensated for loss of entitlements¹⁰ – allowed considerable scope for variations over time in the strictness with which the test was applied. Given the loss of conditions under WorkChoices AWAs (chapter 7), outcomes for WorkChoices AWAs would very likely be worse than these data indicate, even with the operation of the 'fairness test'.

⁸ Peetz, *Brave New Workplace*.

⁹ Australian Sweets, Australian Workplace Agreement ("AWA"), Sydney, 20 September, 2006b. ; Workplace Rights Advocate, WRIL Case Study Summaries: 27/10/06 to 01/11/06 unpublished data, Melbourne, November, 2006.

¹⁰ Senate Journals, Workplace Relations Amendment (A Stronger Safety Net) Bill 2007, 19 June, 2007.

Sampling error

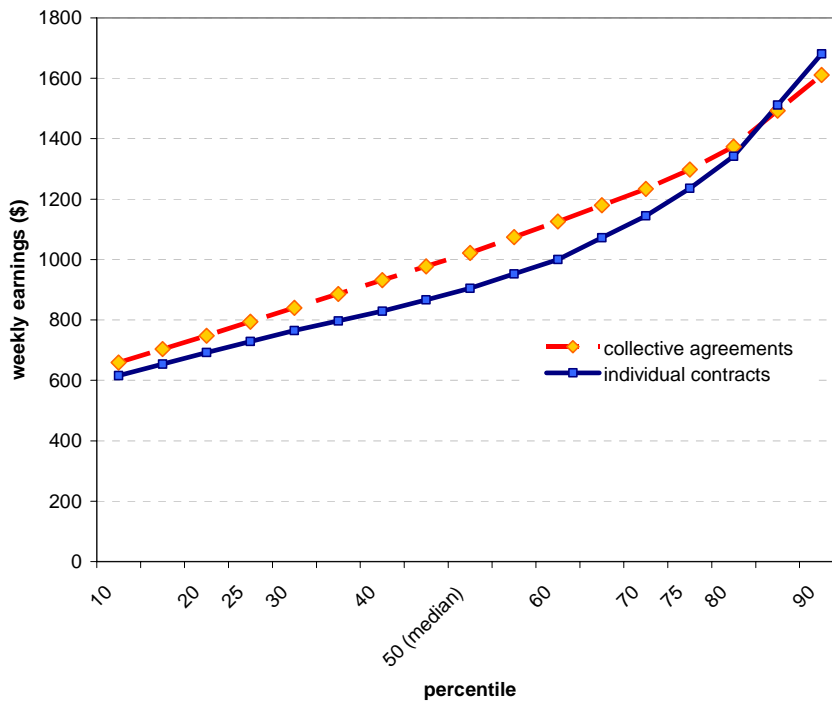
Because of the potential for sampling error, especially in disaggregated data, where possible we seek verification of the trends we observe by considering whether broadly similar patterns are apparent in the 2004 data. The ABS cautions against the use of this survey for time-series analysis. In other words the survey has not been constructed to be used on a time series basis, making it difficult to compare trends over time (particularly at disaggregated occupational and industry levels), so we only make any such comparisons at the most aggregated level.

Skews in earnings distributions and the implications for averages

Earnings of workers on individual contracts, including AWAs, are distributed more unequally than earnings of workers on collective agreements. The ABS published data on the weekly earnings distribution of workers on all individual arrangements, which includes both registered and unregistered individual contracts. The greater inequality of weekly earnings among employees on individual agreements can be seen in chart Figure 2.1, which shows weekly earnings at each percentile and quartile of the two groups. It indicates that throughout the lower and middle percentiles, employees on individual contracts earn less than employees on collective agreements. However, those in the top decile of individual contracts received more than those on the top decile of collective agreements. Looked at another way, a collective agreement employee on the 90th percentile received 58 per cent more per week than the median collective agreement employee, but an individual arrangement employee on the 90th percentile received 86 per cent more per week than the median individual arrangements employee. The greater the inequality in an earnings distribution, the more that average earnings will distort the experience of the typical employee. Hence, 58 per cent of collective agreement employees earned less than average weekly earnings of collective agreements employees, but 65 per cent of individual arrangement employees earned less than average weekly earnings of individual arrangement employees.

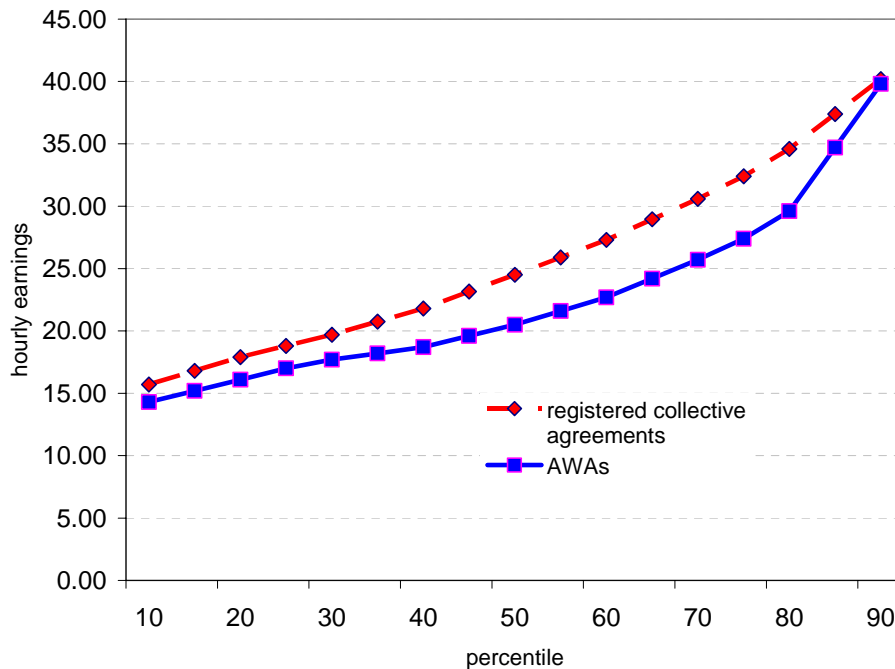
Using unpublished data, a broadly similar story can be seen for hourly earnings of employees under registered collective agreements and AWAs (Figure 2.2). This time, employees on individual contracts at all deciles earn less than employees on collective agreements. However, those on the highest decile of individual contracts received almost as much as those on the highest decile collective agreements, the gap being only 1 per cent there. Looked at another way, a collective agreement employee on the 90th percentile received 64 per cent more per hour than the median registered collective agreements employee, but an AWA employee on the 90th percentile received 94 per cent more per week than the median AWA employee. Hence, 60 per cent of registered collective agreement employees earned less than average weekly earnings of collective agreements employees, but 69 per cent of AWA employees earned less than average weekly earnings of individual arrangement employees.

Figure 2.1 Weekly earnings distribution of workers on collective agreements and individual arrangements, May 2006



Source: ABS Cat No 6306.0

Figure 2.2 Hourly earnings distribution of workers on registered collective agreements and AWAs, May 2006



Source: unpublished data, ABS Cat No 6306.0

The greater inequality of individual contract earnings may make AWA earnings appear relatively higher than a like-with-like comparison of typical employees would show. As

well, differences in the industry distributions of AWAs and collective agreements may also affect comparisons between the two.

A better indicator of the experience of ordinary employees would be given by median earnings. The median earnings employee is the ‘person in the middle’ – the employee who is earning more than half of all employees, and less than the other half of employees. The median employee is best thought of as the ‘typical’ employee. We refer to data on median employees in chapter 5.

The distribution of increases in earnings

Finally, the limitations of averaged data for indicating *increases* in earnings are shown in Table 2.1 below, which looks at changes in the aggregate distribution of hourly earnings of non-managerial employees across the economy as a whole. The table shows hourly earnings at the various deciles, ranging from the 10th percentile (the person at the top of the lowest paid 10 per cent of employees) and the 90th percentile (the person at the beginning of the highest paid 10 per cent of employees).

Table 2.1 – Distribution of hourly earnings, Australia, 2004 and 2006

Decile	hourly earnings, May 2004	hourly earnings, May 2006	nominal total wage increase	average annual real wage increase
10	\$13.30	\$14.30	7.5%	0.25%
20	\$15.10	\$16.40	8.6%	0.76%
25	\$15.80	\$17.20	8.9%	0.88%
30	\$16.50	\$17.90	8.5%	0.70%
40	\$17.80	\$19.40	9.0%	0.94%
50 (median)	\$19.30	\$21.00	8.8%	0.85%
60	\$21.30	\$23.30	9.4%	1.12%
70	\$24.10	\$26.50	10.0%	1.38%
75	\$25.80	\$28.70	11.2%	1.97%
80	\$28.00	\$31.10	11.1%	1.90%
90	\$34.10	\$38.00	11.4%	2.06%
average	\$22.50	\$24.90	10.7%	1.71%

Source: ABS Cat 6306.0, 6401.0, unpublished data

The table indicates that:

- in 2006, the hourly earnings of the typical employee, represented by median earnings, were 16 per cent below average hourly earnings;
- the wage increases obtained between 2004 and 2006 were proportionately higher for high income earners than for low income earners, leading to an increase in inequality;
- growth in average earnings was a poor indicator of what happened to most employees, with nearly three quarters of workers appearing to receive a smaller wage increase than the increase in ‘average’ earnings. For the lowest paid workers, real wages were almost stagnant, with workers the tenth percentile receiving only a 0.25 per cent annual real wage increase;

- growth in average earnings was accordingly a poor indicator of what happened to the typical worker. The real earnings of the median worker rose by only half of the recorded increase in ‘average’ earnings.

The failure of real average earnings figures to represent the experience of most workers needs to be taken into account when interpreting claims about growth in real earnings. Other measures of average earnings – the labour price index and the average weekly earnings survey are distorted even further by the inclusion of managerial employees, including CEOs, whose pay has been increasing at well above the rate for ordinary workers.¹¹ The national accounts measure of earnings – not generally used as an indicator of employee welfare, though widely cited by the former federal government and consiferred to by the Reserve Bank¹² – even includes directors’ fees and fringe benefits.

That said, the rest of this submission concentrates on the sub-populations: those on AWAs, and by comparison those on collective agreements and (in hospitality) those on awards. Accordingly, we turn now to data on the coverage of AWAs and other agreements.

¹¹ eg S. Washington, 'Tell the truth about CEO pay', *Sydney Morning Herald*, 13 November 2006; S. Washington, 'Corporate fat-cats keep getting richer', *Sydney Morning Herald*, 26 February 2007.

¹² Reserve Bank of Australia, Minutes of the Monetary Policy Meeting of the Board, Sydney, 5 February 2008a.

; Reserve Bank of Australia, 'Statement on Monetary Policy', *Reserve Bank Bulletin*, February 2008b, p. 62.

3. COVERAGE OF AUSTRALIAN WORKPLACE AGREEMENTS

The only authoritative data on coverage of *agreements* under WorkChoices (WC) comes from the ABS EEH survey. Unfortunately, the most recent ABS data,¹³ issued in February 2007, only relate to May 2006, when WC was barely two months old. To estimate coverage since then it is necessary to consider data from the Office of the Employment Advocate (OEA) and its successor the Workplace Authority on agreements lodged since then and apply a discount factor for AWA exits (the discount being necessary to reconcile the ABS and OEA/Workplace Authority series).

But first to the ABS data (Tables 3.1 and 3.2). They show that, nationally, in May 2006, 3.1 per cent of employees were covered by registered individual agreements, of which the vast majority were Australian Workplace Agreements (AWAs). This was an increase on the 2.4 per cent recorded in 2004, but much less than expected or claimed by the Commonwealth government.

Drawing also on ABS labour force data,¹⁴ we can estimate that AWAs covered 258,000 employees in May 2006 (Table 3.2).¹⁵ This was an increase of just 59,000 from May 2004. Although coverage of registered collective agreements fell slightly, from 38.3 per cent to 38.1 per cent of employees, the *number* of employees covered by collective agreements rose by about 154,000, well over double the increase in AWA employees.

Nationally, the small decline in the proportion covered by registered collective agreements was more than offset by the growth in unregistered collective agreements, from 2.6 per cent to 3.0 per cent of employees (a similar coverage share to that for AWAs). Total collective agreement coverage, then grew slightly from 40.9 per cent to 41.1 per cent of employees.

However, not all collective agreements are union agreements. Unfortunately, the ABS does not make the critical distinction between union and non-union agreements. To estimate coverage of non-union collective agreements, we have to go to DEWR data on wage agreements. These indicate that, as of June 2006, 10.6 per cent of employees covered by current federal agreements were in non-union agreements. This was slightly lower than 11.3 per cent recorded in June 2004. Applying these ratios to ABS data on federal agreements produces estimates of 2.8 per cent coverage of all employees by non-union federal agreements in both 2004 and 2006 (Table 3.2). Union agreements in the federal and state systems therefore accounted for 35 per cent of employees in 2006.

Coverage by unregistered individual agreements (mostly common law contracts paying above the minimums set out in awards and the Australian Fair Pay and Conditions Standard

¹³ Australian Bureau of Statistics, 6306.0.

¹⁴ Australian Bureau of Statistics, *Labour Force, Australia, Detailed - Electronic Delivery*, Canberra, 6291.0.55.001.

¹⁵ This estimate is actually slightly higher than one derived from using only the EEH survey. That survey (in table 5 of ABS Cat No 6306.0) estimates there were some 8,341,800 employees in Australia in May 2006. On that basis, AWA coverage across all employees would be only 242,000. However, the labour force survey estimates that there were 8,894,900 employees at that time. As the labour force survey is generally considered to be the superior source for estimating actual numbers of employees and employed persons, it has been used as the denominator for generating estimates of the number of employees covered by various pay setting methods.

(AFPCS), but also including some private sector managers and similar workers with no underpinning awards) grew slightly, from 31.2 to 31.7 per cent.

Interestingly, the number of owner-managers of unincorporated enterprises was constant between May 2004 and May 2006, so their share of total employees fell from 5.4 per cent to 5.1 per cent. If these are the 'enterprise workers', then their relative numbers are in decline. Other ABS data indicate that the number of 'own account' employed persons grew only slightly, from 901,000 to 908,000, between May 2004 and May 2006, so again their share of total employment fell from 9.4 per cent to 9.0 per cent, to be lower in 2006 than it had been 20 years earlier.¹⁶ Claims of the growing importance of self-employment amongst workers are therefore exaggerated.

Most states experienced an increase in AWA coverage. The exceptions, however, were South Australia and Western Australia (Table 2.1). In 2004 Western Australia had by far the highest AWA coverage of any state, with 8.0 per cent of employees on AWAs. A small proportion of employees (0.3 per cent) were on state-registered individual agreements ('Employer-Employee Agreements'). By 2006, AWA coverage had dropped by over a quarter, to just 5.8 per cent. This fall is too large to be due to sampling error. In May 2004, WA accounted for 34 percent of AWA-covered employees, but by May 2006 this had fallen to 24 per cent. Western Australia accounted for only 23 per cent of AWA lodgements in the December quarter 2006.

¹⁶ Australian Bureau of Statistics, *6291.0.55.001*.

Table 3.1 Coverage by different methods of pay setting, States and Australia, May 2004 and May 2006.

	Collective			Individual		
	2004 (%)	2006 (%)	Change	2004 (%)	2006 (%)	Change
NSW						
Federal	16.2	17.5	+1.3	1.2	1.9	+0.7
State	18.6	15.3	-3.3	0	0	0
total registered	34.8	32.8	-2.0	1.2	1.9	+0.7
unregistered	2.4	3.3	+0.9	33	32.9	-0.1
<i>total regtd & unregistered</i>	<i>37.2</i>	<i>36.1</i>	<i>-1.1</i>	<i>34.2</i>	<i>34.8</i>	<i>+0.6</i>
WOIB				6.2	6.2	0
award only	22.5	22.9	+0.4			
VIC						
Federal	39.6	40	+0.4	2.2	3.1	+0.9
State	0	0	0	0	0	0
total registered	39.6	40	+0.4	2.2	3.1	+0.9
Unregistered	2.7	2.9	+0.2	33	33.6	+0.6
<i>total regtd & unregistered</i>	<i>42.3</i>	<i>42.9</i>	<i>+0.6</i>	<i>35.2</i>	<i>36.7</i>	<i>+1.5</i>
WOIB				6.3	5.5	-0.8
award only	16.1	14.9	-1.2			
QLD						
Federal	16.4	18.6	+2.2	1.4	2.9*	+1.5
State	22.6	20.5	-2.1	0.1	0.1**	0
total registered	39	39.1	+0.1	1.5	3	+1.5
Unregistered	2.4	2.5	+0.1	30	29.2	-0.8
<i>total regtd & unregistered</i>	<i>41.4</i>	<i>41.6</i>	<i>+0.2</i>	<i>31.5</i>	<i>32.2</i>	<i>+0.7</i>
WOIB				4.1	4.3	+0.2
award only	23	22	-1.0			
SA						
Federal	22	27.4	+5.4	3.2	1.4	-1.8
state	20.3	16.7	-3.6	0	0	0
total registered	42.3	44.1	+1.8	3.2	1.4	-1.8
unregistered	2.5	4.7	+2.2	21.3	27.5	+6.2
<i>total regtd & unregistered</i>	<i>44.8</i>	<i>48.8</i>	<i>+4.0</i>	<i>24.5</i>	<i>28.9</i>	<i>+4.4</i>
WOIB				4.5	3.4	-1.1
award only	26.2	18.9	-7.3			
WA						
Federal	22.4	25.3	+2.9	8	5.8	-2.2
State	15.2	12.8	-2.4	0.3	1.2**	+0.9
total registered	37.6	38.1	+0.5	8.3	7	-1.3
unregistered	3.2	2.9	-0.3	33.5	37	+3.5
<i>total regtd & unregistered</i>	<i>40.8</i>	<i>41</i>	<i>+0.2</i>	<i>41.8</i>	<i>44</i>	<i>+2.2</i>
WOIB				4.8	3.9	-0.9
award only	12.6	11.1	-1.5			

(continued...)

	Collective			Individual		
	2004 (%)	2006 (%)	Change	2004 (%)	2006 (%)	Change
TAS						
Federal	17.7	24.2	+6.5	3.3	4.4*	+1.1
State	20.8	21.5	+0.7	0	0.3**	+0.3
Total registered	38.5	45.7	+7.2	3.3	4.7	+1.4
Unregistered	4.8	1.6	-3.2	28.4	20.9	-7.5
<i>total regtd & unregistered</i>	<i>43.3</i>	<i>47.3</i>	<i>+4.0</i>	<i>31.7</i>	<i>25.6</i>	<i>-6.1</i>
WOIB				4.2	3.8	-0.4
award only	20.9	23.2	+2.3			
NT						
Federal	49.9	51.4	+1.5	1.9	4*	+2.1
State	0	0	0	0	0	0
total registered	49.9	51.4	+1.5	1.9	4*	+2.1
Unregistered	2.8	2.9	+0.1	29.8	27.6	-2.2
<i>total regtd & unregistered</i>	<i>52.7</i>	<i>54.3</i>	<i>+1.6</i>	<i>31.7</i>	<i>31.6</i>	<i>-0.1</i>
WOIB				3.8	2.7	-1.1
award only	11.9	11.3	-0.6			
ACT						
Federal	53.5	55.6	+2.1	4	6.2	+2.2
State	0	0	0	0	0	0
total registered	53.5	55.6	+2.1	4	6.2	+2.2
Unregistered	2.1	1.4	-0.7	20.3	17.4	-2.9
<i>total regtd & unregistered</i>	<i>55.6</i>	<i>57</i>	<i>+1.4</i>	<i>24.3</i>	<i>23.6</i>	<i>-0.7</i>
WOIB				3.1	2.5	-0.6
award only	17	17	0			
Australia						
Federal	24.3	26.2	+1.9	2.4	2.9	+0.5
State	13.9	11.9	-2.0	0.1	0.1	0
total registered	38.3	38.1	-0.2	2.4	3.1	+0.7
Unregistered	2.6	3	+0.4	31.2	31.7	+0.5
<i>total regtd & unregistered</i>	<i>40.9</i>	<i>41.2</i>	<i>+0.3</i>	<i>33.7</i>	<i>34.8</i>	<i>+1.1</i>
WOIB				5.4	5.1	-0.3
award only	20	19	-1.0			

* estimate has a relative standard error of 25% to 50% and should be used with caution

** estimate has a relative standard error greater than 50% and is considered too unreliable for general use.

Table 3.2 Coverage of the Australian workforce by type of instrument, Australia, May 2004 and May 2006

	proportion of employees (%)			approximate no of employees		
	2004	2006	change	2004	2006	Change
Collective agreements	40.9	41.2	+ 0.3	3,437,000	3,665,000	+ 228,000
Registered collective agreements	38.3	38.1	- 0.2	3,218,000	3,388,000	+ 171,000
- union (federal and state)	35.5	35.3	- 0.2	2,987,000	3,141,000	+ 154,000
- non-union (federal)	2.8	2.8	0	231,000	248,000	+ 17,000
Unregistered collective agreements	2.6	3.0	+ 0.4	218,000	267,000	+ 48,000
Individual arrangements	39.1	39.9	+ 0.8	3,285,000	3,549,000	+ 264,000
Registered individual contracts	2.4	3.1	+ 0.7	201,000	276,000	+ 74,000
- AWAs	2.4	2.9	+ 0.5	199,000	258,000	+ 59,000
- state-registered individual contracts	<0.1*	0.1**	+ 0.1**	2,000**	9,000**	+ 7,000**
Unregistered individual contracts	31.2	31.7	0.5	2,621,000	2,820,000	+ 198,000
Owner-managers of unincorporated enterprises	5.4	5.1	0.3	454,000	454,000	0
Award-only	20.0	19.0	- 0.5	1,680,000	1,690,000	+ 10,000
Total	100.0	100.0	0	8,403,000	8,894,000	+ 492,000

Sources: ABS Cat Nos 6306.0 and 6291.0.55.001, and DEWR, *Wage Trends in Enterprise Bargaining*, Canberra, various issues.

na: not available

** estimate has a relative standard error greater than 50% and is considered too unreliable for general use.

Notes: Coverage proportions for most instruments from ABS 6306.0. Coverage estimates of non-union collective agreements calculated from *Wage Trends*, inflated for expired agreements by ratio of total federal agreement coverage in ABS 6306.0 and *Wage Trends*. Employee estimates calculated as a proportion of estimated total employment. Total number of employees estimated from ABS 6310.0 for August, extrapolated to May by employment growth estimates in ABS 6202.0. Non-union collective agreements comprise 'employee collective agreements' plus 'employer greenfields agreements'. 'Union' collective agreements comprise federal, excluding s170LK/non-union collective agreements, plus state collective agreements.

Some of the fall in AWA coverage was probably due to movement onto Western Australian state agreements (which grew to roughly 1.2 per cent coverage), with their higher minimum standards than AWAs, but this could explain less than half of the drop in AWA coverage, as overall coverage by registered individual contracts still fell by 1.3 percentage points. It appears that most of the movement out of AWAs in WA has been among lower income earners, as WA AWAs went from being the second lowest paying (at just 82 per cent of the national average weekly earnings for AWAs) in 2004 to the highest paying AWAs outside the ACT (at 117 per cent of the national average) in 2006. Low income earners, lacking as they do strong bargaining power, are the group that we would expect are most likely to lose benefits and conditions under AWAs. So one possible explanation is that the movement out of AWAs represents either increasingly effective employee resistance to loss of conditions, or recognition by employers that the gains that were expected from AWAs have not materialised. Were it not for the changes brought about by WorkChoices, it is possible that WA could have signalled a 'saturation point' for AWAs.

Another possible explanation is that WA employers had chosen to move employees from AWAs onto non-union employee 'collective' agreements. However, there are reasons to question this:¹⁷ there is no reason to assume that the growth in collective agreement coverage would be mainly in non-union collective agreements, especially as, nationally, the apparent share of non-union agreements in employee coverage remained constant between 2004 and 2006.

Amongst non-managerial employees, nationally 45 per cent of permanent part-time workers were covered by a registered collective agreement, as were 51 per cent of permanent part-timers. But little more than a quarter of casual employees had this protection. Instead, 45 percent of casual employees were dependent on the award for their terms and conditions. Coverage by registered individual contracts was also higher for permanent full-timers (2.8 per cent) and permanent part-timers (2.6 per cent) than it was for casuals (1.7 per cent).

Table 3.3 shows the incidence of pay setting instruments by industry amongst non-managerial employees, using unpublished data from the EEH survey (the published industry data do not distinguish between registered and unregistered contracts). It reveals that the industries with the highest incidence of registered individual contracts are communications services and mining, with 17 and 16 per cent of non-managerial employees on AWAs respectively. Other industries with above-average density of AWAs are transport and storage (7 per cent), retail trade (6 per cent) and hospitality (4 per cent), while finance and insurance, manufacturing, and property and business services all have around 3 per cent of employees on AWAs.

¹⁷ While the increase in federal collective agreement coverage in WA is one percentage point greater than the national average, this could partly reflect the above-average shift out of WA state collective agreements.

Table 3.3 Incidence of methods of pay setting by industry, non-managerial employees, Australia, 2006

	award-reliant	collective agreements					individual arrangements					total
		registered collective agreements			unregistered CA	total CAs	registered individual contracts			unregistered IAs	total IAs	
		federal CAs	state CAs	total registered CAs			AWAs	state ICs	total registered ICs			
mining	* 2.6	23.0	5.3	28.3	3.1	31.3	16.1	0.9	17.1	49.0	66.1	100.0
manufacturing	11.8	30.5	6.5	37.0	4.1	41.1	* 3.6	* 0.0	* 3.6	43.6	47.2	100.0
electricity, gas & water	* 1.0	34.0	54.3	88.3	* 0.6	88.8	** 0.5	0.0	0.5	9.7	10.2	100.0
construction	15.3	22.8	* 5.1	27.9	7.1	35.0	* 1.2	** 0.1	* 1.2	48.4	49.7	100.0
wholesale	14.8	8.5	1.0	9.5	* 1.1	10.6	* 2.3	** 0.1	* 2.4	72.3	74.7	100.0
retail trade	30.8	33.9	** 0.7	34.6	2.8	37.4	5.5	n.p.	5.5	26.3	31.8	100.0
accommodation, cafes & restaurants	62.6	6.7	* 1.3	8.0	* 1.2	9.2	* 4.3	n.p.	* 4.5	23.7	28.2	100.0
transport & storage	13.8	32.2	8.0	40.1	* 4.2	44.3	** 6.8	0.0	6.8	35.1	41.9	100.0
communications	** 1.0	66.2	n.p.	66.2	** 1.0	67.2	17.1	0.0	17.1	14.7	31.7	100.0
finance & insurance	6.3	46.4	** 1.0	47.4	** 3.1	50.5	3.4	n.p.	3.5	39.7	43.2	100.0
property & bus services	27.2	10.9	2.9	13.8	3.9	17.7	2.8	** 0.8	3.6	51.5	55.1	100.0
govt admin & def	* 0.7	55.6	38.2	93.9	* 0.2	94.0	1.4	n.p.	1.4	* 3.8	5.2	100.0
education	12.1	44.8	35.9	80.7	* 0.9	81.7	* 0.4	0.0	* 0.4	5.8	6.2	100.0
health & comm services	26.4	28.9	28.7	57.6	* 2.7	60.3	* 0.3	0.0	* 0.3	13.0	13.3	100.0
cultural & recreational services	20.7	27.6	* 9.6	37.2	* 5.2	42.4	* 0.9	n.p.	* 0.9	36.0	36.9	100.0
personal & other services	25.3	14.4	25.1	39.5	* 9.4	48.9	** 1.1	0.0	1.1	24.7	25.8	100.0
TOTAL	21.0	28.5	12.8	41.3	3.2	44.4	3.1	** 0.2	3.2	31.3	34.5	100.0

* estimate has a relative standard error of 25% to 50% and should be used with caution

** estimate has a relative standard error greater than 50% and is considered too unreliable for general use

Source: ABS Cat No 6306.0, unpublished data

The published data on the incidence of registered individual contracts relate to all employees, both managerial and non-managerial. However, the hourly earnings figures we use in later chapters are based on data from non-managerial employees, so it is appropriate in table 3.3 to look at the incidence amongst non-managerial employees. That said, we can gain another insight by comparing the incidence of registered individual contracts amongst non-managerial employees and amongst all employees (Table 3.4). In most industries there is little difference between the two, but in government administration and defence only 1.4 per cent of non-managerial employees are on registered individual contracts, compared to 3.1 per cent of all employees in that industry. Mathematically, the majority of AWA workers in government administration and defence must be managerial employees, on high weekly wages. In most other industries the incidence of AWAs is, if anything, slightly higher amongst non-managerial employees than across employees as a whole, indicating they are less common amongst managerial employees outside of government administration and defence.

Table 3.4 Incidence of registered individual contracts amongst all employees and non-managerial employees, by industry, Australia, 2006

	registered individual contracts, as % of all employees	registered individual contracts, as % of non-managerial employees	AWAs, as % of non-managerial employees
mining	16.2	17.1	16.1
manufacturing	* 3.3	* 3.6	* 3.6
electricity, gas & water	**0.6	0.5	** 0.5
construction	* 1.0	* 1.2	* 1.2
wholesale	* 2.1	* 2.4	* 2.3
retail trade	5.4	5.5	5.5
accommodation, cafes & restaurants	* 4.3	* 4.5	* 4.3
transport & storage	**6.2	6.8	** 6.8
communications	15.6	17.1	17.1
finance & insurance	2.8	3.5	3.4
property & bus services	3.1	3.6	2.8
govt admin & def	3.1	1.4	1.4
education	* 0.4	* 0.4	* 0.4
health & comm services	* 0.3	* 0.3	* 0.3
cultural & recreational services	* 0.9	* 0.9	* 0.9
personal & other services	**1.0	1.1	** 1.1
TOTAL	3.1	3.2	3.1

* estimate has a relative standard error of 25% to 50% and should be used with caution

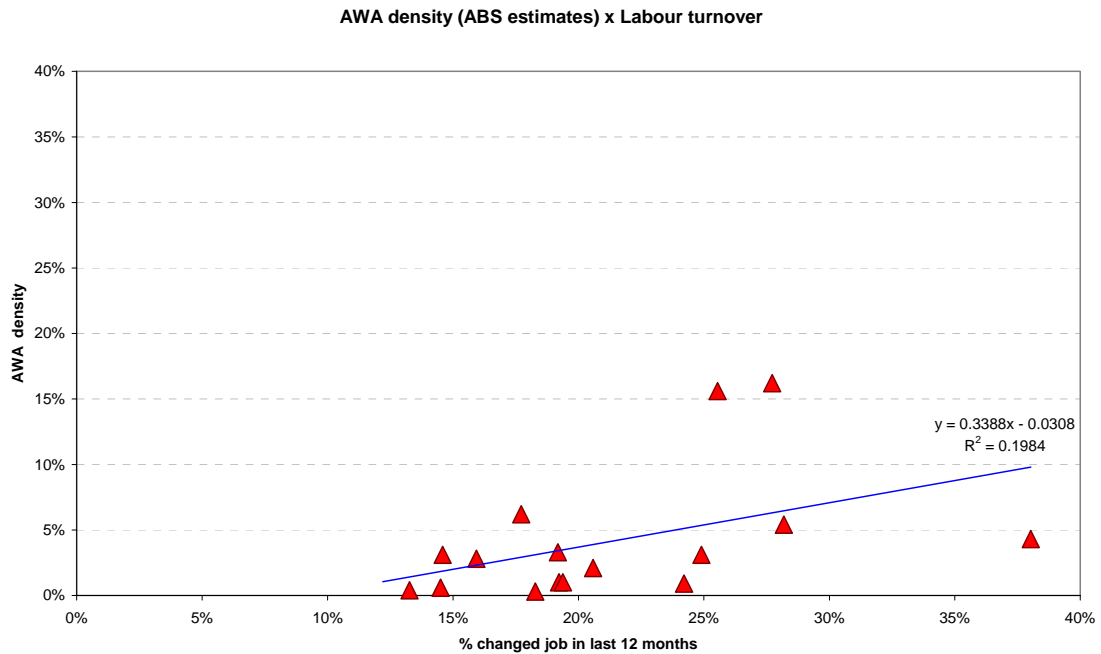
** estimate has a relative standard error greater than 50% and is considered too unreliable for general use

Source: ABS Cat No 6306.0, unpublished data

AWA coverage appears positively associated at the industry level with labour turnover. This is illustrated in Figure 2.1, which shows the proportion of employees in an industry on AWAs and the proportion who have been in their job for less than 12 months. There is a positive relationship – a one per cent increase in labour turnover is associated with a 0.3 per cent increase in AWA coverage – though the relationship is only significant at the 10 per cent level. This probably reflects the fact

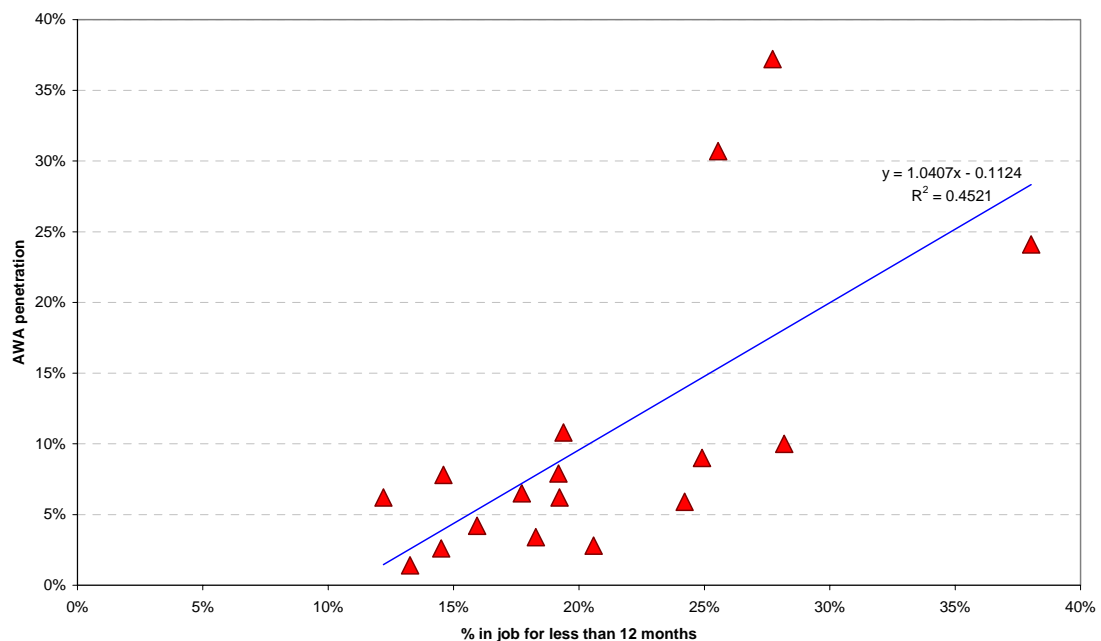
that it is labour turnover that provides the opportunity to require new employees to sign AWAs as a condition of employment. Existing employees may not wish to sign AWAs, and it is technically illegal to coerce them to do so, but there are no such inhibitions on requiring new employees to sign AWAs.

Figure 2.1 Industry AWA density (ABS estimates) x Labour turnover, Australia



Source: ABS 6209.0 and 6306.0.

Figure 2.2 Industry AWA penetration (OEA/Workplace Authority estimates) x Labour turnover, Australia



Source: OEA 2007 and ABS 6209.0

A much stronger, and more significant, relationship can be found between labour turnover and the estimates of AWA ‘penetration’, based on administrative data collected by the OEA and its successor the Workplace Authority. This is shown in Figure 2.2. A one per cent increase in labour turnover is associated with a 1 per cent increase in AWA ‘penetration’.

The data from the ABS show a far lower level of AWA coverage than claimed by the former government and its agencies at the time. In evidence given to a Senate Estimates Committee in May 2006, the then Employment Advocate said that ‘based on our methodology, we estimate that, as at 31 March 2006, 538,120 AWAs were in operation’.¹⁸ This is over double the actual coverage estimated by the ABS, at 3.1 per cent of employees, equivalent to 258,000 employees. It is impossible to explain this as being the result of the ABS survey sampling error.¹⁹

The reason for the over-estimation is that the methodology of the OEA/Workplace Authority nonsensically assumed that every AWA signed in the preceding three years is still in force – that is, no employee who has signed an AWA in the past three years has resigned, or been promoted, dismissed or replaced. This problem increases, the higher the rate of labour turnover in an industry. That is why the relationship between OEA/Workplace Authority coverage estimates and labour turnover is so high, as shown in Chart 2.2. The more people change jobs in an industry, the more double counting of AWAs occurs. Nearly 60 per cent of the variance in the gap between OEA/Workplace Authority and ABS estimates of AWA coverage can be explained simply by variations in the level of labour turnover.

The inadequacies of the former government’s -methodology, based on administrative data, increased over time, with the extent of over-estimation increasing from 60 percent in 2004 to 109 per cent in 2006.

This makes estimating *subsequent* AWA coverage problematic. A simple way of estimating coverage since May 2006, using administrative data, is to make allowance for people leaving AWA-covered jobs by applying a decay function to the quarterly OEA/Workplace Authority data, and setting it at a level at which the ABS and OEA/Workplace Authority data can be reconciled. By assuming that 12 per cent of AWAs in one quarter are no longer operating a quarter later, and that this rate of decay continues in subsequent quarters, administrative records of AWA lodgements can be reconciled with the ABS coverage estimate for May 2004. This rate of loss has to be increased to 16 per cent per quarter to reconcile lodgement data with the more recent, May 2006 ABS estimates. It is certainly feasible that the rate of loss of AWAs has increased in the last two years, as the OEA/Workplace Authority reports increased penetration of AWAs into the retailing and hospitality (accommodation, cafes and restaurants) industries. Workers in these industries have relatively high turnover, and this would be especially the case if they were employed under agreements that did not provide for penalty rates or other previously standard conditions of employment.

¹⁸ P. McIlwain, evidence to May Estimates hearing, Senate Employment, Workplace Relations and Education committee, Canberra, 29 May, 2006a.

¹⁹ To be precise, as the difference between the OEA estimate and the ABS estimate is 10.5 standard errors, the probability of the discrepancy being due to sampling error is less than 1 in 600,000,000,000,000,000,000.

In the first eighteen months after WorkChoices came into force, to September 2007 (shortly before the defeat of the Howard government), 494,212 AWAs were lodged with the OEA/Workplace Authority. Applying a 16 per cent loss rate to the quarterly figures would imply that around 351,000 of these WorkChoices AWAs were still 'live' at the end of March 2007. A 12 per cent loss rate for WorkChoices AWAs would imply that around 381,000 were still in operation. This would bring the number of operating AWAs at the end of September 2007 to between 425,000 and 456,000, of which 83 to 84 per cent were WorkChoices AWAs.²⁰ This is equivalent to between 4.7 and 5.0 per cent of employees on AWAs. This is well short of the 840,000 asserted by the Workplace Authority²¹ and the 'almost a million today' that had been claimed seven months earlier by the former Prime Minister.²² It appears that the Howard government aspired to having 20 per cent of employees on AWAs by an unspecified date.²³

The magnitude of our estimate is confirmed by the *Australia@work* employee survey, which estimated that 5.6 percent of employees believed they were on AWAs in March 2007.²⁴ Employee-derived data in *Australia@Work* overestimated AWA coverage by about 1 percentage point in 2006, when compared with the ABS estimate. The growth of 1.4 percentage points in AWA coverage over a 12 month period to March 2007, estimated by *Australia@Work*, is quite consistent with the growth of 1.6 percentage points estimated by our method between June quarter 2006 and June quarter 2007.

WorkChoices AWAs were more common in larger than smaller businesses: over three fifths of lodgements to September quarter 2007 were in businesses with 100 or more workers. But they were in the minority in large firms: amongst businesses with 500 or more employees, union CAs accounted for the clear majority of WorkChoices agreement-covered workers. In businesses with less than 100 employees, however, AWAs accounted for three fifths of WorkChoices agreement-covered workers in the same quarter.²⁵

Overall, at the end of September 2007 employees under new union CAs represented the slight majority (53 per cent) of current WorkChoices agreement-covered employees. This number was considerably lower than the 81 per cent of federal agreement-covered employees working under union CAs recorded in May 2004. Conversely, the share of WorkChoices agreements employees accounted for by new AWAs, at 30 per cent, was considerably higher than AWAs' share in May 2004 (9 per cent). The share of non-union collective agreements grew more slowly, rising from

²⁰ There would be 120,000 pre-WorkChoices AWAs still in operation (assuming the 16 per cent decay rate necessary to align the ABS and OES data), in addition to the 252,000 (16 per cent decay rate) to 265,000 (12 per cent decay rate) WorkChoices AWAs in operation.

²¹ Workplace Authority, *Workplace agreement data*, Sydney, September 2007.

²² J. Howard, *Building Prosperity: The Challenge of Economic Management*, Address to the Menzies Research Centre, Parliament House, Canberra, 27 February, 2007.

²³ Department of Employment and Workplace Relations, Request for tender: measure the economic benefits of building upon recent workplace relations reforms., confidential unpublished document., Canberra, May, 2007a.

²⁴ B. van Wanrooy, S. Oxenbridge, J. Buchanan and M. Jakubauskas, *Australia at Work: The Benchmark Report*, Workplace Research Centre, University of Sydney, Sydney, September 2007, p. 34.

²⁵ Workplace Authority, *Workplace agreement data*.

10 per cent in 2004 to 17 per cent in September 2007.²⁶ WorkChoices was aimed at shifting people from collective to individual forms of employment, and it clearly had some effect in this regard, though perhaps not as much as its advocates would have hoped.

In summary, as a result of WorkChoices, more employees were moved onto AWAs than before, and fewer onto union CAs. Award coverage declined. However, the coverage of AWAs was greatly exaggerated by the former government, with around 5 per cent of employees on AWAs at the end of September 2007, and a slightly larger number since then.

²⁶ calculated from Australian Bureau of Statistics, 6306.0; Department of Employment and Workplace Relations, *Trends in Federal Enterprise Bargaining*, DEWR, Canberra, June quarter 2007b; Peetz, *Brave New Workplace*; Workplace Authority, *Workplace agreement data*.

4. OVERVIEW OF WAGE RATES UNDER INDIVIDUAL AND COLLECTIVE AGREEMENTS: PUBLISHED DATA

This chapter considers the published data on earnings of workers on registered individual contracts and registered collective agreements. It focuses on national aggregates, gender differences, state by state variations, and the differing outcomes for permanent full-time, permanent part-time and casual employees.

Table 4.1 shows average weekly and hourly earnings of non-managerial employees under registered individual contracts and registered individual contracts in the states and across Australia. For ease of exposition, the key data are also shown in graphic form in figure 4.1. Note again that these data are based on averages, and averages can be distorted by the effects of a small number of high income earners.

Across Australia as a whole, registered individual contract employees received 9 per cent more per week than employees on registered collective agreements. But to earn this, they worked for 13 per cent more hours (an extra 4.1 hours per week). As a result, the average hourly earnings of non-managerial employees on registered individual contracts were 3.3 percent lower than the earnings of their counterparts on registered collective agreements. For men, the average shortfall²⁷ under registered individual contracts is 2 per cent, but for women it is 11 per cent.

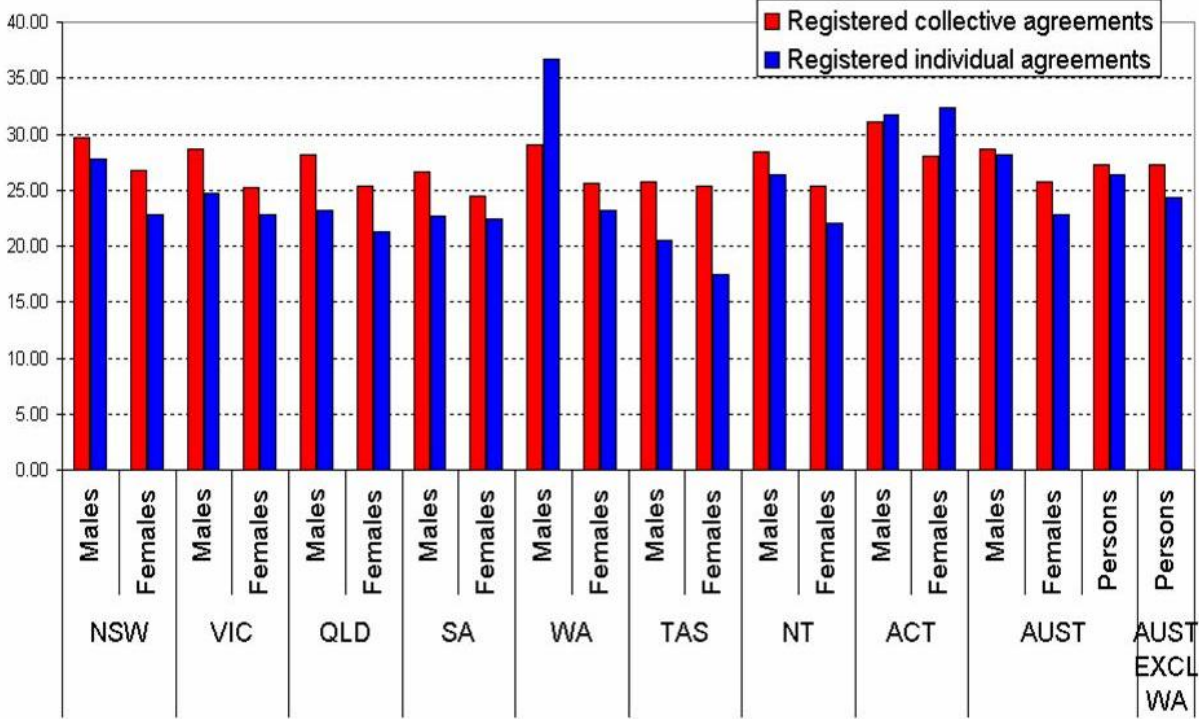
²⁷ The term 'shortfall' refers to the gap between pay under registered individual contracts and pay under registered collective agreements.

Table 5.1: Average weekly earnings, hours worked and hourly earnings of non-managerial employees, by state/territory, 2006.

	Average Weekly Total Cash Earnings			Average Weekly Hours Paid For Females Persons			Average Hourly Cash Earnings		
	Males \$	Females \$	Persons \$	Males Hours	Females hours	Persons hours	Males \$	Females \$	Persons \$
NEW SOUTH WALES									
• Reg collective agts	1058.30	773.00	909.70	35.7	28.9	32.1	29.70	26.80	28.30
• Reg individual agts	1095.80	686.60	925.70	39.4	30.1	35.6	27.80	22.80	26.00
• difference	3.5%	-11.2%	1.8%	10.4%	4.2%	10.9%	-6.4%	-14.9%	-8.1%
VICTORIA									
• Reg collective agts	1034.30	681.40	835.60	36.2	27	31	28.60	25.20	26.90
• Reg individual agts	867.40	643.70	745.50	35.1	28.2	31.3	24.70	22.80	23.80
• difference	-16.1%	-5.5%	-10.8%	-3.0%	4.4%	1.0%	-13.6%	-9.5%	-11.5%
QUEENSLAND									
• Reg collective agts	1058.60	745.60	893.40	37.5	29.5	33.3	28.20	25.30	26.80
• Reg individual agts	959.60	809.10	921.40	41.3	38.0	40.5	23.20	21.30	22.80
• difference	-9.4%	8.5%	3.1%	10.1%	28.8%	21.6%	-17.7%	-15.8%	-14.9%
SOUTH AUSTRALIA									
• Reg collective agts	937.00	702.20	810.60	35.2	28.6	31.6	26.60	24.50	25.60
• Reg individual agts	937.60	659.90	864.20	41.3	29.5	38.2	22.70	22.40	22.70
• difference	0.1%	-6.0%	6.6%	17.3%	3.1%	20.9%	-14.7%	-8.6%	-11.3%
WESTERN AUSTRALIA									
• Reg collective agts	1051.10	686.90	848.00	36.1	26.8	30.9	29.10	25.60	27.40
• Reg individual agts	1541.50	661.20	1255.80	42.0	28.5	37.6	36.70	23.20	33.40
• difference	46.7%	-3.7%	48.1%	16.3%	6.3%	21.7%	26.1%	-9.4%	+21.9%
TASMANIA									
• Reg collective agts	927.50	726.40	819.30	36.0	28.7	32.1	25.70	25.30	25.50
• Reg individual agts	775.30	463.80	634.90	37.8	26.5	32.7	20.50	17.50	19.40
• difference	-16.4%	-36.2%	-22.5%	5.0%	-7.7%	1.9%	-20.2%	-30.8%	-23.9%
NORTHERN TERRITORY									
• Reg collective agts	1055.30	815.00	914.30	37.2	32.0	34.2	28.40	25.40	26.70
• Reg individual agts	1234.90	837.10	1118.80	46.7	38.0	44.2	26.40	22.00	25.30
• difference	17.0%	2.7%	22.4%	25.5%	18.8%	29.2%	-7.0%	-13.4%	-5.2%
AUSTRALIAN CAPITAL TERRITORY									
• Reg collective agts	1051.00	876.70	952.80	33.8	31.3	32.4	31.10	28.00	29.40
• Reg individual agts	1125.10	1143.90	1136.60	35.5	35.5	35.5	31.70	32.30	32.00
• difference	7.1%	30.5%	19.3%	5.0%	13.4%	9.6%	1.9%	15.4%	+8.8%
AUSTRALIA									
• Reg collective agts	1038.00	729.80	871.20	36.2	28.3	31.9	28.70	25.70	27.30
• Reg individual agts	1119.30	689.10	949.60	39.8	30.2	36.0	28.10	22.80	26.40
• difference	7.8%	-5.6%	9.0%	9.9%	6.7%	12.9%	-2.1%	-11.3%	-3.3%

Source: ABS Cat No 6306.0, May 2006, data cube table 10.

Figure 4.1 Average hourly earnings of non-managerial employees, by state/territory and gender, 2006.



Source: ABS 6306.0

A stark pattern emerges in the state by state analysis. In Western Australia, one of the two states where the mining boom is most strongly experienced, and the state with the highest incidence of registered individual contracts, average hourly earnings of workers on registered individual contracts are 22 per cent higher than for those on collective agreements. Mining is a male-dominated industry (87 per cent of mining employees are male),²⁸ and this individual contract advantage is an exclusively male phenomenon: for women in WA, registered individual contract earnings are 9 per cent below collective agreement earnings. Across the other states, registered individual contract employees have a shortfall in pay ranging from 8 per cent to 24 per cent. Even in Queensland, the other mining boom state, registered individual contract hourly earnings are 15 per cent below collective agreement earnings.

The reason for the difference between the patterns in Western Australia and Queensland is simple: in Western Australia the mining sector is dominated by metalliferous mining, in which union density in trend terms is a mere 12 per cent and collective agreements cover few employees; whereas in Queensland, the mining sector is dominated by coal, in which trend union density is 60 per cent and collective agreements cover many employees.²⁹ Thus in Western Australia the mining boom is raising the wages of workers on registered individual contracts but not collective agreements, whereas in Queensland it is boosting the wages of both. As weekly earnings in mining are over double the average of other industries, this clearly has a distorting effect on the figures.

²⁸ Australian Bureau of Statistics, 6310.0.

²⁹ trend estimates calculated from *ibid.* using methodology in D. Peetz, 'Trend analysis of union membership', *Australian Journal of Labour Economics*, vol. 8, no. 1, 2005.

It is also important to note that it is amongst Western Australian men that the earnings estimates for workers on registered individual contracts are most boosted by the high wages under state-registered individual agreements, which accounted for around one sixth of WA workers on registered individual agreements. Although we focus on the unpublished data in chapter 5, it is worth revealing here that the unpublished data indicate that average hourly earnings of WA men on state individual contracts, at \$56.10, were 76 per cent higher than those of WA workers on AWAs (Table 4.2). Thus whereas Table 4.1 showed WA men on registered individual contracts receiving an average of 21.9 per cent more than those on collective agreements, nearly two thirds of this gap was due solely to the impact of state individual contracts, and WA men on AWAs received only 9.6 per cent more than WA men on collective agreements. Women on AWAs in WA received 11.7 per cent less than women on collective agreements, so overall employees on AWAs in WA received an average of just 7.3 per cent more than employees on collective agreements. (In Tasmania and Queensland, because the state contract numbers are so much smaller, the outcomes for AWAs are almost the same as the outcomes for registered individual contracts.)

Table 4.2: Average hourly earnings of non-managerial employees, components of registered individual contracts, Western Australia, 2006.

	Males (\$/hr)	Females (\$/hr)	Persons (\$/hr)
Registered collective agreements	29.10	25.60	27.40
Registered individual agreements	36.70	23.20	33.40
- AWAs	31.90	22.60	29.40
- State individual agreements	56.10	27.60	51.20

Source: Unpublished data from ABS Cat No 6306.0

A clearer idea of the impact of AWAs on earnings is gained by considering earnings across the other five states (and the two territories) excluding Western Australia (Table 4.3). There, average hourly earnings of employees on registered individual contracts are around 10 per cent less than average earnings of employees on registered collective agreements.³⁰

We cannot precisely estimate the average hourly earnings of men and women across the states excluding WA, as gender data on the incidence of registered individual contracts by state are not published, but if the incidence was the same between men and women then our estimates suggest that the shortfall would be broadly similar (around 12 per cent) for both men and women. Certainly, WA is the only state where men do better under registered individual contracts than under collective agreements; in all other states men on registered individual contracts are disadvantaged by between 6 per cent and 20 per cent, compared to men on registered collective agreements. This suggests that the likely effect of mining on the figures would be to exaggerate the relative welfare of men on registered individual contracts (rather than understate the welfare of women).

³⁰ Interestingly, removing the distorting effects of WA from the national average hourly earnings of employees on registered individual contracts (which raises the gap with registered collective agreements from 3.3 per cent to 10.7 per cent) has a similar effect to shifting from average to median earnings in comparing weekly earnings of employees on all individual and collective arrangements (which raises the gap from 3.8 to 11.4 per cent).

Table 4.3: Average hourly earnings of non-managerial employees, by method of pay fixing, impact of WA on Australian estimates, 2006.

	Australia	Australia excluding WA (a)
Reg collective agreements	27.30	27.20
Reg individual agts	26.40	24.30
Difference	-3.3%	-10.7%

(a) estimated using employment weights from May 2006 Labour Force Survey.
Source: Calculated from ABS Cat No 6306.0

The other phenomenon reflected in the state/territory figures in Table 4.1 is the treatment of employees in the Commonwealth public service. Until recently, a number of agencies, including DEWR, refused to recruit people who would not agree to sign an AWA, regardless of their merit.³¹ Promotion was also often dependent on signing an AWA. Hence it was inevitable that AWA employees in the Commonwealth Public Service would eventually have higher pay than all other employees, and this is reflected in the ACT figures where AWA employees had pay 9 per cent higher than employees on registered CAs. When managerial employees were included (almost everyone in the Commonwealth senior executive service was on an AWA), the weekly earnings gap in the ACT rose to a huge 50 per cent.³² This distortion created by Commonwealth public sector employees is one reason why the 'all employees' data, which include managerial employees, are of little use in analysing the general impact of AWAs, and why hourly earnings data for non-managerial employees provide a better indication of the experiences of ordinary employees.³³

Table 4.4 shows weekly earnings, hours worked and hourly earnings for non-managerial employees who are permanent full-time workers, permanent part-timers and casuals. Again, the key data are shown in graphic form in Chart 5.3. The only group in this table for whom average hourly earnings are as high under registered individual contracts as under collective agreements are male permanent-full-timers, the group most likely to be employed in the mining sector. In all other groups registered individual contract workers are disadvantaged compared to workers on collective agreements. Female permanent full-timers were disadvantaged by 8.5 per cent if they were on a registered individual contract. They received 5 per cent less per week on a registered individual contract than on a collective agreement, even though they worked an additional 1.3 hours per week. Permanent part-time workers were 17 per cent worse off on registered individual contracts than registered collective agreements, and casual employees were also 17 per cent worse off.

³¹ Workplace Express, 'CPSU accuses DEWR of threatening merit selection through AWAs', *Workplace Express*, 15 April 2005a, <http://www.workplaceexpress.com.au/nav?id=24335&no=230063090>; Workplace Express, 'DEWR management, CPSU, meet again this afternoon', *Workplace Express*, 8 July 2005b.

³² Australian Bureau of Statistics, 6306.0.

³³ The ACT also therefore distorts the national non-managerial figures, but not by as much. Hence if Table 9.2 were recalculated to exclude both WA and the ACT, the AWA-collective agreement gap would rise to 11.9 per cent.

Table 4.4 Average weekly earnings, hours worked and hourly earnings of non-managerial employees, by employment status, 2006.

	weekly earnings			hours worked			hourly earnings		
	males	females	all	males	females	all	males	females	all
Permanent full-time employees									
• Registered collective	1183.9	1013.1	1112.7	40.4	37.5	39.2	29.30	27.00	28.40
• Registered individual	1252.4	957.6	1162.5	42.7	38.8	41.5	29.30	24.70	28.00
• Difference	5.8%	-5.5%	4.5%	5.7%	3.5%	5.9%	0.0%	-8.5%	-1.4%
Permanent part-time employees									
• Registered collective	555	552.3	552.8	22.2	22.9	22.7	25.00	24.20	24.30
• Registered individual	418.9	472.9	456.4	21.5	23	22.5	19.50	20.50	20.20
• Difference	-24.5%	-14.4%	-17.4%	-3.2%	0.4%	-0.9%	-22.0%	-15.3%	-16.9%
Casual employees									
• Registered collective	470.2	320.1	376.1	19.5	14.5	16.4	24.10	22.00	23.00
• Registered individual	606.3	324.8	445.2	29.2	18.7	23.2	20.70	17.30	19.20
• Difference	28.9%	1.5%	18.4%	49.7%	29.0%	41.5%	-14.1%	-21.4%	-16.5%
All non-managerial employees									
• Registered collective	1038	729.8	871.2	36.2	28.3	31.9	28.70	25.70	27.30
• Registered individual	1119.3	689.1	949.6	39.8	30.2	36	28.10	22.80	26.40
• Difference	7.8%	-5.6%	9.0%	9.9%	6.7%	12.9%	-2.1%	-11.3%	-3.3%

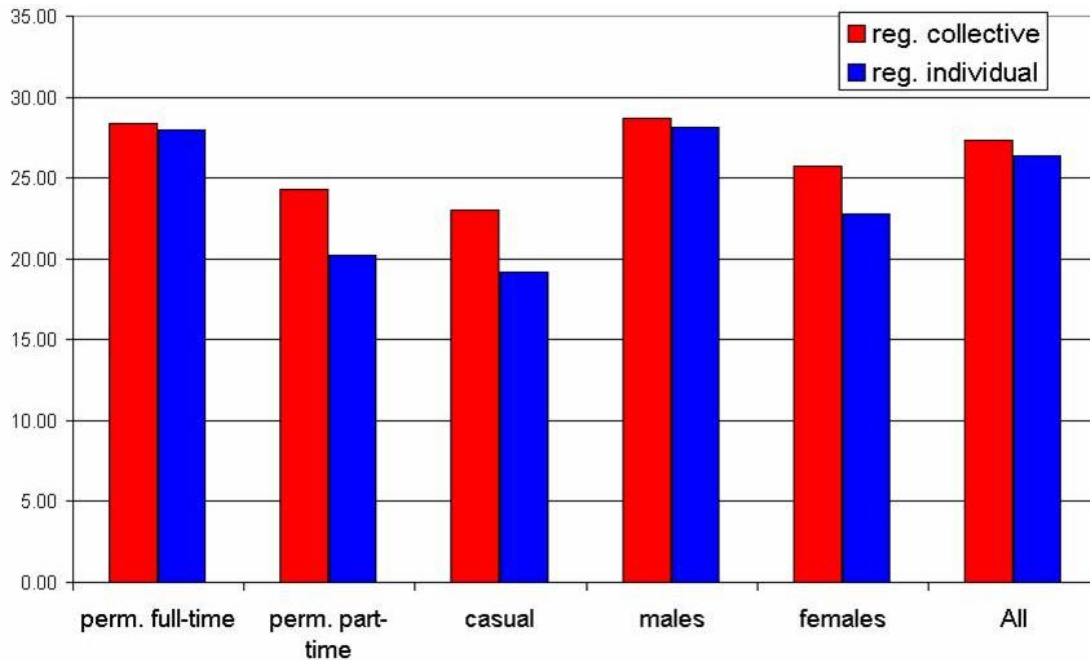
Source: ABS Cat No 6306.0, Table 20.

What of the position of female casual employees? Workers in retail and hospitality account for 45 per cent of all female casuals (compared to just 15 per cent of female permanent employees and 18 per cent of all male employees).³⁴ So trends amongst female casuals will be heavily influenced by trends in these industries, and we turn specifically to those industries in chapter 6.

Casual employees are also the group with the heaviest award reliance – some 47 per cent of award-reliant employees are casuals – and so patterns amongst casuals provide a hint as to what happens to some employees moving onto AWAs off other forms of employment contract.

³⁴ Australian Bureau of Statistics, 6310.0.

Figure 4.2 Average hourly earnings of non-managerial employees, by employment status and gender, 2006.



Source: ABS 6306.0

Table 4.5 compares hourly earnings for casual employees under awards and those under AWAs. We would expect that earnings under AWAs would be above those under awards, because, at least in terms of base hourly rates, no AWAs can pay below the award wage but some AWAs would pay above the award wage, meaning that the average AWA wage must be above the relevant award minimum. (Under the no-disadvantage test that operated before WorkChoices, this principle in effect applied in a global sense to the total pay package, creating a stronger protection than under WorkChoices.) This is certainly the case for permanent full-time workers, and to a lesser extent for permanent part-time workers. Yet as can be seen from Table 4.5, average hourly earnings for female casuals are 7 per cent below the average award minimum. This presumably reflects the loss of penalty rates, as documented in chapter 7, which would lower average hourly wages, especially if not compensated by an increase in base hourly rates. As table 4.4 shows, female casuals on registered individual contracts are also 21 per cent worse off than female casuals on collective agreements. (Male casuals on registered individual contracts are only 14 per cent worse off than under a collective agreement, and are 9 per cent better off than the average award minimum.)

Table 4.5: Average hourly earnings, casual employees, by sex

	Men	Women
Award employees	19.00	18.70
Reg individual agts	20.70	17.30
Difference	8.9%	-7.5%

Source: ABS 6306.0

These data indicate that casual employees, particularly female casual employees, do especially poorly under AWAs. Women are worse off under AWAs no matter what their employment status – women’s hourly pay on registered individual contracts is 9 per cent

lower for permanent full-timers, and 15 per cent lower on registered individual contracts for permanent part-timers. Women on registered individual contracts earn less than women on collective agreements in every state, by margins ranging from 8 per cent to 30 per cent.

Overall, the data from the EEH survey indicate that registered individual contracts, even under the old 'no disadvantage' test, were paying well below collective agreements for comparable workers. Women are particularly disadvantaged under registered individual agreements, and this is especially the case for women in casual jobs. However, even women in permanent full-time jobs do relatively poorly under registered individual agreements compared to collective agreements. Moreover, although men do not appear to do as badly out of registered individual agreements as women, this is in no small part a result of the male domination of mining. These shortfalls for employees on registered individual agreements almost certainly understate the WorkChoices experience because a majority of the AWA employees covered by these data were protected by the no-disadvantage test, which under WorkChoices was significantly weakened, first through its abolition, the effects of which have only been only partially offset by the recent introduction of the 'fairness' test.

5. DETAILED ANALYSIS OF WAGES UNDER AUSTRALIAN WORKPLACE AGREEMENTS AND COLLECTIVE AGREEMENTS: UNPUBLISHED DATA

David Peetz and Alison Preston

In this section we undertake a detailed analysis of the unpublished data obtained from the ABS. This enables us to specifically interrogate the experience of AWAs. We ask what are the differences in hourly earnings for typical employees on AWAs and collective agreements, how do these differ by industries, occupations and by employer size, and what do these tell us about the motivations for and effects of AWAs? But first, we refer to some of the previous literature on individual contracting and collective bargaining, as this helps us develop the hypotheses for testing.

Evidence from earlier regimes

There is a common theme to the research findings from individual contracting regimes in different times or places: where the law permits, individual contracts affect pay by changing the ways in which workers are paid for the time they work. Typically involving cuts in penalty rates, overtime pay or other premiums, this cost cutting often referred to as increasing the 'flexibility of working hours'. Earlier Australian research showed these patterns under pre-WorkChoices AWAs³⁵ or under old state individual contract regimes.³⁶ In New Zealand, cuts in penalty rates and overtime rates under ECA individual contracts were particularly likely amongst those in low-wage areas, and new employees were often hired on individual contracts that contained lower pay and conditions than collective agreements for existing staff.³⁷

Given the links between unionism, collective bargaining and individual contracting, these findings should not surprise. Individual contracting is antithetical to collective bargaining and unionism. A large number of studies around the world have shown unions obtain higher wages for their members.³⁸ Unions obtain these benefits through collective bargaining, and

³⁵ ACIRRT, *ADAM Report*, No 27, Australian Centre for Industrial Relations Research and Training, University of Sydney, Sydney, March 2001a; R. Mitchell and J. Fetter, 'Human resource Management and individualisation in Australian law', *Journal of Industrial Relations*, vol. 45, no. 3, September 2003.

³⁶ Commissioner of Workplace Agreements, *Summary statistics and other information*, Vol 2, CWA, Perth, 1996, <http://www.wa.gov.au/workplace/s86vol2>; Commissioner of Workplace Agreements, *Summary statistics and other information*, Vol 8, CWA, Perth, 1999, http://www.wa.gov.au/workplace/html/5pub_idx.htm; I. Watson, 'Kennett's industrial relations legacy: The impact of deregulation on wages in Victoria', *AIRAANZ 2001: Proceedings of the 15th AIRAANZ conference*, Association of Industrial Relations Academics of Australia and New Zealand, Vol 2, 31 January-2 February 2001, pp. 139-46.

³⁷ E. Dannin, *Working Free: The origins and impact of New Zealand's Employment Contracts Act*, Auckland University Press, Auckland, 1997; S. Oxenbridge, 'The individualisation of employment relations in New Zealand: Trends and outcomes', in *Employment Relations: Individualisation and Union Exclusion - An International Study*, eds S. Deery and R. Mitchell, Federation Press, Sydney, 1999, pp. 227-50.

³⁸ V. Christie, 'Union wage effects and the probability of union membership', *Economic Record*, vol. 68, no. 200, March 1992; R. B. Freeman and J. L. Medoff, *What Do Unions Do?*, Basic Books, New York, 1984; R. Kornfeld, 'The effects of union membership on wages and employee benefits: The case of Australia', *Industrial*

without collective bargaining, union members are no more likely to report receiving a wage increase than non-members.³⁹ When working hours increased, union members were more likely to report that they also received an increase in pay.⁴⁰ Wages rise, for union members and non-members alike, as workplace union density rises and as workplace activism rises.⁴¹

That said, pre-WorkChoices research also indicated that there were different types of AWAs that focused on different issues,⁴² and we should not expect that, under WorkChoices, all AWAs would focus exclusively on cost cutting, particularly in areas of labour shortage. The impact of individual contracting might depend on the labour market power of employees.

Another impact of individual contracting apparent from earlier research is union avoidance. A number of studies have shown the importance of union avoidance as a motivation for a shift to individual contracting in New Zealand⁴³ and Australia.⁴⁴ There is, for example, extensive evidence of individual contracts being effectively used in the mining and communications industries to de-unionise their workforce, sometimes through the offering of higher wages in return for signing an individual contract, and the refusal to promote or give pay rises to those who refuse to sign.⁴⁵ Survey data suggest a negative relationship between individual 'bargaining' and union membership.⁴⁶

& *Labor Relations Review*, vol. 47, no. 1, October 1993; P. Miller and S. Rummery, 'Unionism and the structure of male wages in the labour market', *Journal of Industrial Relations*, vol. 31, no. 2, June 1989; M. Wooden, *Union Wage Effects in the Presence of Enterprise Bargaining*, Melbourne Institute Working Paper No 7/00, Melbourne Institute of Applied Economic and Social Research, University of Melbourne, Melbourne, April 2000.

³⁹ Department of Industrial Relations, *Enterprise Bargaining in Australia: 1995 Annual Report*, AGPS, Canberra, 1996.

⁴⁰ Griffith Work Time Project, *Working time Transformations and Effects*, Queensland Department of Industrial Relations, Brisbane., 2003.

⁴¹ E. Baarth, O. Raaum and R. Naylor, *Union wage effects: does membership matter*, Warwick Economics Research Paper Series No 500, University of Warwick, Warwick, 1998; Wooden, *Union Wage Effects in the Presence of Enterprise Bargaining*.

⁴² M. Cole, R. Callus and K. Van Barneveld, *What's in an agreement? An approach to understanding AWAs*, paper to joint ACIRRT/OEA seminar, University of Sydney, Sydney, September 2001.

⁴³ C. Gilson and T. Wagar, 'Individual contracts and the impact of labour legislation: trans-Tasman comparisons', *Australian Bulletin of Labour*, vol. 22, no. 4, Dec 1996 1996; J. Kelsey, 'Employment and union issues in New Zealand 12 years on', *California Western International Law Journal*, vol. 28, 1997; Oxenbridge, 'The individualisation of employment relations in New Zealand: Trends and outcomes'.

⁴⁴ AIRC *Aluminium Industry (Comalco Bell Bay Companies) Award 1983: Decision 1994* AIRC; M. Bickley, T. Jefferson and T. Travaglione, *A case study on the introduction of Australian Workplace Agreements*, Report for the Office of the Employment Advocate, Sydney, June 1999; World Competitive Practices, *OEA Case Study - Peabody Resources (Ravensworth Mine)*, November. 1999a; World Competitive Practices, *OEA Case Study: Telstra*, Report for the Office of the Employment Advocate, Sydney, November 1999b.

⁴⁵ B. Hearn MacKinnon, 'The struggle for managerial prerogative: Ramifications of the CRA Weipa dispute', *Current Research in Industrial Relations*., Proceedings of the 10th AIRAANZ Conference, Association of Industrial Relations Academics of Australia and New Zealand, Perth, February 1996, pp. 287-95; B. Hearn MacKinnon, 'Clash of the Titans: Rio Tinto vs the CFMEU', *AIRAANZ 2001: Proceedings of the 15th AIRAANZ conference*, Association of Industrial Relations Academics of Australia and New Zealand, Vol 1, Wollongong, 31 January-2 February 2001, pp. 208-13; D. Van den Broek, 'Recruitment strategies and union exclusion at two Australian call centres', *Relations Industrielles*, vol. 58, no. 3, Summer 2003.

⁴⁶ M. Wooden, 'Individual agreement-making in Australian workplaces: incidence, trends and features', *Journal of Industrial Relations*, vol. 41, no. 3, September 1999.

Notwithstanding this, in introducing and defending the 'WorkChoices' reforms to industrial relations law, the former federal government argued that they would encourage higher productivity growth and through this, increased wages for workers, particularly those employed under individual contracts registered in the federal jurisdiction as 'Australian Workplace Agreements' (AWAs).⁴⁷ In effect, the literature generates some competing hypotheses for us. On the one hand, individual contracting, if it really does lead to higher productivity and efficiency, should also lead to a general pattern of higher wages. On the other hand, individual contracting's effects might depend on employees' labour market situation and bargaining power, leading to lower wages and conditions for workers with weak bargaining power. For other employees, individual contracting might be associated with union avoidance, perhaps through pay premiums for those who sign and penalties for those who do not. The national survey data enable us to test these hypotheses, and we expand on these below.

The motivations for Australian Workplace Agreements and some consequent hypotheses

Various possible explanations for the use of AWAs can be tested through hypotheses. If AWAs are used predominantly for flexibility to benefit both employees and employers, then they should pretty consistently provide for higher hourly pay than registered collective agreements, across different employer types.

Conversely, if AWAs are predominantly used for cutting labour costs and avoiding unions, we would expect to see wide variations in the relationship between AWA earnings and earnings under registered collective agreements. The highest AWA premiums would be in situations where union avoidance strategies are important (such strategies have been well documented in finance, mining, communications and government administration).⁴⁸ There would be shortfalls for AWA employees where union avoidance strategies were not important, for example in small businesses, where unions find organising difficult due to problems of small scale and do not therefore invoke an avoidance response from employers.

⁴⁷ K. Andrews, Building better workplaces, speech to the National Press Club, Canberra, 31 May 2005a; K. Andrews, WorkChoices 7, Speech to Australian Business Limited, Sydney, 11 October, 2005b.; Hockey in S. Strutt, 'No response to Hockey AWA claim', *Courier-Mail*, 29 September 2007.

⁴⁸ ABC TV, 'Proposed IR changes hurt Govt in poll', *7.30 Report*, Australian Broadcasting Corporation, 5 July 2005.; ABC, 'Andrews accused of hypocrisy over workplace agreements', *ABC Online*, 21 June 2005, <http://www.abc.net.au/news>; Background Briefing, 'Call centres -- the nerve centres of business', *Background Briefing*, Australian Broadcasting Commission, 18 June 2000; D. Browne, 'Telstra tangle over "Honest Bob"', *Workers Online*, 28 April 2000; Peetz, *Brave New Workplace*; Workplace Express, 'CPSU accuses DEWR of threatening merit selection through AWAs'; Workplace Express, 'DEWR management, CPSU, meet again this afternoon'; WorkplaceInfo, 'September 2001: the month in IR', 9 October 2001, <http://www.workplaceinfo.com.au/nocookie/alert/2001/01248.htm>; World Competitive Practices, *OEA Case Study - Peabody Resources (Ravensworth Mine)*; World Competitive Practices, *OEA Case Study: Telstra.*; Hearn MacKinnon, 'The struggle for managerial prerogative: Ramifications of the CRA Weipa dispute'; B. Hearn MacKinnon, 'The Weipa dispute: Ramifications for the spread of Australian Workplace Agreements', in *Individual Contracts and Workplace Relations*, eds A. Frazer, R. McCallum and P. Ronfeldt, ACIRRT, University of Sydney, 1997, pp. 55-68; J. McDonald and N. Timo, 'Killing the union? Individualised contracts and CRA', in *Contemporary Research on Unions: Membership, Organisation, Marginalisation and Non Standard Employment*, ed G. Griffin, National Key Centre in Industrial Relations, Monash University, Melbourne., 1996; N. Timo, 'The management of individualism in an Australian mining company', *Employee Relations*, vol. 19, no. 4, 1997.

Where cost-minimisation strategies were preferred, we would expect shortfalls for AWA employees to be most severe amongst workers with low skills levels or in low demand, highly competitive areas. At the same time, institutional and market arrangements in each industry and occupation will also influence outcomes. For example, particular occupations within an industry may be traditionally non-union. This will need to be taken into account in understanding the patterns of earnings by industry and occupation.

We test these competing hypotheses using the EEH data.

Aggregate findings

In 2006, employees on CAs earned an average of \$27.30 per hour, compared to \$25.30 per hour for employees on AWAs (Table 5.1). Thus, employees on AWAs earned \$2.00 per hour less, that is, they faced a shortfall of 7.3 per cent compared to workers on CAs. However, averages can be deceptive, as they can be distorted by a small number of employees with high earnings: as mentioned, 69 per cent of AWA employees earn less than average AWA hourly earnings. A more representative indicator showed that median AWA earnings in 2006 were only \$20.50 per hour, some \$4.00 per hour below median earnings for CA employees. That is, *the median AWA worker earned 16.3 per cent less than the median CA worker in 2006*. This represented a slight deterioration on the median AWA shortfall in 2004, which was 14.8 per cent.

Table 5.1: Average and 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
Average earnings								
Males	25.80	28.70	11.2%	25.80	26.50	2.7%	1.000	.923
Females	23.30	25.70	10.3%	20.30	22.80	12.3%	.871	.887
Persons	24.60	27.30	11.0%	23.90	25.30	5.9%	.972	.927
Median earnings								
Males	23.40	26.00	11.1%	20.90	22.00	5.3%	.893	.846
Females	21.40	23.00	7.5%	17.30	18.70	8.1%	.808	.813
Persons	22.30	24.50	9.9%	19.00	20.50	7.9%	.852	.837

Source: unpublished data, ABS Cat No 6306.0

In 2006, men on median AWA earnings earned 15.4 per cent less than men on median CA earnings in 2006. The median level of AWA earnings for female non-managerial employees was 18.7 per cent lower than the corresponding median for females on CAs. In 2004, the corresponding female shortfall was similarly large, at 19.2 per cent.

The availability of data on median earnings also markedly changes our understanding of the relationship between AWAs and award wages. The previous federal government and

sympathetic interest groups repeatedly stated that employees on AWAs earn twice as much as people on awards.⁴⁹ Yet table 5.2 shows that median hourly earnings for AWA employees were only 16 per cent above median award-only earnings. For women, median AWA earnings were only 5.6 per cent above median award-only earnings. This is only a quarter of the advantage that average hourly earnings data appeared to give women on AWAs over women wholly reliant on awards. And this is before full account is taken of the downward bias imparted into award wages estimates arising from the greater tendency for workers on high award classifications to be earning above the award rate and therefore not be included in the award-only calculations.

It is noteworthy that the published data reveal that average hourly earnings of female casual workers on registered individual contracts, averaged across all industries, were 7.5 per cent lower than those of female casual workers on registered collective agreements. By contrast, across the economy as a whole, casual women on CAs were paid 18 per cent above the award average and 27 per cent above the average for casual women on registered individual contracts.

Table 5.2: Median hourly total cash earnings, awards, CAs and AWAs, May 2006, non-managerial employees

	award-only	CA	AWA	CA/award-only	AWA/award-only	AWA/CA
males	\$17.40	\$26.00	\$22.00	1.494	1.264	.846
females	\$17.70	\$23.00	\$18.70	1.299	1.056	.813
persons	\$17.60	\$24.50	\$20.50	1.392	1.165	.837

Between May 2004 and May 2006, the increase in average AWA earnings was only 5.9 per cent, barely half the 11 per cent increase in average collective agreement earnings (Table 5.3). The median increase, which is a better indication of typical outcomes under AWAs, was not so poor at 7.9 per cent. This was still 2 percentage points less than the 9.9 per cent growth in median earnings of workers on CAs over the same period.

Table 5.3: Growth in Average and Median Earnings of Non-Managerial Employees on AWAs and CAs, Australia, 2004-2006

	CA Average Earnings growth	AWA Average Earnings growth	CA Median Earnings growth	AWA Median Earnings growth
Males	11.2%	2.7%	11.1%	5.3%
Females	10.3%	12.3%	7.5%	8.1%
Persons	11.0%	5.9%	9.9%	7.9%

Source: unpublished data, ABS Cat No 6306.0

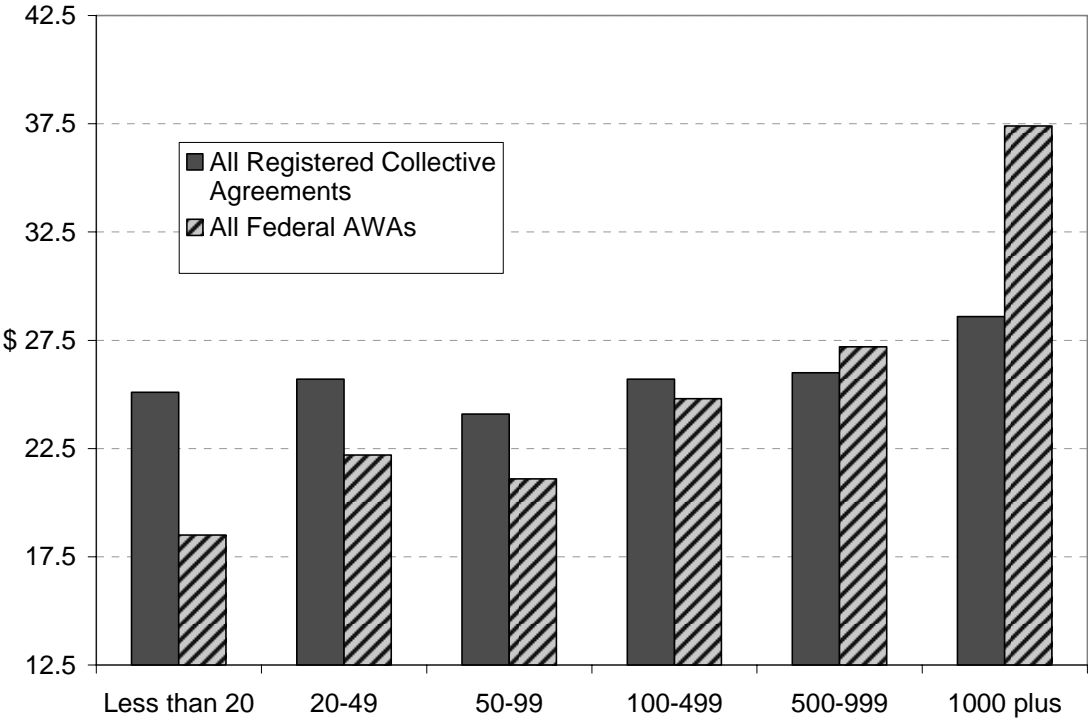
⁴⁹ Australian Government, *More Jobs, Higher Wages, A Stronger Economy*, advertisement, various newspapers, July 2005; P. McIlwain, The truth about AWAs, Office of the Employment Advocate, 2005, http://www.oea.gov.au/graphics.asp?showdoc=/news_room/statements-050715.asp; K. Andrews on ABC TV, 'Industrial relations debate', *Lateline*, Australian Broadcasting Corporation, 21 June 2006.; J.Hockey on ABC TV, 'Friday night forum: Joe Hockey and Julia Gillard', *Lateline*, Australian Broadcasting Corporation, 27 April 2007.; P. Hendy on SBS TV, 'Hard Yakka', *Insight*, Special Broadcasting Service, 5 June 2007.

Firm size and agreements

There is a very stark relationship between firm size and the AWA/CA ratio. In organisations with less than 500 employees, the AWA/CA ratio is less than 100 per cent, that is, AWAs pay less than CAs. The wage shortfall widens as organisations get smaller (Figure 5.1).

Hence, the 2006 shortfall is 3.5 per cent amongst organisations with 100–499 employees, rises to 12.4 per cent in organisations with 50–99 employees, 13.6 per cent in organisations with 20–49 employees and is a very substantial 26.3 per cent in organisations with fewer than 20 employees. Amongst large organisations with more than 1000 employees (the majority of whom are covered by collective agreements), there is a wage premium for AWAs of 30.8 per cent. The 2004 data follow a broadly similar pattern.

Figure 5.1: Average Total Hourly Cash Earnings by Firm Size and Method of Pay Setting, May 2006



Source: unpublished data, ABS Cat No 6306.0

For women, the broad pattern of a bigger shortfall in smaller organisations persists. The AWA shortfall for women was worse than that for men in the majority of size bands (Table 5.4).

Table 5.4: AWA/CA cash hourly earnings ratio by gender, 2004 and 2006, non-managerial employees

	2004		2006		average 2004-2006	
	male	female	male	female	male	female
less than 20	.768%	.771	.748	.751	.758	.761
20-49	.823%	.723	.825	.885	.824	.804
50-99	.782%	.756	.912	.780	.847	.768
100-499	1.046%	.866	1.000	.888	1.023	.877
500-999	.860%	.947	1.069	.996	.965	.971
1000 plus	1.316%	1.092	1.319	1.230	1.318	1.161
total	1.000%	.871	.923	.887	.962	.879

Source: unpublished data, ABS Cat No 6306.0

These findings support the hypothesis that AWAs are frequently used for cost cutting or union avoidance. Very large firms and federal government departments have the resources and sophistication to mount concerted union avoidance strategies and use AWAs as part of that, offering wage premiums to induce workers to sign AWAs and/or financially penalising those who seek to remain on collective agreements. With unionisation concentrated in larger firms and workplaces,⁵⁰ they are also more likely to have an incentive to do this, even if it is only a minority of large firms who go down this path. Smaller firms are not likely to follow this approach, and clearly are more likely to use AWAs as a cost minimisation tool, presumably through cutting penalty rates, overtime pay and other 'protected' award conditions.

Had AWAs been used as a device for promoting flexibility for the mutual benefit of employees and employers, we would have expected that employees in small and medium firms would have gained in roughly similar proportions to those in large firms. This clearly is not the case.

Industry and agreements

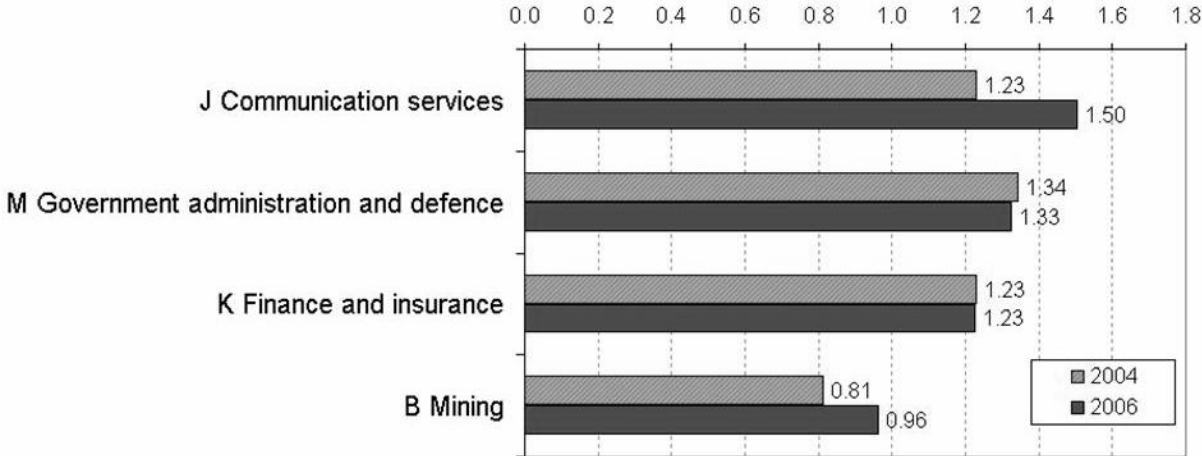
Of the 16 one-digit industry groupings in Australia, at May 2006, the AWA/CA ratio was below 100 per cent in nine of the 16 industries. In other words, AWA employees in the majority of industries received a lower hourly rate on their AWA than their counterparts did on CAs.

In 2006 the industry with the highest wage premium for AWAs (when the industry AWA average is compared to the industry CA average) was communication services, with the AWA average hourly wage premium equal to 50 per cent (see Figure 5.2). As mentioned, this is an industry where significant union avoidance behaviour has been underway. The second highest premium (33 per cent) is in government administration and defence where, as previously indicated, a number of federal government agencies require the signing of an

⁵⁰ A. Morehead, M. Steele, M. J. Alexander, K. Stephen and L. Duffin, *Changes at Work: The 1995 Australian Workplace Industrial Relations Survey*, Longman, South Melbourne, 1997.

AWA as a precondition to advancement in the organisation or receipt of a wage increase, again as part of a strategy aimed at reducing the influence of unions and collective agreements in the sector. The third highest premium (22 per cent) is in finance and insurance, where some organisations are also attempting to use AWAs to reduce union influence, and where employees in the more highly remunerated parts of an organisation (such as those engaged in foreign exchange speculation) are hired on individual contracts. Electricity, gas and water (17 per cent) also had a moderately high AWA premium in 2006. We should be cautious in interpreting this, as it showed no such premium in 2004 (Figure 5.3). However, communication, finance and insurance and government administration and defence all showed significant AWA premiums (23 to 34 per cent) in 2004, confirming the 2006 observations. (Figure 5.2).

Figure 5.2: Ratio of AWA/CA Average Total Hourly Cash Earnings by Industry, industries with common union avoidance strategies, May 2004 and 2006



Source: unpublished data, ABS Cat No 6306.0

The only industry in which union avoidance strategies are extensive and well documented, but in which there is no AWA premium, is mining, where AWA employees earned 3.6 per cent less than CA workers. This may come as a surprise, given some of the bold claims that have been made about mining wages and AWAs in recent times. For example, the Australian Mines and Metals Association (AMMA) claimed in March 2007 that ‘in the resources sector AWAs have provided for significant wage improvements’ and that average wages in mining had increased by 22 per cent in the year to August 2006.⁵¹ (The report sourced this claim to an ABS publication, yet this publication had not even been released at the time of the report. When the data were eventually published, they showed just an 8.7 per cent increase over the year to August 2006.)

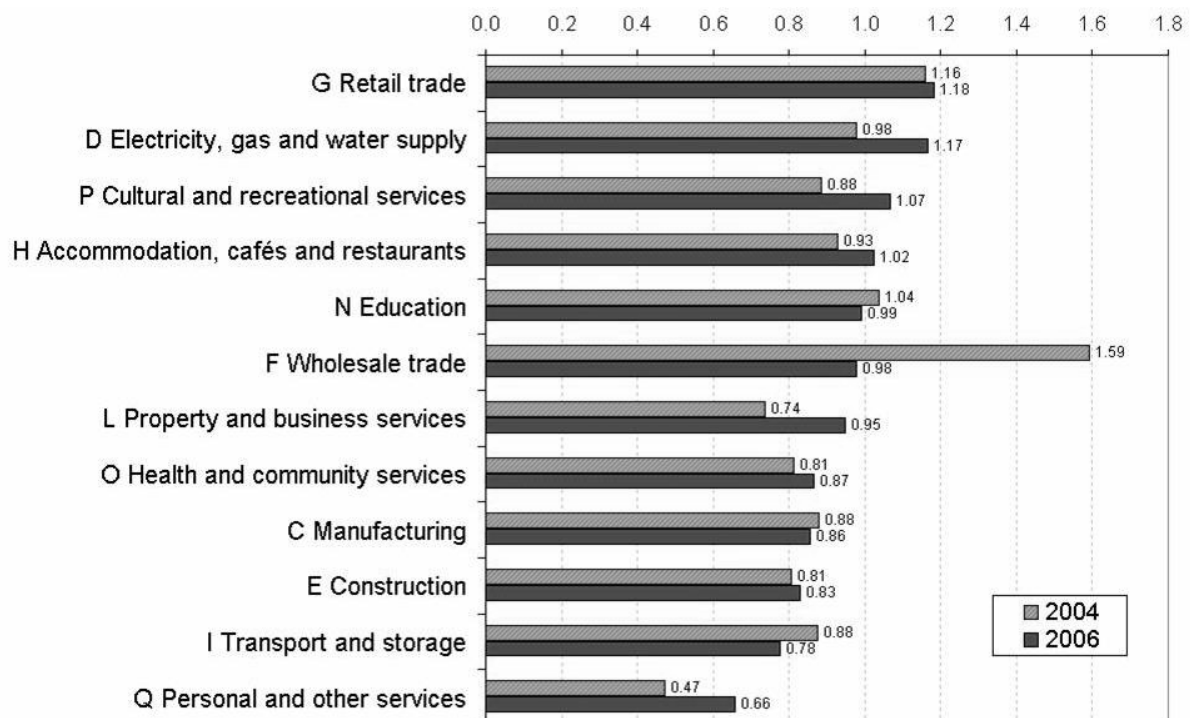
The reason for the AWA shortfall in mining is probably that union membership remains strong in the collectively organised coal mining sector, where the career path for new entrants typically involves a period working for a contractor on an AWA until a permanent job in a mine, often covered by a collective agreement, can be obtained. In coal mining, union density in August 2006 was, in trend terms, 61 per cent, compared to 12 per cent in metal ore mining

⁵¹ Australian Mines and Metals Association, Australian Workplace Agreements - A Major Matter for Miners, AMMA, Perth, 22 March, 2007.; also M. Farr, 'Bosses say AWAs are pushing wages up', *News.com.au*, 9 April 2007; C. Platt, 'Why AWAs are better', *Herald-Sun*, 10 May 2007.

where AWAs dominate.⁵² The main way in which AWAs are used in coal to reduce union influence is by ensuring a readily available alternative labour supply in case of industrial action. 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 coal mining.

Retail trade also has an AWA premium (18 per cent). We discuss this industry in the next chapter, but here it is worth noting that this premium in large part reflects the structure of awards and collective agreements in the industry, which provide that employees earning above a certain level are 'exempt' from the award or agreement.⁵³

Figure 5.3: Ratio of AWA/CA Average Total Hourly Cash Earnings by Industry, other industries, May 2004 and 2006



Source: unpublished data, ABS Cat No 6306.0

AWAs paid on average well below CAs in: manufacturing (where the AWA shortfall was 14 per cent in 2006); construction (17 per cent); transport and storage (22 per cent); health and community services (14 per cent); property and business services (5 per cent); and 'personal and other services' (though the 34 per cent shortfall exaggerated the negative effects of AWAs, being influenced by the structure of the industry, that is the inclusion of highly paid emergency service workers). (Figure 5.3)

⁵² trend estimates calculated from Australian Bureau of Statistics, 6310.0. using methodology in Peetz, 'Trend analysis'.

⁵³ R. Price, *Checking out supermarket labour usage: The nature of labour usage and employment relations consequences in a food retail firm in Australia*, PhD thesis, Department of Industrial Relations, Griffith University, Brisbane, 2004a, p. 93.

In almost all industries where AWAs paid less than CAs in 2006, this was true for both men and women, and the same applied in most industries where AWAs paid more than CAs. The gender wage gap was larger for women on AWAs than for women on CAs in ten industries.

Overall, the industry pattern is consistent with the proposition that AWAs are used for multiple purposes that vary between industries, with AWAs generally paying above CAs in industries where union avoidance strategies are important and below CAs in industries where labour cost minimisation is important. Structural factors within industries also played a role in explaining industry patterns, for example, the use of exemption clauses in retail trade and the hiring of staff in high-salary areas on AWAs. The strong bargaining power of unionised workers in coal mining and emergency services also affected industry level wages of workers on collective agreements in particular industries.

Occupation and agreements

For the top three occupational groups, AWA employees earn more on average than CA employees in both 2004 and 2006, though only for professionals does this occur for both genders. Professionals are clearly a group with high labour market power.

At the other end of the labour market, labourers and related workers experienced a consistent AWA pay shortfall – their wages were 17 per cent lower than wages of workers on CAs in 2006 (and 14 per cent lower in 2004). In all, five of the six lowest occupational groups revealed an AWA pay shortfall compared to CAs in 2006 (Figure 5.4)

Figure 5.4: Ratio of AWA/CA Average Total Hourly Cash Earnings by Occupation, May 2004 and 2006



Source: unpublished data, ABS Cat No 6306.0

The most disadvantaged group, appeared to be female labourers and related workers – in 2006 those on AWAs were paid an average 26 per cent less than similar women on CAs. Indeed, in 2006 female labourers and related workers on AWAs were receiving 20 per cent less even than the award-reliant average for that occupation. The shortfall was much less in 2004 (7 per cent below collective agreements, 5 per cent above award-reliant wages), but reducing the effects of sampling error by averaging the two years still suggests that female labourers on AWAs were earning below their equivalents on award rates, by something in the order of 8 per cent. Another vulnerable group was female elementary clerical sales and service workers, who received 15 per cent above award-reliant wages in 2006 but 3 per cent below them in 2004. The other occupational group with a large gap between AWA and collective agreement earnings was female tradespersons and related workers. Among this occupation (which includes hairdressers), females on AWAs received on average 10 per cent below female collective agreement earnings in 2006, and 14 per cent below in 2004.

Overall, the pattern of earnings by occupation is consistent with the hypothesis that workers with low bargaining power in the labour market arising from low skill levels are most adversely affected by individual bargaining through AWAs, while occupations with high skill and short demand appear able to maintain high wages under AWAs and possibly attract a union avoidance premium in some cases.

Conclusions

The unpublished data support the hypotheses that the effects of individual contracting, by comparison with collective agreements, will vary according to the reason for its introduction and the labour markets in which employees are working. AWA premiums (and/or non-signing penalties) could where employers are seeking to use AWAs to avoid unions, at least in the short run. However, where employers are more focused on cost minimisation strategies, individual contracts will be used to reduce average pay and conditions of employees where the legal environment permits. This will most likely be the case for those workers whose skills are not unique and who have limited bargaining power. If there were ‘flexibility’ benefits for employees and employers through AWAs, they are not apparent at either the aggregate or disaggregated level.

There is no evidence to support the hypothesis that individual contracting, by increasing productivity, leads to generally higher wages than would occur under collective bargaining. For the typical worker, the reverse is the case. The overall AWA (median) shortfall of 16.3 per cent suggests that cost-minimisation is an important element in AWA strategising, and any ‘flexibility’ benefits that exist are not enough to offset the cost-minimisation effects on wages.

Female casual workers on AWAs received average earnings some 7.5 per cent below average award earnings. These figures suggest that AWAs can often lead to earnings falling below the award average. They also reinforce that individual ‘bargaining’, through AWAs, is especially detrimental for women, particularly when they lack labour market power.

In the context of the loss of conditions under WorkChoices AWAs (chapter 7), outcomes for WorkChoices AWAs would very likely be worse, even with the operation of the ‘fairness test’. Note also that the data here will understate the gap between AWAs and union CAs, as the CA data include non-union CAs (which have, on average, lower wage increases than union CAs) and are also depressed by the impact of free riders on bargaining power of unionised workers negotiating new CAs.

Overall, AWAs are commonly associated with poorer outcomes for typical employees than registered collective agreements. While AWAs sometimes attract wage premiums, associated with union avoidance strategies, these mainly affect outcomes in a small number of industries and in some very large organisations. Where union avoidance is not a common issue, for example in small organisations, the negative impact of AWAs on earnings becomes very stark. The impact of AWAs is worst for those people without unique skills, who do not have strong bargaining power in the labour market.

6. AUSTRALIAN WORKPLACE AGREEMENTS AND AWARDS IN RETAIL AND HOSPITALITY INDUSTRIES

David Peetz and Robin Price

In this chapter we examine more closely the experience of two industries, the retail and hospitality industries. These are industries with low wages, low unionisation, and low worker bargaining power. In the case of hospitality, they also afford us the opportunity to compare AWA wages with a reasonable indicator of award wages, something we are unable to do in other industries.

Table 3.3 in chapter 3 showed the methods of pay setting used in each industry, across Australia, in May 2006 for non-managerial employees. It indicated that accommodation, cafes and restaurants and retail trade were the two industries with the highest reliance on awards for setting pay and conditions, and that accommodation, cafes and restaurants was the only industry in which a majority of employees relied on the award for their pay and conditions. Some 63 per cent of non-managerial employees in that industry were award-reliant, compared to the national average of 21 per cent. In retail trade, 31 per cent of non-managerial employees were award-reliant.

Conversely, registered collective agreements were less important in accommodation, cafes and restaurants than in any other industry. Only 8 per cent of non-managerial employees in this industry were on registered collective agreements, compared to 41 per cent nationally. This reflected the low union density in the industry, at 8 per cent. In retail trade, where union density is double this at 16 per cent, coverage by registered collective agreements is 35 per cent – indicating also a high rate of free riding in the industry, with more than half of employees covered by collective agreements not belonging to a union. This in turn probably reflects the high rate of casual employment in retail trade. These high levels of casualisation and free riding reduce the bargaining power of employees when negotiating union collective agreements in the industry. Hence over the two years to May 2006, collective agreements in retail trade had the second lowest rate of wages growth built into them, ahead of only hospitality.⁵⁴

More so than in other industries, the great majority of collective agreement-covered workers were in agreements signed under the federal rather than the state jurisdiction. The operation of WorkChoices, however, would mean that most employees under collective agreements in most industries are now subject to federal law, regardless of which jurisdiction their agreement was signed in.

A small number of unregistered collective agreements in both industries brings total collective agreement coverage to 9 per cent in accommodation, cafes and restaurants and 37 per cent in retail trade.

Roughly three in ten workers in both industries were on individual contracts in May 2006, and in both cases (like almost all other industries) only a minority of these were on registered individual contracts – Australian Workplace Agreements (AWAs). In retail trade 5½ per cent

⁵⁴ Department of Employment and Workplace Relations, *Wage Trends in Enterprise Bargaining*, DEWR, Canberra, September quarter and previous editions 2006.

of non-managerial employees were on AWAs, and in accommodation, cafes and restaurants 4½ per cent were on AWAs. Despite these small numbers, these industries had the third and fourth highest rates of AWA coverage amongst the sixteen industries for which data were available.

Changes over time

Table 6.1 shows changes in methods of pay between the two ABS surveys in 2004 and 2006. Nationally, in retail trade, there was an apparent doubling in the proportion of workers on AWAs, from 2.7 per cent to 5.5 per cent. Although this difference is not large enough to be statistically significant, it is consistent with the trend evident in OEA/Workplace Authority data of increasing usage of AWAs in retail trade.

Offsetting the rise in AWA coverage has been a 3 percentage point drop in award reliance and a roughly 1½ percentage point drop in common law contract coverage, suggesting that a majority of the growth in AWAs has come from people previously award-reliant, but some of it has come from people who are already earning above the award.

The retail trade data also indicate a shift in the composition of registered collective agreements, with most former state-registered agreements shifting to federal-registered agreements.

Table 6.1 Change in incidence of methods of pay setting, non-managerial employees, retail and hospitality, Australia, 2004-2006

	award-reliant	collective agreements			individual arrangements			total
		federal CAs	state CAs	unregistered CAs	AWAs	state ICs	unregistered IAs	
RETAIL TRADE								
2004	33.7	27.9	6.2	1.8	2.7	0.0	27.7	100.0
2006	30.8	33.9	** 0.7	2.8	5.5	n.p.	26.3	100.0
CHANGE	-2.9	5.9	-5.5	1.0	2.8	na	-1.4	0.0
ACCOMMODATION, CAFES & RESTAURANTS								
2004	64.9	8.0	1.5	2.3	4.0	n.p.	19.2	100.0
2006	62.6	6.7	* 1.3	* 1.2	* 4.3	n.p.	23.7	100.0
CHANGE	-2.3	-1.3	-0.2	-1.1	0.3	na	4.5	0.0
ALL INDUSTRIES								
2004	22.4	26.5	15.1	2.6	2.5	* 0.0	31.0	100.0
2006	21.0	28.5	12.8	3.2	3.1	** 0.2	31.3	100.0
CHANGE	-1.4	2.0	-2.3	0.6	0.6	0.1	0.4	0.0

* estimate has a relative standard error of 25% to 50% and should be used with caution

** estimate has a relative standard error greater than 50% and is considered too unreliable for general use

Source: ABS Cat No 6306.0, unpublished data

Gender

Table 6.2 shows the gender dimensions of payment system coverage in these. In retail trade, women are more likely than men to be award-reliant, with 35 per cent of women, but only 27 per cent of men, award-reliant in retail trade. In retail trade, women are much more likely than men to be covered by a registered collective agreement: 40 per cent of women in retail trade are on a registered collective agreement, compared to 28 per cent of men.

Conversely, unregistered (common law) individual contracts are far more common amongst men than women in retail trade. While 36 per cent of males in retail trade are on common law contracts, this is the case for only 18 per cent of women. The pattern is similar, though the gap slightly smaller, at the national level.

Table 6.2 Incidence of methods of pay setting by gender, non-managerial employees, retail and hospitality, Australia, 2006

Australia 2006								
	award-reliant	collective agreements			individual arrangements			total
		federal CAs	state CAs	unregistered CAs	AWAs	state ICs	unregistered IAs	
RETAIL TRADE								
males	26.5	27.0	** 0.7	* 2.6	* 7.4	0.0	35.9	100.0
females	34.4	39.5	** 0.7	* 3.0	3.9	n.p.	18.3	100.0
total	30.8	33.9	** 0.7	2.8	5.5	n.p.	26.3	100.0
ACCOMMODATION, CAFES & RESTAURANTS								
males	61.2	6.9	* 1.3	* 1.9	* 4.4	n.p.	24.3	100.0
females	63.5	6.6	* 1.4	* 0.8	* 4.3	n.p.	23.3	100.0
total	62.6	6.7	* 1.3	* 1.2	* 4.3	n.p.	23.7	100.0
ALL INDUSTRIES								
males	17.1	27.8	11.0	3.5	3.8	** 0.2	36.6	100.0
females	24.8	29.1	14.5	2.8	2.4	* 0.1	26.4	100.0
total	21.0	28.5	12.8	3.2	3.1	** 0.2	31.3	100.0

* estimate has a relative standard error of 25% to 50% and should be used with caution

** estimate has a relative standard error greater than 50% and is considered too unreliable for general use

Source: ABS Cat No 6306.0, unpublished data

The large difference between men and women in collective bargaining coverage is not mirrored in the union density figures. Trend union density amongst males in retail trade was 14 per cent in August 2006, just 3 percentage points below the 17 per cent trend density amongst females. By contrast, the difference in collective agreement coverage was 13 percentage points. This reflects the higher concentration of women in casual, part-time jobs in larger retailers, jobs which have low rates of unionisation but are covered by the retailers' collective agreements.

The gender coverage of collective agreements, awards and individual contracts reflects the interaction between the gender structure of employment and exemption clauses in awards and agreements. The latter provide that employees earning above a certain level are 'exempt' from the award or agreement. Thus

Exempt employees are those whose weekly wage is equal to or greater than 125 per cent of the rate of pay for shop assistants or other appropriate classification (*Retail Industry Interim Award – State*). Exempt employees are specifically excluded from any provision in the award or in certified agreements, other than those legally required by state and federal legislation, such as superannuation and public holidays.⁵⁵

Exempt employees are ‘not managers’ and are often ‘2ICs or 3ICs of departments’ or perform specialist functions such as stockperson.⁵⁶ It does not mean that exempt employees are well paid for what they do: as Price’s study of retailing indicated, exempt employees in her project ‘recognised that their exempt status was a cost-cutting measure, as it meant they were paid less than they would be if they received overtime’.⁵⁷ Exempt employees will typically be covered by a common law agreement or, less commonly, by an AWA. With women disproportionately concentrated amongst low status casual and part-time jobs in the industry, and commensurately under-represented amongst the more senior parts of the industry, they will be more likely than men to be working under a collective agreement that covers the lower paid employees in an organisation. Men, conversely, will be overrepresented amongst the more higher paid jobs, which are mainly on common law individual contracts (and sometimes AWAs).

Nationally, around 7 per cent of males in retail trade are on AWAs, compared to 4 per cent of females. This mainly reflects the operation of exemption clauses and the tendency for more senior positions to be on individual contracts, including AWAs.

In accommodation, cafes and restaurants the pattern is quite different. There is a small gender difference (2 percentage points) in award reliance, with women only slightly more likely to be award-reliant. In fact, the differences in coverage by collective agreements, AWAs and common law contracts are all very small. There were also only very small gender differences in award reliance or coverage by collective agreements, common law agreements or AWAs.

AWA coverage and labour turnover

The above data on coverage are based on the ABS survey undertaken in May 2006. What has happened since then? We know that a large number of AWAs have been signed in those industries under WorkChoices. Administrative data from the Workplace Authority, formerly the Office of the Employment Advocate (OEA), indicate that 396,300 AWAs were lodged across Australia between the commencement of WorkChoices and the end of June 2007. Of these, the largest share (accounting for 17.7% of all WC AWAs), were in retail trade while the second largest share were in accommodation and food services (14.7%). That is, nationally, retail and hospitality accounted for almost one in three AWAs. By comparison, they accounted for just one in five jobs in May 2007.

One reason for the high rate of AWA lodgements in these industries is their high rates of labour turnover. In retail trade in 2006, 28 per cent of employees had been in their job for less than 12 months while in accommodation cafes and restaurants, 38 per cent had been in

⁵⁵ R. Price, *Checking out Supermarket Labour Usage: The Nature of Labour Usage and Employment Relations Consequences in a Food Retail Firm in Australia*, PhD thesis, Department of Industrial Relations, Griffith University, Brisbane, 2004, p. 93.

⁵⁶ Ibid, p 121.

⁵⁷ Ibid., p. 122.

their job for less than 12 months. Together with mining (where labour turnover was also 28 per cent), these industries have the three highest rates of labour turnover. They also have three of the four highest rates of AWA coverage.

In chapter 3 we discussed the close relationship between AWA coverage and labour turnover and the implications this had for the poor accuracy of administrative estimates of AWA coverage. Because labour turnover rates differ so substantially between industries, meaning that the degree of overstatement of AWA coverage in administrative data will vary considerably between industries, we cannot use administrative data to meaningfully estimate the incidence of AWAs at an industry level. However, we can look at the administrative data to consider, *within* an industry, the ranking of states in terms of the relative importance of AWAs within those states.

Table 6.3 does that, and includes the ABS incidence data from May 2006. It shows that, from the ABS data, the accommodation, cafes and restaurants industry in Western Australia and Victoria had the highest incidences of AWAs amongst the states. The administrative data from 2007 show the same two states having the top two positions, with the number of Western Australian AWAs signed over the preceding three years being equivalent to 69 per cent of all employees in the industry. It would, of course, be implausible that 69 per cent of that state's hospitality workers were actually on AWAs in March 2007, when only 8 per cent of them had been in May 2007, the ratio being severely inflated by high labour turnover in the industry. However, it is clear that Western Australia and, to a lesser extent, Victoria are the states where employers in the hospitality industry are most assiduous in their pursuit of AWAs.

In retail trade, Western Australia had the second highest incidence of AWAs in May 2006, behind Tasmania. However, the standard errors on the estimates are such that the difference was not statistically significant. Administrative data suggested that, by March 2007, AWA penetration was higher in Western Australia than Tasmania and, if we assume similar labour turnover rates within the industry between the two states, it is plausible that, as in hospitality, Western Australia has the highest rate of AWA coverage in retail trade.

Table 6.3: ABS estimate of AWA incidence, May 2006, and OEA/Workplace Authority estimate of ratio of AWA 'penetration', March 2007

	NSW	VIC	QLD	SA	WA	TAS	Aust
ABS, May 2006 (a)							
Retail trade	*4.6	*5.9	**6.4	n.p.	*8.4	*13.8	5.5
Accommodation, cafes & restaurants	**3.5	*7.7	n.p.	**3.5	*8.3	n.p.	*4.3
OEA, March 2007 (b)							
Retail trade	6.6	9.2	5.6	11.8	29.0	19.3	10.0
Accommodation, cafes & restaurants	11.8	37.2	9.2	29.1	68.6	32.2	24.1

(a) AWA employees as a proportion of all employees

(b) ratio of the number of AWA signed over previous 3 years to the number of employees as of the end date. This number is not directly comparable with the ABS numbers above.

Source: ABS Cat No 6306.0, unpublished data; OEA evidence to Senate Inquiry into Fairness Test, May 2007.

Non-union collective agreements

While the OEA/Workplace Authority data on AWAs are highly erratic between industries because of the impact of labour turnover on AWA lodgements, this is not so much the case for data on collective agreements. When an existing employee on a collective agreement resigns and is replaced by a new employee on a collective agreement, there is no change in either the count of agreements or the count of employees covered.

Table 6.4 provides OEA/Workplace Authority data on the numbers of employees in each industry covered by union and non-union ('employee') collective agreements signed under WorkChoices, as of the end of June 2007. Nationally, around 22 percent of employees covered by WorkChoices collective agreements were on non-union employee collective agreements (ECAs), the remaining 78 per cent being on union collective agreements. (The OEA/Workplace Authority does not record data for the numbers of employees covered by greenfields agreements, as technically speaking no employees are meant to be covered by them at the time they are lodged, though in practice they have been used to cover existing employees in some transmission of business arrangements.⁵⁸) In retail trade, only 13 per cent of employees under WC collective agreements were in non-union CAs. In accommodation and food services, however, a huge 61 per cent of collective agreement employees were actually on non-union ECAs. So we would expect many collective agreements in hospitality to have similar characteristics to AWAs in that industry.

The way in which ECAs and AWAs can operate in similar ways, and indeed symbiotically, is illustrated by this summary of a process of workplace change in an interstate hotel chain, as described by the consultant advising them. In the first stage there was an 'AWA/ECA combination agreement package' in which:

The initial AWA gradually implements the changed culture into the workplace offering individual agreements as a condition of employment for new employees so that full benefits of enterprise agreements can be realized. Once the new instrument forms part of the workplace culture, the ECA can be introduced to provide a common agreement for the site. [...In the second stage there was] implementation of a WorkChoices ECA for the QLD sites. The introduction of WorkChoices means the no-disadvantage test has been removed and minimum conditions put in place.⁵⁹

Accordingly, comparisons of earnings under collective agreements and AWAs in the hospitality industry are unlike comparisons in many other industries, as they are not comparing union and non-union wage systems but instead comparing two different forms of non-union wage systems.

⁵⁸ D. Peetz, 'Is it a work in progress?' *Courier Mail*, 17 October 2006, p. 19.

⁵⁹ Enterprise Initiatives, *Our Clients: Hotels and Pubs - The Mean Fiddler Irish Tavern, Belvedere Hotel, Grand Central Hotel and the Full Moon Hotel.*, Enterprise Initiatives Pty Limited, North Sydney, 2007.

Table 6.4 Employees covered by union and non-union collective agreements under WorkChoices, by industry, June 2007, Australia

	Employees on WC collective agreements	Employees on WC union collective agreements	Employees on WC employee collective agreements	Proportion of employees on WC collective agreements that are on non-union agreements
Accommodation and Food Services	24,595	9,548	15,047	61.2%
Administrative and Support Services	3,594	401	3,193	88.8%
Agriculture, Forestry and Fishing	5,208	2,358	2,850	54.7%
Arts and Recreation Services	23,624	17,069	6,555	27.7%
Construction	41,333	27,077	14,256	34.5%
Education and Training	88,496	79,436	9,060	10.2%
Electricity, Gas, Water and Waste Services	7,291	5,819	1,472	20.2%
Financial and Insurance Services	11,009	5,592	5,417	49.2%
Health Care and Social Assistance	55,817	41,674	14,143	25.3%
Information Media and Telecommunications	9,662	1,080	8,582	88.8%
Manufacturing	94,129	72,670	21,459	22.8%
Mining	10,640	8,710	1,930	18.1%
Other Services	15,914	6,517	9,397	59.0%
Professional, Scientific and Technical Services	5,259	2,357	2,902	55.2%
Public Administration and Safety	95,458	84,891	10,567	11.1%
Rental, Hiring and Real Estate Services	7,174	5,095	2,079	29.0%
Retail Trade	176,694	153,411	23,283	13.2%
Transport, Postal and Warehousing	29,360	22,925	6,435	21.9%
Wholesale Trade	7,379	4,501	2,878	39.0%
total	712,636	551,131	161,505	22.7%

Source: Workplace Authority 2007

Comparing hourly earnings by payment system

Comparative measures of average hourly earnings of workers in retail and hospitality are affected by four factors specific to those industries.

Lowest paid industries

First, these are the two lowest paid industries in the country and the state. As shown in Table 6.5, average hourly earnings in these industries in May 2006 was around \$18 per hour, whereas the next lowest paid industry averages \$23 per hour and the all-industry average is around \$25 per hour. This reflects, amongst other things, the low bargaining power of employees in those industries, as a result of low union density and high rates of casualisation.

Table 6.5 Average hourly earnings by industry, non-managerial employees, Australia, May 2006

	2004	2006
B Mining	34.90	37.40
D Electricity, gas and water supply	29.80	33.10
J Communication services	25.60	30.40
N Education	26.70	30.20
K Finance and insurance	26.00	28.70
M Government administration and defence	24.70	27.10
O Health and community services	24.10	26.40
I Transport and storage	22.30	25.70
E Construction	22.80	25.30
L Property and business services	22.80	25.20
C Manufacturing	22.20	24.30
Q Personal and other services	22.10	23.80
P Cultural and recreational services	22.50	23.60
F Wholesale trade	21.10	23.40
H Accommodation, cafés and restaurants	17.00	18.30
G Retail trade	16.30	17.80
T-All industries	22.50	24.90

Source: ABS Cat 6306.0, unpublished data

Exemption clauses

Second, average earnings of collective agreement employees in retail trade are depressed by the operation of ‘exemption’ clauses, as discussed above. Employees earning above certain thresholds are exempted from the coverage of collective agreements. As a result, average earnings of employees under collective agreements in retail trade are relatively low, in relation to the all-industry average. This is shown in Table 6.6. Whereas on average, employees in retail trade earn 72 per cent of national average hourly earnings, those on collective agreements earn only 58 per cent of the average for employees on collective agreements across all industries, principally because higher wage workers are excluded from collective agreements, while the relatively low bargaining power of employees in retail trade is also relevant.

Table 6.6 Average hourly earnings in retail trade and comparison with all-industries average, employees on collective agreements and all employees, 2004 and 2006.

		Australia, 2004		Australia, 2006	
		CAAs	all employees	CAAs	all employees
average hourly earnings					
G Retail trade	males	15.50	16.90	16.30	18.90
	females	14.80	15.80	15.50	16.60
	total	15.10	16.30	15.80	17.80
All industries	males	25.80	23.70	28.70	26.40
	females	23.30	21.20	25.70	23.20
	total	24.60	22.50	27.30	24.90
ratio industry/national average earnings					
G Retail trade	males	60.1%	71.3%	56.8%	71.6%
	females	63.5%	74.5%	60.3%	71.6%
	total	61.4%	72.4%	57.9%	71.5%

Source: ABS Cat 6306.0, unpublished data

Non-union collective agreements

Critically, and very unfortunately, the ABS does not differentiate between union and non-union collective agreements. So the third factor affecting earnings figures in these industries is that the growth of non-union collective agreements in hospitality has depressed hourly earnings in collective agreements in that industry in particular. As mentioned, non-union ECAs accounted for over three fifths of WC collective agreement employees in hospitality by 2007. Whereas average hourly earnings in accommodation, cafes and restaurants as a whole were 74 per cent of average earnings for all industries, workers on collective agreements in the industry had average earnings only 65 per cent of the national average for workers on collective agreements in May 2006 (Table 6.7). Hourly earnings in collective agreements appeared to fall slightly between 2004 and 2006, perhaps because of the impact of an increasing share of non-union collective agreements. Data from the Department of Employment and Workplace Relations (DEWR) indicate that the average annualised wage increase within current collective agreements in accommodation, cafes and restaurants was 3.3 per cent a year.⁶⁰ While this was the lowest increase in any industry, it obviously does not explain why the ABS data imply a fall. It is possible that the 2006 ABS figures underestimate collective agreement wages in the industry, as the fall in hourly wages is not large enough to be statistically significant. If there really was a fall in hourly earnings under collective agreements in the industry, it could only be explained by the growing importance of non-union collective agreements there.

⁶⁰ D. Peetz, *Assessing the Impact of WorkChoices - One Year On*, Industrial Relations Victoria, Department of Innovation, Industry and Regional Development, Melbourne, March 2007. using data from Department of Employment and Workplace Relations, *Wage Trends in Enterprise Bargaining*, DEWR, Canberra, September quarter and previous editions 2006.

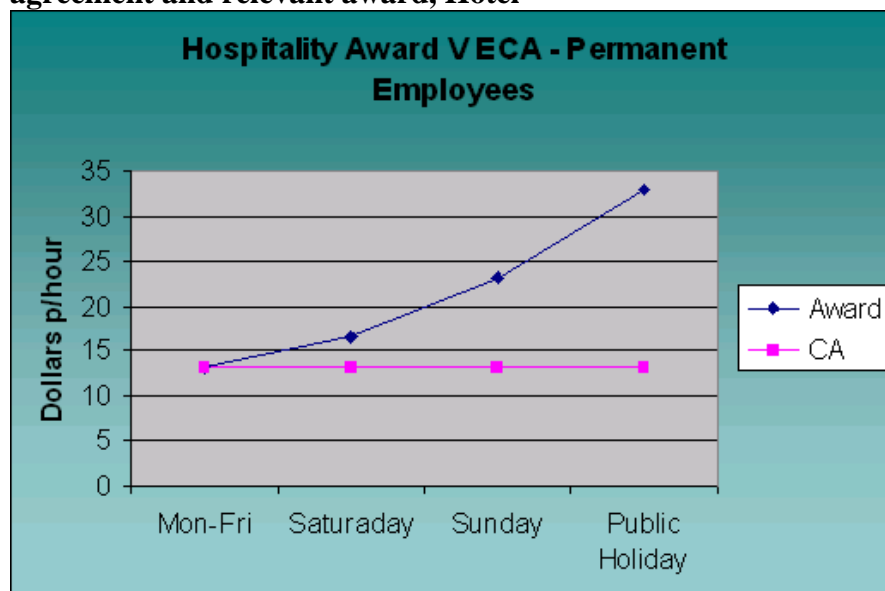
Table 6.7 Average hourly earnings in hospitality and comparison with all-industries average, employees on collective agreements and all employees, 2004 and 2006.

		Australia, 2004		Australia, 2006	
		CA's	all employees	CA's	all employees
average hourly earnings					
H Accommodation, cafés and restaurants	males	18.60	17.30	18.30	18.40
	females	17.30	16.70	17.10	18.30
	total	17.90	17.00	17.70	18.30
All industries	males	25.80	23.70	28.70	26.40
	females	23.30	21.20	25.70	23.20
	total	24.60	22.50	27.30	24.90
ratio industry/national average earnings					
	males	72.1%	73.0%	63.8%	69.7%
	females	74.2%	78.8%	66.5%	78.9%
	total	72.8%	75.6%	64.8%	73.5%

Source: ABS Cat 6306.0, unpublished data

Since their introduction, non-union collective agreements have consistently displayed a lower rate of earnings growth than union collective agreements.⁶¹ Non-union collective agreements are especially likely to use reductions in penalty rates for night and weekend work to reduce hourly earnings. An illustration of this is provided by the consultant mentioned earlier who devised an integrated AWA-non-union collective agreement strategy to cut costs in a hotel chain. A chart from his website, comparing hourly wage rates under the award and the non-union ECA implemented in the hotel, indicating in particular the loss of weekend penalty rates, is at Figure 6.1.

Figure 6.1 Comparison of hourly earnings under non-union employee collective agreement and relevant award, Hotel

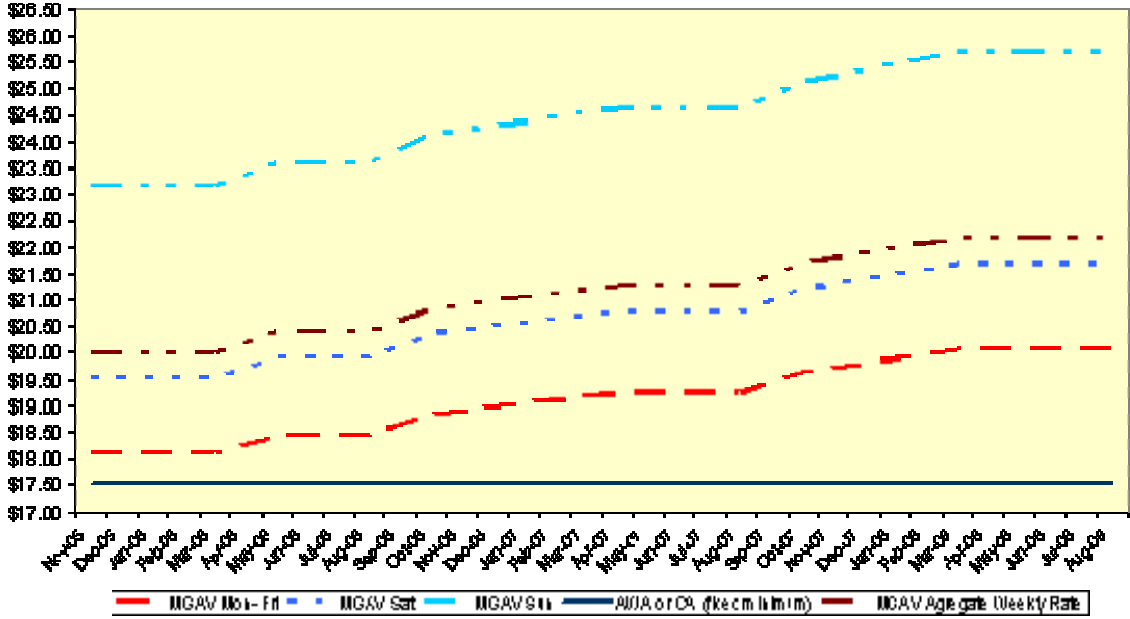


Source: Enterprise Initiatives web site, http://www.ei.net.au/index.php?q=case_studies&case_id=16, accessed 19 April 2007.

⁶¹ Peetz, *Assessing the Impact of WorkChoices*.

Another chart provided by the same consultant, this time relating to a Victorian retail trade establishment, shows how a combined AWA and non-union collective agreement strategy could deliver a lower hourly wage than the comparison union collective agreement, that the shortfall was largest for weekends, and that the shortfall widened over time as wage increases built into the union collective agreement were frozen out of the non-union collective agreement and AWA (Figure 6.2).

Figure 6.2 Comparison of MGAV union collective agreement and non-union collective agreement, Victorian supermarket, 2005-2008



Source: Enterprise Initiatives web site, http://www.ei.net.au/index.php?q=case_studies&case_id=30, accessed 23 April 2007.

The wholesale abolition of penalty rates without compensation only became possible under WorkChoices. Prior to this, the ‘no disadvantage’ test, in principle at least though not in practice, required compensation for lost award conditions. Most non-union collective agreements (and AWAs) in place in May 2006, at the time the ABS survey was undertaken, would have been formalised under the pre-WorkChoices rules. Hence the ABS data presented here will understate the degree of downward pressure on wages in both (non-union) collective agreements and AWAs under most of WorkChoices

High award coverage

The fourth factor affecting wages in hospitality in particular is the high rate of award coverage. As mentioned, accommodation, cafes and restaurants is the only industry in which a majority of workers are covered by awards. This means that hospitality is really the only industry in which average award wages paid are reasonably reflective of average award rates.

Why is this? Award-reliant employees are, virtually by definition, individuals with the least bargaining power. They have been unable to negotiate a higher rate of pay than that applying under the award through either individual or collective bargaining. They are likely therefore to be in labour markets where labour shortages are not apparent. Over 90 per cent of award-reliant employees are earning below the average hourly earnings of non-managerial employees. In most industries, comparisons of the earnings of award-reliant employees and

other employees may not show the effect of collective or individual bargaining on wages compared to what the same people would have received under the award, because the award-reliant group does not constitute a representative control group. These comparisons will be distorted by the fact that award-reliant employees are those at the bottom of the bargaining chain, and the distortion will be bigger when award employees constitute a smaller proportion of the workforce. This can be illustrated this most clearly by looking at the occupational group tradespersons. Few tradespersons are on awards, and those who remain are in low trades classifications. On average, tradespersons and related workers earn 20 per cent more than labourers and related workers. We also know that, in awards, trades employees receive higher pay than labourers. But amongst award-reliant employees, tradespersons and related workers earn on average 10 per cent *less* than labourers and related workers. This distortion is because of the skewing of award-reliant tradespersons and related workers to the bottom end of the award scale, which is not representative of the overall trades structure in awards. Some 47 per cent of employees on registered individual contracts (almost all of whom are on AWAs) are casual employees, so in many ways comparing CA or AWA hourly rates with award hourly pay rates is really comparing employees in highly paid jobs with casual employees on low classifications.

It means that, in most industries and in aggregate, comparisons between award-reliant workers and workers on agreements are of little value in telling us about the effects of agreements on pay. In hospitality, however, where the majority of employees are reliant on the award, the average wage of award-reliant employees is considerably more likely to be reflective of the average award rates that prevail in the industry. The inadequacy of average award wages as an indicator of award rates in other industries is illustrated by the fact that average wages of award-reliant workers are below those of hospitality in seven industries out of sixteen: manufacturing, property and business services, communications, wholesale trade, personal and other services, construction and retail trade – even though we have no reason to believe that award rates of pay in those industries would be below those prevailing in hospitality.

Implications for comparisons

The above considerations, taken together, have the following implications:

- average earnings of employees on collective agreements in both retail and hospitality will be distorted downwards – in the case of retail trade, by the operation of exemption clauses, and in the case of hospitality, by the high rate of non-union collective agreement making. Comparisons of AWAs and collective agreements in retailing and hospitality, therefore, will be of little use in showing the relative position of workers under union and non-union wage bargaining systems, while the failure of the ABS to differentiate between union and non-union collective agreements makes the earnings data on collective agreements of little value for this project;
- average earnings of award-reliant employees in retail trade will be distorted downwards, by the tendency for award-reliant employees to be at the bottom of the bargaining chain with the weakest position in the labour market, protected mainly by the external regulation provided by awards. Hence they are not a good indicator of average award rates in the industry;

- however, average earnings of award-reliant workers in hospitality will be a good indicator of average award rates prevailing in the industry, as the majority of the industry's employees are reliant on awards;
- hence a comparison of wages of workers on AWAs and workers reliant on awards in hospitality will be a reasonable indication of the relative position of AWAs and the *award rates* that AWAs are meant to be compared with. Certainly, this will provide a better comparison between AWAs and award rates than will be provided by any other industry, or would be provided by aggregate level data;
- comparisons of wages of workers under AWAs with award-reliant workers will be most useful for indicating the outcomes for lower paid workers, as hospitality is one of the two lowest paid industries in the state and the country.

However, there are still some caveats. In particular, all the wage data we have access to for this exercise are expressed as averages. Averages can be biased by the inclusion of a small number of observations with very high earnings. As AWAs contain a higher proportion of very high earners than CAs, this could produce upwardly biased estimates of the relative earnings of AWA employees.

Comparing AWAs and award earnings in retail and hospitality

Unpublished data on average hourly earnings of non-managerial workers on awards and AWAs in retail trade and hospitality are shown in Table 6.8. National data for both 2004 and 2006 are shown.

As discussed above, the most useful comparisons are in hospitality, because there awards determine the wages of the majority of employees, and hence average award wages are fairly representative of average award rates of pay. In retail trade, where fewer people are covered by awards, average award wages are 11 to 17 per cent lower than in hospitality, reflecting the fact that many of the higher paid workers in retail trade are on above-award rates of pay, and indeed are often excluded from the award by the operation of exemption clauses.

We see that, in accommodation cafes and restaurants, average AWA earnings were 1.6 per cent below average earnings of workers reliant on the award minimum. This AWA wage deficit is of questionable statistical significance but our confidence in it is increased by the fact that almost the same deficit - 1.8 per cent - was recorded in 2004.

One very notable aspect is that, in all cases, the deficit for women in hospitality was greater than the deficit for men. Hence nationally, in 2004, the deficit for women on AWAs was 3.6 per cent, whereas average wages were the same amongst men for AWAs and award-reliant workers. In 2006 women on AWAs received 6.5 per cent below the average for women reliant on the award minimum, whereas men on AWAs received 3.3 per cent above the average for men reliant on the award minimum.

This is consistent with the proposition, discussed in the previous chapter, that AWAs are used for cost-cutting, and indeed can produce outcomes below award rates.

As expected, given the impact that exemption clauses and minority award coverage have on average award-reliant earnings in retail trade, on average AWA workers were paid more than workers who were reliant solely on the award minimum. This does *not* mean that AWAs paid

higher than the relevant award rate, as for reasons stated above the average award rate for comparable AWA workers would be higher than the average earnings of workers reliant on the award minimum – unfortunately, we do not know by how much.

It is interesting to note, again, how women on AWAs do worse than men. Indeed, in 2004 retail trade women on AWAs nationally were estimated to be receiving 9.9 per cent less than women reliant on the award minimum, despite the impact of the exemption clause on average award earnings. We cannot be confident of this AWA/award deficit, though, because in 2006 women on AWAs were estimated to be receiving 5.1 per cent above those reliant on the award minimum. But it is noteworthy that in both years women on AWAs in retail trade were earning considerably less than award-reliant workers in hospitality, where award-reliant wages are a reasonable indicator of award rates of pay. And in both years women in retail trade clearly were worse off than men: in 2006 women on AWAs in retail trade earned 17 per cent less than men, while in 2004 the gender gap was 29 per cent.

Table 6.8 Average hourly earnings of workers on AWAs and awards in retail and hospitality, Australia, 2004 and 2006

		Awards	AWAs	AWA/award
May 2004				
G Retail trade	males	14.80	19.10	129.1%
	females	15.10	13.60	90.1%
	total	15.00	17.50	116.7%
H Accommodation, cafés and restaurants	males	16.80	16.80	100.0%
	females	16.90	16.30	96.4%
	total	16.90	16.60	98.2%
May 2006				
G Retail trade	males	15.40	19.70	127.9%
	females	15.60	16.40	105.1%
	total	15.50	18.70	120.6%
H Accommodation, cafés and restaurants	males	18.20	18.80	103.3%
	females	18.50	17.30	93.5%
	total	18.40	18.10	98.4%

Source: ABS Cat 6306.0, unpublished data

As mentioned, these data were collected in May 2006, before the full effects of the abolition of the no-disadvantage test under WorkChoices were felt. Given the high rate at which penalty rates, overtime rates, shift allowances and other protected award conditions have been diminished under WorkChoices – in most cases between 80 and 90 per cent of AWAs have reduced or removed these protected award conditions⁶² – we would expect that a comparison between AWAs and award wages undertaken a year later would be more unfavourable to AWA workers than that shown in these data.

⁶² *ibid.* using data from M. Davis, analysis of unreleased OEA data on AWAs May-September 2006, unpublished, Sydney, 2007.

Overall, these data suggest that workers on AWAs in these low paid industries, particularly women, are disadvantaged by the cost cutting associated with AWAs and receive low pay relative even to the award minimum.

A note on the 'no disadvantage' test

This Bill reinstates a 'no disadvantage test' in place of the 'fairness test' which the former federal government had introduced in May 2007.

There is no doubt that this would be an improvement. The 'fairness test' only relates to seven 'protected award conditions'. Hence it requires no compensation if an AWA removes or reduces entitlements to redundancy pay, notice of termination, superannuation or long service leave, and its the subjective nature allows considerable scope for variations in the strictness with which it is applied.

Yet there are still significant problems with the 'no disadvantage' test, most evident in retail and hospitality.

Researchers who examined AWAs before WorkChoices took effect questioned whether the benefits could have been of 'sufficient value to the employee for the agreement to have passed' the test.⁶³ Before WorkChoices there were growing indications the OEA was approving agreements which led to below-award wages. Even the CEO of the Western Australian Retailers Association complained about the 'lax interpretation' of the test.⁶⁴ For example, following a change in administrative procedures,⁶⁵ the OEA promoted the non-payment of overtime rates when employees 'volunteer' to work overtime hours, a bit like approving wages below the minimum wage if employees volunteer to work on such wages.⁶⁶ In 2005 workers from a Penrith donut outlet calculated that their AWAs paid at least 8 per cent below the award.⁶⁷ An Adelaide bakery worker had an AWA that paid 25 per cent below the award. The court awarded her \$1400 in back pay, because the employer had messed up the paperwork. He said he had 50 other staff working on the same AWAs which the OEA had approved.⁶⁸

Problems with the test were not restricted to AWAs. Price examined the rosters of staff in the retail sector and compared what they were entitled to under the collective agreement and under the award. She estimated that many employees rostered to work nights or weekends

⁶³ R. Mitchell, R. Campbell, A. Barnes, E. Bicknell, Creighton, F. K, J and S. Korman, *Protecting the Workers Interest in Enterprise Bargaining: The "No Disadvantage" Test in the Federal Jurisdiction*, Report to Workplace Innovation Unit, Industrial Relations Victoria, University of Melbourne, Melbourne, 2003, [http://www.irv.vic.gov.au/CA256EF9000EB8A3/WebObj/B9721C262D82BE8ECA256EF2001A8EF3/\\$File/NDT%20REPORT.pdf](http://www.irv.vic.gov.au/CA256EF9000EB8A3/WebObj/B9721C262D82BE8ECA256EF2001A8EF3/$File/NDT%20REPORT.pdf), acc 6/3/05. p. 62.

⁶⁴ T. Todd and J. Eveline, *Report on the Review of the Gender Pay Gap in Western Australia*, University of Western Australia, Perth, November 2004, http://www.docep.wa.gov.au/lr/LabourRelations/Media/Gender_Pay_Final_Rep.pdf.

⁶⁵ G. Haycroft, Discussion paper: "Fairness Test" consequences, Briefing paper presented to Minister for Employment and Workplace Relations, reprinted by Workplace Express, Canberra, June 2007 10.

⁶⁶ OEA, No Disadvantage Test and Voluntary Non Standard Hours, mimeo distributed by OEA to WA employers, Perth, 2003.

⁶⁷ T. B. Fitch, Submission to Inquiry into Workplace Agreements, Senate Employment, Workplace Relations and Education References Committee, Canberra, 2005; J. Smith, Submission to Inquiry into Workplace Agreements, Senate Employment, Workplace Relations and Education References Committee, Canberra, 2005.

⁶⁸ *Yurong v Renella* [2005] SAIRC 50.

would have received more under the award.⁶⁹ At the time, agreements were vetted by the AIRC, but for collective agreements it mainly relied on the assurances of the parties. These outcomes reflect several inadequacies with the ‘no disadvantage’ test: the lack of close scrutiny of agreements; the failure to examine the circumstances of employees in actual rosters; the ‘public interest’ let-out whereby a sub-standard agreement can be passed so long as it is not against the public interest to do so; and the low threshold implied by the passive benchmark that employees not be disadvantaged by an agreement, rather than actively be made better off. In short, the hurdle set by the ‘no disadvantage’ test is too low, and the loopholes too wide, both for individual and collective agreements. The abolition of AWAs will deal with the problem for individual agreements but not for collective agreements. With the growth of non-union employee collective agreements, which with the abolition of AWAs will be the main mechanism used by employers wishing to circumvent unions and/or reduce labour costs, it becomes essential that the benchmark set for collective agreements prevents the further exploitation of already low paid, vulnerable workers in industries like retail and hospitality. As it is, the proposed ‘no disadvantage’ test does not guarantee that some workers cannot be made worse off as a result of a new collective agreement. Experience in the retail industry tells us that, without such a guarantee, some low paid workers will be worse off, particularly those reliant on penalty rates and overtime rates to produce a living wage.

The government’s policy *Forward with Fairness* (FWF) deals with this problem through the promise of a new benchmark:

‘Collective agreements will be able to override award entitlements provided the agreement means employees are genuinely better off overall.’⁷⁰

In several places FWF makes it clear that the benchmark will be that the agreement means ‘employees are better off overall against the safety net’.⁷¹ This is a higher hurdle than merely leaving employees ‘not disadvantaged by an agreement’, and is repeated in the *Forward with Fairness Policy Implementation Plan*.⁷² The *Implementation Plan* implies that this ‘better off overall’ test will be implemented when the government’s substantive industrial relations legislation is introduced, with effect from 1 January 2010. The inclusion of a ‘no disadvantage’ test in this Transition Bill is not inconsistent with this, and indeed the *Implementation Plan* refers to ‘no disadvantage’ being applied in the Transition Bill.⁷³ We wish to endorse this planned introduction of a ‘better off overall’ test and encourage the Senate Committee to do so as well. In the meantime, the wording of the proposed ‘no disadvantage’ test in the Transition Bill should be tightened to guarantee that minorities of workers are not made worse off under new collective agreements.

⁶⁹ R. Price, ‘No Disadvantage for Whom? Enterprise Bargaining Outcomes in Food Retailing’, *12th conference of International Employment Relations Association: Refereed proceedings*, Rockhampton, 5-7 July 2004b.

⁷⁰ K. Rudd and J. Gillard, *Forward with Fairness: Labor’s plan for fairer and more productive Australian workplaces*, Australian Labor Party, Canberra, April 2007a, p. 10.

⁷¹ *ibid.* pp. 14,15.

⁷² K. Rudd and J. Gillard, *Forward with Fairness: Policy Implementation Plan*, Australian Labor Party, Canberra, August 2007b, p. 14.

⁷³ *ibid.* pp. 2, 6, 7.

7. AUSTRALIAN WORKPLACE AGREEMENTS AND CONDITIONS OF EMPLOYMENT

There were many stories of cuts in pay and conditions through AWAs, some of which made it into the media during 2006 and 2007.⁷⁴ For example, workers at a Melbourne call centre operated for Lufthansa were told to sign AWAs cutting their base pay by between three and ten per cent, reduced penalty rates and loadings, and to allegedly offset this, provided a complex bonus scheme in which, to get the targets and not take more than one day of sick or carer's leave. The Equal Opportunity Commission of Victoria said that there was 'considerable potential for the proposed performance bonus scheme... to discriminate against employees who need to utilise their leave entitlements because they experience personal illness and/or have parental or carer responsibilities.'⁷⁵ However, there were only limited quantitative data on changes in pay and conditions under AWAs published by the OEA, the government agency then responsible for collecting and promoting AWAs. The disclosure of information on the loss of 'protected award conditions' (that is, award conditions that were, according to government advertisements, 'protected by law'), based on a sample of the first batch of AWAs undertaken in April 2006 and released in May 2006,⁷⁶ led to considerable public debate.

Subsequently, dissemination of such data was terminated, due to the Advocate's 'serious concerns about the methodology' and his view that 'focusing on certain characteristics in isolation, without considering what else the parties may have agreed, had the potential to produce misleading and distorted results'.⁷⁷ The latter concern should have led to more, not less, information being disseminated. As to the former concern, the sampling method was apparently identical to one which had been used to generate data for the OEA's preceding major official report to parliament on AWAs, covering the years 2002 and 2003.⁷⁸ The former federal government's justification for suppressing government-held data was that it is not possible to gauge whether people who lose penalty rates and other conditions through AWAs are better or worse off, because it is impossible to 'compare apples and apples' - that is, to assess conditions lost against the 'flexibilities' under AWAs.⁷⁹ However, the 'fairness test' did exactly that.

In April 2006, all AWAs in the OEA's sample removed at least one 'protected' award condition, and 16 per cent excluded all protected award conditions. The remaining limited information available on WorkChoices AWAs, and a comparison with pre-WorkChoices AWAs, is shown in Table 7.1. Several observations stand out.

⁷⁴ Australian, 'Young people 'losing fight' against IR laws', *Australian*, 26 September 2006; M. Schubert, 'Penalties, overtime, holiday pay worth 2¢ an hour', *Age*, 25 May 2006; Workplace Express, 'Victorian watchdog refers AWA allegations to OWS', *Workplace Express*, 1 December 2006; WorkplaceInfo, 'Labor, PM, in parliamentary battle over AWAs', *WorkplaceInfo*, 10 October 2006; Young Workers Advisory Service, *Submission to QIRC Inquiry into the impact of WorkChoices on Queensland workplaces, employees and employers*, YWAS, Brisbane, 2006, <http://www.ywas.org/filestore/WC%20Inquiry%20FINAL%2021.pdf>.

⁷⁵ quoted in Office of the Workplace Rights Advocate, *Report on the investigation into a complaint regarding Australian Workplace Agreements being offered by Global Tele Sales Pty Ltd*, Melbourne, 8 August 2006.

⁷⁶ McIlwain, evidence to May Estimates hearing.

⁷⁷ McIlwain, evidence to November Estimates hearing.

⁷⁸ Department of Employment and Workplace Relations and Office of the Employment Advocate, *Agreement Making in Australia under the Workplace Relations Act, 2002 and 2003*, DEWR, Canberra, June 2004.

⁷⁹ J. Hockey in ABC Radio National, 'Figures point to less worker protection under AWAs', *The World Today*, 17 April 2007.

There was a strong focus in AWAs on reducing protected award entitlements. The rate at which conditions were being removed was substantially higher under WorkChoices AWAs than under pre-WorkChoices AWAs. In the case of overtime pay, the rate at which this has been removed through AWAs doubled, from a quarter of AWAs in 2002-03 to over half of AWAs in April 2006. The rate at which penalty rates have been removed went up by 17 per cent, the same increase applies to the removal of allowances, the rate at which annual leave loading has been removed has increased by over half, and the rate at which shiftwork loading is removed has nearly tripled under WC.

Table 7.1: Reductions or losses of protected award conditions under AWAs, 2002-2003 and April 2006 (%)

	2002-03		April 2006			2002-03 to April 2006
	Absorbed (abolished)	'excluded' (abolished)	'modified' (mostly reduced but not abolished) ⁱ	total 'modified' or abolished ⁱ	Un-changed	increase in rate of abolition
overtime pay	25	51	31	82	18	+104%
penalty rates	54	63	na	na	na	+ 17%
annual leave loading	41	64	na	na	na	+ 56%
shiftwork loading	18	52	na	na	na	+189%
rest breaks	na	40	29	69	31	Na
public holiday payments	na	46	27	73	27	Na
days substituted for public holidays	na	44	na	na	na	Na
declared public holidays	na	36	na	na	na	Na
incentive based payments/bonuses	na	46	na	na	na	Na
allowances (expenses; skills; disabilities)	41	48	na	na	na	+ 17%

na = not available.

Sources : calculated from Department of Employment and Workplace Relations and Office of the Employment Advocate, 2004; McIlwain, May 2006; Office of the Employment Advocate, 2006

ⁱ It is possible that some of the provisions that 'modify' 'protected' award conditions represent an improvement on the award standard. However analysis of EGAs (see section 7) shows that this is rarely the case, and that most or all 'modifications' to 'protected' award conditions represent a lessening of the award standard.

Overtime and penalty rates were particular targets for removal. Over three fifths of AWAs abolished penalty rates altogether. Over four fifths of AWAs abolished or reduce overtime pay. Over three fifths abolish penalty rates. We did not know how many AWAs reduced penalty rates without abolishing, because the data have been suppressed.

Most AWAs abolish or reduce meal breaks. Most do the same to public holiday payments. A majority of AWAs abolish shiftwork loading. Large numbers abolish allowances, incentive payments/bonuses and other conditions.

In April 2007 suppressed OEA data on the content of AWAs lodged from May to September 2006 were published by Mark Davis in the *Sydney Morning Herald*.⁸⁰ These data, and further

⁸⁰ M. Davis, 'Revealed: how AWAs strip work rights', *Sydney Morning Herald*, 17 April 2007b.

data from that source analysed and passed on to this author by Davis, are shown in Table 7.2. This table mirrors the structure of Table 7.1. The data obtained by Davis were based on a much larger sample than that released by the OEA/Workplace Authority (998, rather than 250) and as a result of that, and also because they are more recent, should be taken as being a better indication of what has been happening with AWAs.

Table 7.2: Reductions or losses of protected award conditions under AWAs, 2002-2003 and May-October 2006 (%)

	2002-03		May-September 2006			2002-03 to May-Sept 2006
	Absorbed (abolished)	'excluded' (abolished)	'modified' (mostly reduced but not abolished) ⁱ	total 'modified' or abolished ⁱ	Un-changed	increase in rate of abolition
overtime loading	25	52	36	88	12	107%
penalty rates	54	68	21	90	10	26%
annual leave loading	41	71	3	74	26	73%
shiftwork loading	18	76	13	89	11	323%
rest breaks	na	30	53	83	17	Na
public holiday payments	na	53	29	82	18	Na
substitute days for public holidays	na	67	3	70	30	Na
declared public holidays	na	23	3	25	75	Na
incentive payments	na	70	15	85	15	Na
monetary allowances	41	57	34	91	9	40%

na = not available.

Sources : Davis 2007 and unpublished OEA data obtained by Davis; Department of Employment and Workplace Relations and Office of the Employment Advocate, 2004

ⁱ It is possible that some of the provisions that 'modify' 'protected' award conditions represent an improvement on the award standard. However analysis of EGAs (see section 7) shows that this is rarely the case, and that most or all 'modifications' to 'protected' award conditions represent a lessening of the award standard.

It shows that the rate of abolition of conditions accelerated between the two periods. This was most obviously the case for shiftwork loading. In May-September 2006, some 76 per cent of AWAs excluded (abolished) shiftwork loading (up from 52 per cent in April 2006), a 323 per cent increase on the 18 per cent of AWAs that abolished shiftwork loading in 2002-03.

The number of AWAs that excluded award provisions on days substituted for public holidays also increased significantly, from 44 per cent in April 2006 to 67 per cent in May-October 2006. Although AWAs are often touted as a means of increasing incentives for rewarding staff, the number of AWAs that excluded award incentive payments increased from 46 per cent in April 2006 to 70 per cent in May-September 2006.

The unpublished data also revealed that 68 per cent of AWAs abolished penalty rates (up 8 per cent on April 2006 and up 26 per cent on 2002-03), 52 per cent abolished overtime pay (up 2 per cent on April 2006 and up 107 per cent on 2002-03), 46 per cent abolished public holiday payments, 64 per cent abolished annual leave loading and 48 per cent abolished

monetary allowances. The only conditions for which the rate of withdrawal eased after April 2006 were rest breaks and declared public holidays.

Many of the gaps in earlier chapters are also filled in by these unpublished data. In particular, for the first time they give an indication of the extent to which each condition is 'modified' – almost always, reduced, without being abolished – through AWAs.⁸¹ These data were not originally published by the *Herald* but have been provided by Davis. They show that, for most 'protected' award conditions, even amongst those AWAs that do not abolish that condition, the majority will 'modify', that is reduce it.

For example, as mentioned 68 per cent of AWAs abolished penalty rates. But among the remaining 32 per cent that did not abolish penalty rates, two thirds – that is, 21 per cent of all AWAs – 'modified' penalty rates, that is, they mostly reduced them without abolishing them. In total, then, *around 90 per cent of AWAs either abolished or reduced penalty rates.*

Similarly, most AWAs that did not abolish overtime rates nonetheless modified them. In total, 88 per cent of AWAs abolished or 'modified' overtime rates. The story was no better for shiftwork loading: 89 per cent of AWAs either abolished or 'modified' it.

Ninety-one per cent abolished or 'modified' monetary allowances. Eighty-five per cent abolished or 'modified' incentive payments. Eighty-two per cent abolished or 'modified' public holiday payments. And 83 per cent abolished or 'modified' rest breaks.

As mentioned earlier, we have no inkling as to how many AWAs reduced or abolished redundancy pay, because it is not a 'protected' award condition and the OEA issued no data about unprotected conditions. However, at least some AWAs are abolishing redundancy pay. The following example comes from the Victorian Workplace Rights Information Line:

Jean⁸² has been working on a permanent full time basis for over 6 years as a merchandiser for a large company...Her employer is offering individual 'employment arrangements' and is claiming the employees are only covered by the Australian Fair Pay and Conditions Standard, not any award. Jean said the proposed agreement does not contain entitlements to redundancy...Jean said other employees have been bullied into signing the agreement.⁸³

An AWA for employees at Australian Sweets, a company created not long before by a private equity-funded 'management buy in' of two confectionery manufacturers,⁸⁴ includes a provision that says:

No entitlements for severance pay arise in the event of your position becoming redundant. You will not be eligible for any redundancy entitlements at all. We have no obligation to consult with you in relation to Our operational requirements,

⁸¹ For a discussion of how 'protected' award provisions are 'modified' – reduced or, very rarely, improved – in EGAs, see section 7.

⁸² Fictitious names have been used to preserve anonymity.

⁸³ Rudd and Gillard, *Forward with Fairness: Policy Implementation Plan*; Workplace Rights Advocate, WRIL Case Study Summaries: 27/10/06 to 01/11/06

⁸⁴ Australian Sweets, ANZ Capital facilitates private equity acquisition of Ric's Confectionery and Prydes Sweets, news page, Australian Sweets website, 2006a,

restructuring or the redundancy of your position. We have no obligation to assist you to obtain other employment or to provide alternative employment.⁸⁵

The covering letter describes the AWA as offering ‘a significant increase in your terms and conditions of employment’.⁸⁶ The management buy-in was advised by one of the legal firms whose lawyers assisted in the drafting of WorkChoices.⁸⁷

The OEA/Workplace Authority did not collect or publish data on wage rates or the size of wage increases under AWAs. For statistical evidence on that, we must rely on the ABS. However, qualitative research points to some patterns. According to Helen Masterman-Smith and Jude Elton from the Centre for Work and Life, who interviewed 130 participants including 84 low paid workers, ‘Through personal experience or social networks most employees we interviewed were aware of instances in which the new regulations had been used to cut pay rates or conditions’.⁸⁸ They cited several examples including this one:

Where I’m from, there’s people on the vines down there in Coonawarra ... their wages have gone down and also in the meat industry down there... they’re trying to drop them about \$4 an hour (Mandy, 30s, childcare worker).⁸⁹

Unfortunately, statistical data on differences in patterns between industries or occupations were also never made available (and it appears, not recorded) by the OEA/Workplace Authority. For example, we would expect that AWAs in industries and occupations with tight labour markets (such as mining, where AWAs are common) would have quite different characteristics to those in industries where labour has limited bargaining power (such as retailing and hospitality, where they are also expanding). An earlier survey of employees on pre-WorkChoices AWAs and a control group not on AWAs showed that the attitudes of employees on AWAs varied hugely according to their position in the labour market, as indicated by occupation: those in managerial and professional occupations were quite happy, while those in other occupations (‘ordinary employees’) were dissatisfied on several key issues, by comparison with workers not on AWAs.⁹⁰ Pre-WorkChoices research showed that there were different types of AWAs that focused on different issues,⁹¹ and we would not expect that, under WorkChoices, all AWAs would focus exclusively on cost cutting, particularly in areas of labour shortage. This expectation is consistent with the evidence from chapter 5.

⁸⁵ Australian Sweets, Australian Workplace Agreement ("AWA").

⁸⁶ *ibid.* The agreement also provides for ‘one flat ordinary time rate’ for all work done, whether day, night, weekend, public holiday or ‘additional hours’, exclusion of all protected award conditions, no long service leave (but the potential to cash out the long service leave they accrued until the AWA), and the right to ‘deduct payment for any time that you cannot be usefully employed for any reason’. The base rate of pay was allegedly \$36.55 per week less than the relevant state award. Most employees were from a non-English speaking background. P. Primrose, Legislative Council Hansard, Sydney, 27 September, 2006. J. P. Murphy, House of Representatives Hansard, Canberra, 30 November, 2006.

⁸⁷ Australian Sweets, ANZ Capital facilitates acquisition, ; M. Priest, ‘Employers’ advocates help draft IR Bill’, *Australian Financial Review*, 19 August 2005, p. 57.

⁸⁸ H. Masterman-Smith and J. Elton, ‘Cheap labour - the Australian Way’, *AIRAANZ conference 2007*, Association of Industrial Relations Academics of Australia and New Zealand, Auckland, 7-9 February 2007.

⁸⁹ *ibid.*

⁹⁰ D. Peetz, ‘How well off are employees under AWAs? Reanalysing the OEA’s employee survey’, *New Economies: New Industrial Relations*, Proceedings of the 18th AIRAANZ conference, Association of Industrial Relations Academics of Australia and New Zealand, Volume 1: Refereed Papers, Noosa, February 2004, pp. 371-80; Peetz, *Brave New Workplace*.

⁹¹ Cole, Callus and Van Barneveld, *What’s in an agreement? An approach to understanding AWAs*.

That said, there is qualitative evidence indicating that flexibilities often favour employers at the expense of employees. According to Masterman-Smith and Elton

Many interviewees raised concerns about new ‘flexibilities’ around working time. The general picture is one of employers having gained greater power to control working hours, while employees have correspondingly less influence...Anxieties around working time centred on four key issues: penalty rates for unsocial hours; predictability of hours; access to holidays and leave loadings and casualisation.

Some workers interviewed were not in receipt of any penalty rates despite regularly working extended hours or on weekends. For example, Susan, a private childcare worker in her 50s, receives \$12 per hour gross and often works 10 hour days and occasionally on Saturday nights. May, a luxury hotel worker in her 30s, sees the denial of penalty rates at her workplace as a disturbing sign of things to come: ‘I’m really insecure because of that law and because we haven’t got penalty rates and sick leave. But, I don’t know in the future. I’m really afraid’ (30s, luxury hotel worker). For some workers, the loss of penalty rates means even longer hours at work and fewer hours for family and social engagement.⁹²

They add:

According to Henry and other hotel workers, WorkChoices ‘takes away the flexibility’ working families need to juggle their work and care commitments (20s, luxury hotel worker). For example, changed regulations around annualised average hours of work mean that some employers are forcing workers to take annual leave at times that do not suit their families:

‘They seem to think if regular hours are too high you’ve got to take annual leave. ...It’s terrible ... they seem to think that the new laws ...[mean] they can force people to take annual leave when they don’t want it – if the hotel is quiet. All they seem to be worrying about is their budget’ (Simone, 50s, luxury hotel worker).⁹³

In sum, the available data indicate a substantial loss of conditions of employment, for many workers signing AWAs, as a direct result of WorkChoices, though we would not expect this to be the case in all sectors. Conditions were being lost before WorkChoices, but at a slower rate; in theory compensation was available through the ‘no disadvantage’ test, though in practice even this test failed to protect all employees.

⁹² Masterman-Smith and Elton, ‘Cheap labour - the Australian Way’.

⁹³ *ibid.*

8. WAGE INCREASES UNDER AUSTRALIAN WORKPLACE AGREEMENTS

Prior to WorkChoices, average wage increases under AWAs had been estimated in the range of 2 – 2½ per cent per annum,⁹⁴ well below the rate in union CAs and even non-union CAs. No administrative data have been published, or probably even collected, on average wage increases under WorkChoices AWAs, so it is not possible to assert that ‘no matter what your agreement, wages are up’.⁹⁵ We do know that 22 per cent of AWAs in April 2006 contained no provision for a wage increase during the life of the agreement, and this figure rose to 34 per cent in April-September 2006.⁹⁶ These numbers are well down on the rate prior to WorkChoices (when 73 per cent contained no mention of a wage increase),⁹⁷ though this is probably due to the greater length of AWAs under WorkChoices. They can now last for five years, compared to three years pre-WorkChoices, and it is difficult to imagine many people willingly signing an agreement that provided for no increase for the next five years. There are anecdotes indicating a pattern of AWAs containing a reasonable wage increase up front but little or nothing afterwards.

The fact that 34 per cent contained no wage increase should not be taken as indicating that 76 per cent of AWAs contained a definite wage increase. In fact, only 14 per cent of AWAs in May-September 2006 contained a guaranteed wage increase during the period of the AWA. The majority contained wage increases that were either not quantifiable or not guaranteed, as shown in Table 8.1.⁹⁸

Table 8.1 Forms of wage increases in AWAs, April-September 2006.

Type of wage increase	proportion
Quantifiable wage increase – guaranteed	14%
Non-quantifiable or non-guaranteed	52%
comprising :	
- Quantifiable wage increase - not guaranteed	3%
- Non-quantifiable wage increase - guaranteed	10%
- Non-quantifiable wage increase - not guaranteed	39%
No wage rise	34%
Total	100%

Sources : Davis 2007 and unpublished OEA data obtained by Davis

⁹⁴ ACIRRT, 'Wage trends in AWAs and certified agreements', *ADAM Report*, vol. 31, December 2001b; ACIRRT, 'AWAs in Focus', *ADAM Report*, vol. 47, December 2005.

⁹⁵ J. Hockey, Australian Workplace Relations, speech to Australian Workplace Relations Summit, Dockside Convention Centre, Sydney, Department of Employment and Workplace Relations, Canberra, 14 March, 2007.

⁹⁶ M. Davis, analysis of unreleased OEA data on AWAs May-September 2006, unpublished, Sydney, 2007a. ; Davis, 'Revealed: how AWAs strip work rights'.

⁹⁷ ACIRRT, 'AWAs in Focus'.

⁹⁸ Davis, analysis of unreleased OEA data.

There is little reason to believe that wage increases under AWAs in the recent period would be substantially higher than the earlier average of up to 2.5 per cent, and certainly no reason to believe that they would be matching wage increases under collective agreements, especially bearing in mind that the rate at which conditions have been excluded from AWAs has increased while the need for compensation for the loss of such conditions was removed for over a year. As stated in chapter 5, the EEH survey suggests that median wages for employees on AWAs rose by 2 percentage points less than those for employees on collective agreements between 2004 and 2006, reinforcing the notion that earnings growth for AWA employees has fallen behind earnings growth for collective agreement employees.

9. CONCLUSIONS

Despite limitations in the data, a number of findings are clear from this analysis:

- Nationally, in May 2006, 3.1 per cent of employees were covered by registered individual agreements, of which the vast majority were Australian Workplace Agreements (AWAs). This was an increase on the 2.4 per cent recorded in 2004. AWA coverage is closely linked to labour turnover. The data from the ABS show a far lower level of AWA coverage than claimed by the former government at the time, using administrative data. AWAs covered 258,000 employees nationally in May 2006, an increase of just 59,000 from May 2004. At the time, the former government was claiming 538,000 AWAs were in operation. By September 2007, around 5 per cent of employees were on AWAs.
- Registered individual contracts, even under the old ‘no disadvantage’ test, were paying well below collective agreements for comparable workers. Women were particularly disadvantaged under registered individual agreements, and this is especially the case for women in casual jobs. However, even women in permanent full-time jobs do relatively poorly under registered individual agreements compared to collective agreements. Moreover, although men do not appear to do as badly out of registered individual agreements as women, this is in no small part a result of the male domination of mining.
- Shortfalls for employees on registered individual agreements almost certainly understate the WorkChoices experience because a majority of the AWA employees covered by these data were protected by the no-disadvantage test, which under WorkChoices was significantly weakened, first through its abolition, the effects of which have only been only partially offset by the recent introduction of the ‘fairness’ test.
- The unpublished data support the hypotheses that the effects of individual contracting, by comparison with collective agreements, will vary according to the reason for its introduction and the labour markets in which employees are working. AWA premiums (and/or non-signing penalties) could where employers are seeking to use AWAs to avoid unions, at least in the short run. However, where employers are more focused on cost minimisation strategies, individual contracts will be used to reduce average pay and conditions of employees where the legal environment permits. This will most likely be the case for those workers whose skills are not unique and who have limited bargaining power. If there were ‘flexibility’ benefits for employees and employers through AWAs, they are not apparent at either the aggregate or disaggregated level.
- There is no evidence to support the hypothesis that individual contracting, by increasing productivity, leads to generally higher wages than would occur under collective bargaining. For the typical worker, the reverse is the case. The overall (median) AWA shortfall of 16.3 per cent suggests that cost-minimisation is an important element in AWA strategising, and any ‘flexibility’ benefits that exist are not enough to offset the cost-minimisation effects on wages.

- Female casual workers on AWAs received average earnings some 7.5 per cent below average award earnings. These figures suggest that AWAs can often lead to earnings falling below the award average. They also reinforce that individual ‘bargaining’, through AWAs, is especially detrimental for women, particularly when they lack labour market power.
- The data here will likely understate the gap between AWAs and union CAs, as the CA data include non-union CAs (which have, on average, lower wage increases than union CAs) and are also depressed by the impact of free riders on bargaining power of unionised workers negotiating new CAs.
- In hospitality, the only industry where meaningful comparisons between average AWA and award earnings can be made, average AWA earnings in 2004 and 2006 were 1.8 and 1.6 per cent below average earnings of workers reliant on the award minimum respectively. The deficit for women in hospitality was greater than the deficit for men. Hence, in 2004, the deficit for women on AWAs was 3.6 per cent, whereas average wages were the same amongst men for AWAs and award-reliant workers. In 2006 women on AWAs received 6.5 per cent below the average for women reliant on the award minimum, whereas men on AWAs received 3.3 per cent above the average for men reliant on the award minimum. Overall, these data suggest that workers on AWAs in these low paid industries, particularly women, are disadvantaged by the cost cutting associated with AWAs and receive low pay relative even to the award minimum.
- Even before WorkChoices took effect, problems with the ‘no disadvantage’ test were evident in retail and hospitality, both for workers on AWAs and those on collective agreements. These problems led to low wage employees losing pay and conditions under both types of agreement, a problem that would intensify with the spread of non-union ‘employee collective agreements’ following the demise of AWAs, even with the reintroduction of the ‘no disadvantage’ test.
- Only 14 per cent of AWAs in May-September 2006 contained a guaranteed wage increase during the period of the AWA, even though many AWAs lasted for up to five years. Others contained references to wage increases that were either not quantified or not guaranteed, but 34 per cent contained no provision at all for a wage increase.
- There has been a strong focus in AWAs on reducing or removing protected award entitlements. The rate at which conditions are being removed was substantially higher under WorkChoices AWAs than under pre-WorkChoices AWAs. In the case of overtime pay, the rate at which this has been removed through AWAs doubled, from a quarter of AWAs in 2002-03 to over half of AWAs in 2006. Indeed, overtime and penalty rates have been particular targets for removal under WorkChoices. Over three fifths of AWAs abolished penalty rates altogether. Over four fifths of AWAs abolish or reduce overtime pay. Many other ‘protected’ award conditions have been excluded from AWAs. A majority of AWAs abolished shift allowances. Many abolish public holiday payments. Some, perhaps many, AWAs are abolishing redundancy pay, but no data about them have been issued as they are not a ‘protected’ condition.
- We would expect AWAs in industries and occupations with tight labour markets (such as mining) to be quite different to those in industries where labour has limited

bargaining power (such as retailing and hospitality). Earlier survey evidence suggests that the relative effects of AWAs are more positive for workers in high paid managerial and professional jobs, more negative for ‘ordinary employees’ in other occupations. There is qualitative evidence indicating that the flexibilities often favour employers at the expense of employees.

- Overall, AWAs are commonly associated with poorer outcomes for typical employees than registered collective agreements. While AWAs sometimes attract wage premiums, associated with union avoidance strategies, these mainly affect outcomes in a small number of industries and in some very large organisations. Where union avoidance is not a common issue, for example in small organisations, the negative impact of AWAs on earnings becomes very stark. The impact of AWAs is worst for those people without unique skills, who do not have strong bargaining power in the labour market.

Accordingly, we **recommend** that the key feature of the Bill, its proposed permanent removal of AWAs, be endorsed without qualification by the Committee. We also note the provisions foreshadowed in *Forward with Fairness* that would deal with the problems with the ‘no disadvantage’ test, by requiring agreements to make employees ‘better off overall’ against the award safety net, and **recommend** that the Committee endorse this ‘better off overall’ test be applied in the substantive Bill that will follow this Transitional Bill. In the meantime, the proposed wording of the test should be tightened to prevent some employees being disadvantaged by new collective agreements.

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