20/2/07
950

BRAVE NEW WORK CHOICES: WHAT IS THE STORY SO FAR?[1]

David Peetz
Griffith University, Brisbane, Australia
d.peetz@griffith.edu.au

ABSTRACT

This paper uses data from a range of sources, including the Australian Bureau of Statistics, the Department of Employment and Workplace Relation, private surveys, media and web reports, to analyse the experience to date under WorkChoices. Matters considered include the level and distribution of real earnings changes; productivity and economic performance; employment growth; conditions of employment and the content of agreements; dismissal behaviour by employers; and the minimum wage decision by the Australian Fair Pay Commission.

1 INTRODUCTION

The *Workplace Relations (Work Choices) Amendment Act 2005* (hereafter 'WorkChoices') made the most revolutionary changes to Australian industrial relations law in a century. These changes, detailed more extensively elsewhere (Stewart, 2006), included: abolition of the 'no disadvantage' test by which registered individual and collective agreements were assessed and approved, replacing it with five minimum standards; abolition of unfair dismissal protections for workers in firms with less than 101 workers or for whom *part* of the reason for their dismissal was 'operational'; privileging individual contracts ('Australian Workplace Agreements' or AWAs) over collective agreements (CAs), for example by enabling them to override CAs at any time or place and making it illegal to include in CAs 'prohibited content', such as provisions restricting AWAs or enabling union training or unfair dismissal protections; restricting the right to undertake collective action in ways that are unusual or unique by international standards (for example, by prohibiting pattern bargaining or the involvement of non-members in planning or executing industrial action); restricting union entry to workplaces; forcing many employers previously covered by state legislation into the federal jurisdiction through expansive use of the 'corporations' power in the constitution to regulate industrial relations; and removing core functions of the independent Australian Industrial Relations Commission (AIRC), handing them either to specially established government agencies or private corporations. Although many comparisons have correctly been made with the radical New Zealand reforms of 1991, there are also fundamental differences: in particular, while the *Employment Contracts Act* 1991 was a radically deregulatory approach, WorkChoices is a radical interventionist approach, with over 2600 pages of legislation, regulation and explanatory memoranda.

Various claims were made by proponents about the impact WorkChoices would have, including that it would lead to 'more jobs, higher wages [and] a stronger economy', (Australian Government, 2005), would enable workers to 'continue to enjoy the benefits of...low inflation and low interest rates' (Australian Government, 2005), and would generate

[1] Presented to *Diverging Employment Relations in Australia and New Zealand?*, 24th conference of the Association of Industrial Relations Academics of Australia and New Zealand, Auckland, NZ, 9 February 2007. This paper includes data current up to 8 February 2007.

'productivity improvements...driven by the shift of workers reliant on awards to other methods of pay setting such as collective and individual agreements' (Andrews, 2006), while 'employment growth will be stimulated by changes to the unfair dismissal laws which represented a barrier to employment' (Andrews, 2006).

WorkChoices came into force on 27 March 2006 and, according to the advocates, these expectations have been confirmed. The 'successes of Work Choices' include that 'we have seen record high jobs growth across Australia...there has been strong wages growth since the introduction of Work Choices...[and] labour productivity grew by 2.2 per cent in this financial year' (Abetz 2006).

It being less than a year since the laws took effect, any assessment of the impact of WorkChoices can, at this stage, only be preliminary. Assessment is also hampered by the fact that some critical information (in particular, on the content of agreements) has been suppressed (McIlwain, 2006b). This paper aims to assess the impact of WorkChoices on the evidence available to date. The emphasis is on quantitative data that are available, and in each case we shall try to identify the effect, if any, that WorkChoices (WC) appears to have had to date. A separate paper at this conference examines the gender dimensions.

2 COVERAGE

AWA coverage is invariably overstated by the government and its agencies. During 2006 the millionth AWA was signed, but as this included all AWAs signed since January 1997, the majority of those AWAs had expired. The Employment Advocate gave evidence in November 2006 that there were 610,000 'live or operational' AWAs (McIlwain, 2006b). This is unquestionably an overestimate, as it assumes 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. The last time there was an independent benchmark (the ABS Employee Earnings and Hours survey) the Advocate's methodology overestimated AWA coverage by 60 per cent. Applying that same ratio implies current coverage of about 380,000 employees, though the actual figure is likely to be higher (perhaps 400,000 or so – around 5 per cent of employees) because of the recent policy-induced acceleration in AWA take-up.

Initially, take-up of new agreements under WorkChoices was very slow compared with the pre-WorkChoices period (an average of around 50,000 AWAs per quarter had been signed over the two preceding years). Just 6263 AWAs were lodged in April as the new simplified system took effect. There was a rush to finalise union CAs before WorkChoices took effect, so only 16 union CAs covering 1239 employees were lodged in April. Normally accounting for the majority of employees under agreements, union CAs in April covered only 21 per cent of agreement-covered employees in April. Since then, the rate of take up of all forms of agreement has accelerated, with 76,161 AWAs lodged in September quarter. Overall, in the nine months to 30 September 2006, some 212,000 WorkChoices AWAs were lodged, covering just under 2½ per cent of employees. (The number of people actually on WC AWAs in December 2006 would, of course, be slightly less than this.) Around double that number – 420,000, representing 5 per cent of employees – were covered by new union CAs signed under WorkChoices, while 97,000 (slightly over 1 per cent of employees) were covered by non-union CAs under WorkChoices. In total, then, approximately 750,000 workers (9 per cent of employees) were working under agreements signed under WorkChoices at the end of December (Australian Bureau of Statistics, 6202.0; Office of the Employment Advocate, 2006b).

The number of employees covered by new non-union 'agreements' (including AWAs, greenfields and EGAs) each month has grown by about 27,000, but only a small part of this is due to a drop (of about 8,000) in the number of employees covered by new union agreements. By implication, most of the newly covered employees were previously covered by awards (or had awards underpinning their unregistered individual arrangements). They have, as a result of being covered by WC 'agreements', lost forever their award coverage in that job (except in relation to any 'protected award conditions') (s399).

WorkChoices AWAs were more common in larger than smaller businesses: over three fifths 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 majority of WorkChoices agreement-covered workers. In businesses with less than 100 employees, however, AWAs accounted for over three fifths of WorkChoices agreement-covered workers. (Office of the Employment Advocate, 2006b).

Overall, employees under new union CAs represented the majority (56 per cent) of WorkChoices agreement-covered employees. However, this number was 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 28 per cent, was higher than AWAs' share in May 2004 (9 per cent). The share of non-union collective agreements was relatively stable, rising from 10 per cent in 2004 to 13 per cent under WorkChoices (calculated from Australian Bureau of Statistics, 6306.0; Department of Employment and Workplace Relations, 2004; Office of the Employment Advocate, 2006b; Peetz, 2006). WorkChoices was aimed at shifting people from collective to individual forms of employment, and it is clearly having some effect in this regard, though perhaps not as much as its proponents would hope.

One factor limiting the effects of WorkChoices is that many organisations have decided against taking advantage of the 'opportunities' it presents. For example, a small business survey found that 62 per cent of respondents said they would retain their present approach to employment, pay and conditions in light of WorkChoices, with only 9 per cent clearly indicating they would not retain their present approach while 18 per cent gave a 'maybe' response (AMR Interactive, 2006). In a web-based survey of 1595 employees with undisclosed sample design, 24 per cent of employees indicated they had noticed a change in their organisation's HR policies since WorkChoices took effect, but the other 76 per cent detected no change (Talent2, 2006). Though the survey did not appear to be representative of occupations, these employee results were broadly consistent with the employer survey above. The tight state of many parts of the labour market is currently an impediment to many employers making use of the 'flexibilities' available.

This in turn is seen by some as likely to blunt the social and political impact of WorkChoices. However, there are large variations in labour market conditions across industries, occupations and regions, and often these are experienced within family or friendship networks. Thus, although only a small minority of employees were working under WorkChoices agreements, some 41 per cent of New South Wales residents said in a Galaxy opinion poll that they knew a friend or family member adversely affected by the reforms (Silmalis, 2006). While the figure might be lower if collected at a national level – as New South Wales (experiencing growth of 0.6 per cent in final demand over the year to September quarter 2006) is not reaping the benefits of the resources boom to the same extent as Western Australia (9.3 per cent) or Queensland (8.0 per cent) (Australian Bureau of Statistics, 5206.0) – the WorkChoices experience is clearly being widely felt. Perhaps because of this, public antagonism to WorkChoices did not soften in the first nine months after WorkChoices took effect (Newspoll, 2007).

In summary, as a result of WorkChoices, more employees are moving onto AWAs than before, and fewer onto union CAs. Award coverage is likely declining. The effects of WorkChoices are being reduced because many firms are not taking advantage of the opportunities it present.

3 UNFAIR DISMISSAL PROVISIONS

No data are available on the extent to which unfair dismissals by employers have increased under WorkChoices, as the only previous information was from administrative collections and the abolition of protections for workers in many firms means data are no longer collectable. Some workers who would previously have pursued a claim in the AIRC under unfair dismissal laws are forced to use the more expensive unlawful termination procedures. Anticipating this, funding for the Human Rights and Equal Opportunities Commission was increased by $2 million over two years to enable it 'to handle the possible increase in complaints' (Ruddock quoted in Schubert, 2006b). However, the shift to the unlawful termination jurisdiction is unlikely to meet the needs of all eligible workers: as Western Australia's Equal Opportunity Commissioner warned, one consequence of WorkChoices is a fear among workers about lodging complaints concerning discrimination (ABC, 2006). There are numerous press reports and anecdotes of unfair dismissals, and of the threat or actuality of dismissals being combined with cuts in pay and conditions (eg Burke, 2006; Cooke, 2006; Humphries, 2006; NSW Nurses Association, 2006; Young Workers Advisory Service, 2006). Without a tribunal process to test those that fall outside of unlawful termination, though, it is impossible to know how extensive has been the change in employer behaviour. In some cases, publicity and union pressure led to workers being reinstated (ABC Radio National, 2006a), demonstrating, as the Chaser team commented, that 'the new IR system guaranteed fair outcomes for workers in all cases where there was national media attention and a huge public outcry' (ABC Chaser Team, 2006).

Anxiety about job security seems to have increased. A Morgan survey showed small movements in perceived job security. The proportion of respondents expecting unemployment to rise over the coming year fell by one percentage point. While in normal circumstances we would expect this to lead to an increase in job security, the proportion of people who thought their job was safe fell by two percentage points, though most respondents remained in this category (Morgan 2006). A more substantial shift is observed when people are directly asked if they feel more insecure: the web survey mentioned earlier, while not representative of occupations, claimed that 39 per cent of clerical administrative workers (and, with small N, 42 per cent of blue collar workers) felt more scared about their job security now than they did before the IR reforms came into effect – while such fears were felt by only 24 per cent of senior managers and 15 per cent of CEOs (Talent2, 2006).

Workplaces which are exempt from the unfair dismissal laws appear to be the site of the greatest employee anxiety. Amongst calls concerning dismissal made to the Victorian Workplace Rights Advocate's Workplace Rights Information Line (WRIL) a disproportionately large number came from workers in small and medium sized workplaces (ie those with less than 100 employees) when compared with the distribution of employees as a whole. Workplaces of this size also appeared to be overrepresented amongst calls concerning other matters (procedural unfairness, underpayment, leave, discrimination, harassment, individual contracts, etc) (Australian Bureau of Statistics, 6310.0; Gahan, 2006).

This suggests that the unfair dismissal changes may be having a broader effect on workplace relations and might be leading to increased anxiety at the workplace.

4 AUSTRALIAN WORKPLACE AGREEMENTS

There are many stories of cuts in pay and conditions through AWAs (Australian, 2006; Office of the Workplace Rights Advocate, 2006; Schubert, 2006a; Workplace Express, 2006d; WorkplaceInfo, 2006a; Young Workers Advisory Service, 2006), but there are only limited quantitative data published by the Office of thee Employment Advocate (OEA), the government agency 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') in a sample of the first batch of AWAs in May 2006 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' (McIlwain, 2006b). The latter concern should have led to more, not less, information being disseminated. As to the former concern, the sampling method was identical to one which had been used to generate data for the OEA's last major official report to parliament on AWAs, covering the years 2002 and 2003.

In May 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 1. Several observations stand out. There is a strong focus in AWAs on reducing protected award entitlements. The rate at which conditions are being removed is 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 has doubled, from a quarter of AWAs in 2002-03 to over half of AWAs in 2006. Indeed, overtime and penalty rates are particular targets for removal. Over three fifths of AWAs abolish penalty rates altogether. Over four fifths of AWAs abolish or reduce overtime pay. Majorities of AWAs abolish or reduce meal breaks and public holiday payments. A majority of AWAs abolish shiftwork loading, and large numbers abolish allowances and other conditions. 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.

Nor, unfortunately, were data ever made available on differences in patterns between industries or occupations. 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).

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.

Table 1: Reductions or losses of protected award conditions under AWAs, 2002-2003 and April 2006 (%)

	2002-03	2006				2002-03 to 2006
	absorbed (abolished)	abolished	'modified' (reduced but not abolished)	total reduced	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, 2006a; Office of the Employment Advocate, 2006a)

5 COMPARING AGREEMENTS

In the first Estimates hearing, the duty Minister observed that '33 per cent of collective agreements expressly excluded all protected award matters' (Abetz, 2006), double the rate for AWAs. This was based on data for April 2006, during which most 'collective' agreements were in fact non-union 'employee collective agreements'. It seems likely, then, that non-union CAs were removing protected award conditions at least as rapidly as AWAs. Minister Andrews later claimed on television that one third of *union* CAs 'also had the removal of those conditions' (ABC TV, 2006), but it has proved impossible to verify this. The claim is also inconsistent with evidence from thee Victorian Workplace Industrial Relations Survey, conducted in May-June 2006, which found that workplaces in which collective agreements dominated were over twice as likely to pay penalty rates and overtime rates as workplaces in which individual contracts dominated (Considine, 2006).

Annualised wage increases under new union CAs have averaged about 4.03 per cent in the two quarters since WorkChoices took effect. This is very slightly above the annual rate of inflation (average about 3.95 per cent over the period), and above the rate under non-union employee CAs (3.60 per cent) (Department of Employment and Workplace Relations, 2006). This pattern, whereby union CAs have higher increases than non-union CAs, has been consistent since non-union CAs were effectively introduced under the Workplace Relations Act 1996. (Before then, non-union 'Enterprise Flexibility Agreements' had been possible, but rare.)

Prior to WorkChoices, average wage increases under AWAs had been in the range of 2 – 2½ per cent per annum (ACIRRT, 2001, 2005), well below the rate in union CAs and even non-union CAs. No data have been published, or possibly even collected, on average wage

increases under WorkChoices AWAs. All that is known is that 22 per cent of AWAs contain no provision for a wage increase during the life of the agreement. This is well down on the rate prior to WorkChoices (when 73 per cent contained no mention of a wage increase (ACIRRT, 2001)), 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 over a five year period. There are anecdotes indicating a pattern is for AWAs to contain a reasonable wage increase up front but little or nothing afterwards.

In sum, the data imply a likely loss of conditions in mainly non-union collective agreements under WorkChoices, and a reduction in wages growth in the formal sector as a result of the increased share of instruments that are encouraged by WorkChoices and that provide for relatively low rates of wage increase. However, as with several other areas, more data are required.

6 EMPLOYER GREENFIELDS AGREEMENTS

Employer greenfields 'agreements' (EGAs) are not agreements in any sense of the word. They are unilateral instruments setting pay and conditions, determined solely by management of an organisation before it establishes a new 'project' or 'undertaking' (which appears to include, under WorkChoices, a new branch of a franchise or a business that has been sold in certain circumstances). Workers cannot legally take industrial action for 12 months after an EGA comes into force. EGAs were created by WorkChoices. Prior to WorkChoices, greenfields agreements could only be made with unions, for bona fide new businesses. Since WorkChoices took effect, the number of union greenfields agreements has fallen sharply, and two thirds of greenfields 'agreements' have been EGAs. Average wage increases under EGAs (3.48 per cent) are below those under WorkChoices union greenfields agreements (3.64 per cent) and indeed the lowest of any time of agreement for which data are available (Department of Employment and Workplace Relations, 2006).

Newsletter *Workplace Express* analysed the content of 34 EGAs in November 2006. It found that EGAs fell into three categories: fast food EGAs (the biggest category, which included franchisees of Subway, Hooters, Wok in a Box, Grill'd, Hogs Breath Café and Seaking Seafood) which provided for low wages (typically $13-15 per hour), mostly abolished penalty rates and excluded protected award conditions; finance EGAs (mostly Bank of Queensland franchisees) which provided for low wages but retained most protected conditions and severance pay; and construction EGAs (in roads & mines, in Western Australia and Queensland), which provided for higher wages ($20 or more per hour) due it seems to labour shortages (Workplace Express, 2006b). Stories about EGAs are emerging (Horin, 2006). One particular EGA worth noting was one covering United Petroleum petrol stations in Tasmania. Having bought the stations from another company, the new owner was able to persuade both the OEA and the Office of Workplace Services that it was a 'new undertaking', allowing him to unilaterally establish an EGA covering pay and conditions for existing employees of the stations. Through the abolition of penalty rates and other conditions, their pay was cut by up to $190 per week, and any industrial action in protest at this would have been illegal and attracted fines of $6000 per day (ABC Radio National, 2006b; Paine, 2006; WorkplaceInfo, 2006b).

In sum, WorkChoices has created a new instrument, the EGA, which is associated with the loss of conditions for a significant number of employees, though not all employees covered by EGAs (depending on their position in the labour market).

7 MINIMUM WAGES

The November 2006 decision by the Australian Fair Pay Commission (AFPC), to grant a $27.36 per week increase in award wages for workers on wages of up to $700 per week, and $22.04 per week above that, was seen by many as unexpectedly generous to those reliant on awards. However, it needs to be recognised that the AFPC had little room to manoeuvre. State tribunals had already granted their award workers increases of around $20 over 12 months. When annualised, the AFPC's increase was actually slightly less generous than what most state tribunals had provided. It was the second lowest minimum wage increase in real terms since the Coalition came to office – representing a real wage fall of 0.9 per cent fall on average for award-reliant employees, according to data from the AFPC chair (Workplace Express, 2006c). The AFPC will move its decisions to mid year, enabling it to pre-empt state tribunals and exert more authority over minimum wages. Whether it will be able to overcome the confusion caused by its failure to publish the minimum wage rates that arise from its decisions, and apparent errors in the rates posted by the federal Department, is another matter (AAP, 2006; Workplace Express, 2006a).

In short, the minimum wage fixing arrangements established under WorkChoices have led to a real wage decline for most award-reliant (low wage) workers, but the full effect is yet to be seen.

8 WAGES AND PROFITS

The average weekly earnings (AWE) survey reveals that, during the six months to August 2006, average weekly ordinary-time earnings for full-time adult employees (AWOTE), in real terms (that is, after adjusting for prices), *fell* by 1.1 per cent. Real average weekly total earnings (AWTE) fell by a similar amount (Australian Bureau of Statistics, 6302.0, 6401.0). Another indicator of wages growth, the labour price index, showed a real decline of 0.6 per cent in hourly earnings excluding bonuses in the six months to September quarter 2006.

The only other occasions in recent decades which have seen such a reduction in real wages in the AWE survey were in 2000 (when the GST was introduced) and in the 1980s (when the centralised Accord was in place). In both these other occasions the reductions in real wages were in one form or another explicitly 'offset' through the tax-transfer or social wage systems. However there has been no explicit offsetting for the reduction in real wages that has occurred during the first six months of WorkChoices. Indeed, its existence is denied. We would not expect this reduction in real wages to continue indefinitely, with inflation forecast to fall in the context of changing petrol and fruit prices. Nonetheless, the most notable thing about this reduction in real wages is that it has occurred in the tightest labour market in three decades. Normally tight labour markets are associated with strong growth in real wages. Even stagnation of real wages would be unusual in such circumstances.

Retailing and hospitality (accommodation, cafes and restaurants) are two industries where workers are likely to be especially vulnerable to the effects of WorkChoices. The industries are highly casual, reducing workers' bargaining power. On average, according to the labour price index, since 1997 hourly earnings growth in these two industries has been 17 to 19 per cent lower than earnings growth across all industries. Workers in both industries are reliant on penalty rates for night and weekend work, and these are susceptible to change under WorkChoices. In the two quarters since WorkChoices took effect, hourly earnings growth in these industries (at 1.0 per cent and 0.7 per cent respectively) were 47 per cent and 61 per cent lower than the all-industry average (Australian Bureau of Statistics, 6345.0). This

probably reflects the loss of penalty rates and other conditions of employment, though unfortunately the data to verify this are not published.

Women have been particularly affected. They represent the majority of employees in retailing and hospitality. Nominal AWOTE for females in the private sector rose by only 0.5 per cent in the six months to August 2006, compared to 1.3 per cent for males. In real terms, female AWOTE in the private sector fell by 2.0 per cent in six months to August 2006 (Australian Bureau of Statistics, 6302.0). Again, we would expect the size of the real wage fall to diminish as inflation eases, but the relative movement implies a widening of inequality between men and women.

The wages share of national income was, seasonally adjusted, 53.8 per cent in September quarter 2006, up marginally from 53.5 per cent in March quarter, which had in turn been just 0.1 points above a 35-year low. In trend terms, the wages share of 53.7 per cent was a mere 0.1 percentage points above the 35 year low recorded in March quarter. The profit share, by contrast, has never been stronger. At 27.5 per cent in September quarter 2006 (seasonally adjusted), it was 0.5 points above the previous all-time high of 27 per cent recorded in March quarter. In trend terms, the 27.3 per cent recorded in September quarter was also an all-time high, 0.4 points above the pre-WorkChoices record achieved in March quarter 2006 and over 6 points (that is, nearly 30 per cent) higher than its average over the past 35 years (Australian Bureau of Statistics, 5206.0). There appears, then, to also be a widening inequality between the owners of capital and labour.

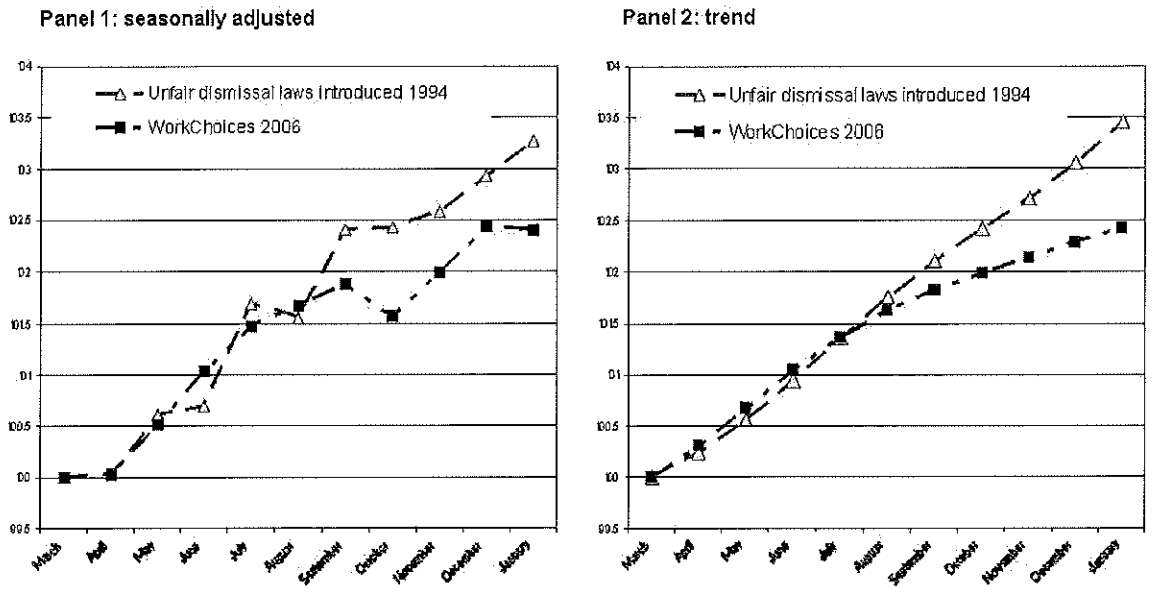
In short, WorkChoices has been associated with a decline in average real wages, at least in the short term, despite the economic boom. It appears to have led to real wage declines in retail and hospitality, probably as a result of the loss of penalty rates in those industries, and in the short term at least a drop in real and relative earnings for women, while profits are at record levels, continuing a trend established under the Workplace Relations Act.

9 EMPLOYMENT

WorkChoices was to deliver substantial employment growth through the partial abolition of the 'job destroying' unfair dismissal laws. A useful benchmark to assess the job creation effect of WorkChoices, then, is to compare employment growth in the period since WorkChoices was introduced with employment growth in the equivalent period after the unfair dismissal laws were introduced at the end of March 1994. The comparison is shown in Figure 1. In seasonally adjusted terms (panel 1), over the eight months from March to November 2006, employment grew by 241,300 or 2.38 per cent. But over the same eight months after the unfair dismissal laws were introduced in 1994, employment grew by 256,400 or 3.25 per cent. In trend terms (panel 2), employment growth of 2.39 per cent under WorkChoices was noticeably weaker than the 3.43 per cent growth after the unfair dismissal laws were introduced. The implication is not that the unfair dismissal laws were more effective job creators than the law that abolished them; rather, the implication is that the strong growth of employment in 2006 is unrelated to the abolition of the unfair dismissal laws, and instead reflects other factors.

In short, the recent employment growth, while strong, appears to owe more to underlying demand in the economy - driven in no small part by the resources boom - than to the introduction of WorkChoices.

Figure 1: Employment growth over ten months from March 1994 (introduction of unfair dismissal laws) and from March 2006 (partial abolition of unfair dismissal laws)



Note: index, March = 100
Source: ABS Cat No 6202.0.

10 ECONOMY AND PRODUCTIVITY

The WorkChoices economic miracle has yet to materialise. The annual rate of inflation rose from 3.0 per cent in the year to March quarter 2006 to 3.9 percent in September quarter 2006, before easing to 3.3 per cent in December quarter (Australian Bureau of Statistics, 6401.0). Interest rates were increased by 0.25 percentage points in each of May, August and November 2006 (Reserve Bank of Australia, 2006). WorkChoices did not create these increases, but nor did it ensure that workers would 'enjoy the benefits of...low interest rates' (Australian Government, 2005).

A more credible target for WorkChoices would be labour productivity. A useful benchmark is the 2.5 per cent annual growth in productivity achieved under the traditional award system of the 1960s and 1970s (Australian Bureau of Statistics, 5204.0; Peetz, 2005), as the alleged inefficiencies of the award system are often derided as the rationale for WorkChoices. But here the story is no better. Labour productivity (GDP per hour worked) fell by 1.6 per cent nationally, in seasonally adjusted terms, between the March and September quarters of 2006. In the market sector, labour productivity fell by 1.7 per cent over the same period (Australian Bureau of Statistics, 5206.0). Labour productivity figures are volatile, but the trend estimates by the ABS also show declines: by 0.7 per cent across the economy as a whole, and 0.4 per cent in the marker sector. (These are figures over the two quarters since WorkChoices took effect – the annualised rates of decline would be double those indicated here.) Labour productivity is best assessed over the course of a complete productivity cycle. That said, two years into this growth cycle, the cumulative productivity growth of just 1.8 per cent to 2005-06 is the second lowest of any comparable period at this stage of the last eight growth cycles (before account is taken of the drop in the September quarter). In trend terms, labour productivity in September quarter 2006 was only 1 per cent higher than it was in March 2004, two and a half years earlier.

Some have suggested that this poor productivity performance is simply the arithmetical result of the entry of semi-skilled and unskilled workers into the workforce as a result of WorkChoices (Pearson 2007). However, at less than 18 per cent, the share of 'unskilled' workers (labourers and elementary clerical sales and service workers) in the workforce has been, during the past three quarters, the lowest average on record (Australian Bureau of Statistics, 6291.0).

We would not expect these declines to continue indefinitely – a rise in productivity must occur sometime soon. But from these data, and from extensive evidence elsewhere (Dalziel, 2002; Peetz, 2005), there is no reason to believe that WorkChoices will be able to generate a significantly higher productivity growth rate than occurred under the traditional award system, or would have occurred anyway.

The Australian Small Business survey, undertaken by MYOB, found that only 12 per cent of small business respondents believe the new WorkChoices legislation will lead to an increase in business productivity. By contrast, 34 per cent disagreed, including 14 per cent who strongly disagreed (AMR Interactive, 2006). Perhaps one reason for this was that 40 per cent of small business respondents considered that the legislation is 'unfair to many employees', compared to just 24 per cent who disagree (AMR Interactive, 2006).

In sum, it is doubtful on the evidence to date that there is any positive impact on labour productivity arising from WorkChoices, and there is a possibility, yet to be confirmed, that its effect may end up negative.

11 INDUSTRIAL DISPUTES

The number of working days lost due to industrial disputes in the June and September quarters 2006 was 53 per cent lower than the equivalent period a year earlier and a record low (Australian Bureau of Statistics, 6321.0.55.001). This reflects in part a medium term trend in Australia (and a number of other countries) of declining overt industrial conflict . Industrial conflict has been falling consistently since 1983 (the beginning of the prices and incomes Accord). Working days lost fell by 75 per cent between 1982 and 1995, and by 58 per cent between 1995 and 2005 (Australian Bureau of Statistics, 6321.0.55.001). However, the recent data also reflect the fact that WorkChoices has introduced a large number of restrictions on industrial action that make most forms of industrial action illegal. It could be argued that the decline in industrial conflict is simply one manifestation of the lower level of power that employees have under WorkChoices.

One possibility, yet to be confirmed, is that the restrictions on industrial action are now so severe that unions will decide to ignore the law, as it is almost impossible to adhere to it. Data on causes of disputes are available for only one quarter, but these indicate that in June quarter 2006, working days lost due to potentially 'legal' industrial action (ie action associated with enterprise bargaining) were 89 per cent lower than the average over the two years to March quarter 2006 (note that the ABS data do not identify whether the disputes were actually legal, only whether they were associated with enterprise bargaining). By comparison for non-enterprise bargaining related disputes (almost certainly all technically illegal) the decline was only 29 per cent (and indeed there was a rise between the March and June quarters 2006). Over the preceding three years, these (illegal) non-bargaining-related disputes accounted for about 48 per cent of working days lost, but in the first quarter of WorkChoices this jumped to 83 per cent. These quarterly figures on cause of dispute are highly volatile, however, and importantly may be influenced by the finalisation of

negotiations for most union CAs before WorkChoices took effect, so more data will be required before provisional inferences can be drawn.

In sum, the first six months of WorkChoices have seen a continuation of the long term trend reduction in industrial disputes, but it is possible (but not yet clear) that WorkChoices has had an effect in separately reducing the level of legal industrial action, mainly by making many previous industrial actions illegal.

12 CONCLUSIONS

This review of the experience under WorkChoices indicates several conclusions. Union agreements still dominate, but more employees are moving onto AWAs than before, and fewer onto union CAs. Award coverage is likely declining. The effects of WorkChoices are being reduced because many firms are not taking advantage of the opportunities it present.

The unfair dismissal changes may be having a broader effect on workplace relations and might be leading to increased anxiety at workplaces, moreso those with less than 100 employees, many of whom are now exempted from unfair dismissal protection.

There has clearly been a substantial loss of conditions of employment, particularly overtime pay and penalty rates, for many workers signing AWAs, as a direct result of WorkChoices, though we would not expect this to be the case in all sectors.

WorkChoices has created a new instrument, the EGA, which is associated with the loss of conditions for a significant number of employees, though not for all employees covered by EGAs (depending on their position in the labour market).

Union CAs are providing the highest wage increases, and EGAs the lowest, though there are no data for AWAs, which might be lower again. The data imply a likely loss of conditions in mainly non-union collective agreements under WorkChoices, and a reduction in wages growth in the formal sector as a result of the increased share of instruments that are encouraged by WorkChoices and that provide for relatively low rates of wage increase.

The minimum wage fixing arrangements established under WorkChoices have led to a real wage decline for most award-reliant (low wage) workers, but the full effect is yet to be seen. WorkChoices has been associated with a decline in average real wages, at least in the short term, despite the economic boom. It appears to have led to real wage declines in retail & hospitality, probably as a result of the loss of penalty rates in those industries, and in the short term at least a drop in real and relative earnings for women. Meanwhile profits are at record levels, continuing a trend established under the Workplace Relations Act.

The recent employment growth, while strong, appears to owe more to underlying demand in the economy – driven in no small part by the resources boom – than to the introduction of WorkChoices.

Inflation and interest rates have risen, but this is not directly attributed to WorkChoices (though it was claimed that WorkChoices would have beneficial effects in these areas). Productivity has fallen; it is doubtful on the evidence to date that there is any positive impact on productivity arising from WorkChoices, and there is a possibility, yet to be confirmed, that its effect may end up negative.

The first six months of WorkChoices have seen a continuation of the long term trend reduction in industrial disputes, but it is possible (but not yet clear) that WorkChoices has had an effect in reducing the level of legal industrial action, mainly by making many previous industrial actions illegal.

In several areas, more data are urgently required, in some cases as a result of the withholding of official information. Nonetheless, these are, in general, the patterns we would expect to see from a transfer of power from employees to corporations.

13 REFERENCES

AAP. (2006, 8 December). Work Choices a high for PM this year. *Australian*.

ABC. (2006, 15 November). IR laws 'make workers fear complaining'. *ABC News Online*.

ABC Chaser Team. (2006, 31 December). The Chaser's year in review. *Sydney Morning Herald*.

ABC Radio National (2006a). Govt says Cowra outcome shows IR laws fair, *The World Today*.

ABC Radio National (2006b). Tas petrol station workers lose entitlements under new AWA, *PM*.

ABC TV (2006). Industrial relations debate, *Lateline*: Australian Broadcasting Corporation.

Abetz, E. (2006). Estimates hearing. Canberra: Senate Employment, Workplace Relations and Education committee.

ACIRRT. (2001). Wage trends in AWAs and certified agreements. *ADAM Report, 31*, 7.

ACIRRT. (2005). AWAs in Focus. *ADAM Report, 47*, 9-17.

AMR Interactive. (2006). *MYOB Australian Small Business Survey*. Melbourne: MYOB.

Andrews, K. (2006). Answer to Question 2611, *(reply to question asked by Mr Murphy [Lowe], 9 November 2005)*. Canberra: House of Representatives Hansard.

Australian. (2006, 26 September). Young people 'losing fight' against IR laws.

Australian Bureau of Statistics. Australian System of National Accounts, *5204.0*. Canberra.

Australian Bureau of Statistics. National Income, Expenditure and Product, *5206.0*. Canberra.

Australian Bureau of Statistics. Labour Force, Australia, *6202.0*. Canberra.

Australian Bureau of Statistics. Labour Force, Australia, Detailed Quarterly, *6291.0.55.003*. Canberra.

Australian Bureau of Statistics. Average Weekly Earnings, Australia, *6302.0*. Canberra.

Australian Bureau of Statistics. Employee Earnings and Hours, Australia. *6306.0*. Canberra.

Australian Bureau of Statistics. Employee Earnings, Benefits and Trade Union Membership, Australia. *6310.0*. Canberra.

Australian Bureau of Statistics. Industrial Disputes, Australia, *6321.0.55.001*. Canberra.

Australian Bureau of Statistics. Labour Price Index, Australia, *6345.0*. Canberra.

Australian Bureau of Statistics. Consumer Price Index, *6401.0*. Canberra.

Australian Government. (2005, July). More Jobs, Higher Wages, A Stronger Economy. advertisement. various newspapers.

Burke, K. (2006, 10 April). Same work, $40 less: take it or leave it. *Sydney Morning Herald*.

Considine, G. (2006). *Working conditions snapshop 2006: Victorian Workplace Industrial Relations Survey 2006 - Special Summary Report - Non-managerial employee compensation*. Melbourne: Industrial Relations Victoria and Workplace Research Centre, University of Sydney.

Cooke, D. (2006, 25 October). First his job, then his house: why one man is beyond anger. *Age*.

Dalziel, P. (2002). New Zealand's economic reforms: An assessment. *Review of Political Economy, 14*(1), 31-46.

Department of Employment and Workplace Relations. (2006). *Wage Trends in Enterprise Bargaining*. Canberra: DEWR.

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

Gahan, P. (2006). *WorkChoices & Workplace Rights in Victoria: Evidence from the Workplace Rights Information Line*. Melbourne: Report to the Office of the Workplace Rights Advocate.

Horin, A. (2006, 28 December). Young workers warned to spot pay rip-offs. *Sydney Morning Herald*.

Humphries, D. (2006, 4 April). A lot to beef about for abattoir workers. *Sydney Morning Herald*.

McIlwain, P. (2006a). evidence to May Estimates hearing. Canberra: Senate Employment, Workplace Relations and Education committee.

McIlwain, P. (2006b). evidence to November Estimates hearing. Canberra: Senate Employment, Workplace Relations and Education committee.
Morgan Research Centre (2006) 'Australians & New Zealanders Optimistic About Job Security - Majorities Say They Could Find A Job Quickly If Need Be', Finding No. 4120, 22 December.
Newspoll. (2007, 3 January). National telephone survey of 1200 adults, 15-17 December 2006. *Australian,* p. 2.
NSW Nurses Association. (2006, 28 July). Desperate Federal Government Wrong About Parkes Nurses, Whose Rights At Work Were Reduced. press release.
Office of the Employment Advocate. (2006a). Answer to Question W210-07. Canberra: Senate Employment, Workplace Relations and Education Legislation Committee.
Office of the Employment Advocate. (2006b). *Workplace agreement statistics*. Sydney.
Office of the Workplace Rights Advocate. (2006). *Report on the investigation into a complaint regarding Australian Workplace Agreements being offered by Global Tele Sales Pty Ltd*. Melbourne.
Paine, M. (2006, 8 December). More work for less pay. *Hobart Mercury*.
Pearson, C. (2007) Pie-in-the-sky productivity. *Weekend Australian*, 27 January.
Peetz, D. (2005). Hollow shells: The alleged link between individual contracting and productivity. *Journal of Australian Political Economy, 56*, 32-55.
Peetz, D. (2006). *Brave New Workplace: How Individual Contracts are Changing our Jobs*. Sydney: Allen & Unwin.
Reserve Bank of Australia. (2006). *Monetary Policy Media Releases*, http://www.rba.gov.au
Schubert, M. (2006a, 25 May). Penalties, overtime, holiday pay worth 2¢ an hour. *Age*.
Schubert, M. (2006b, 2 September). Work claims to rise. *Age*.
Silmalis, L. (2006, 31 December). IR reforms backlash. *Sunday Telegraph*.
Stewart, A. (2006). Work Choices in Overview: Big Bang or Slow Burn? *Economic and Labour Relations Review, 16*(2), 25-61.
Talent2. (2006). Industrial relations reform - raw, *Data tables from survey, August*. Sydney.
Workplace Express. (2006a, 4 December). Confusion emerges at AIRC hearing to flow on AFPC minimum wage ruling. *Workplace Express*.
Workplace Express. (2006b, 13 November). Greenfields agreements true to predictions.
Workplace Express. (2006c, 23 November). Harper downplays impact of minimum wage rise, looks for jobs growth.
Workplace Express. (2006d, 1 December). Victorian watchdog refers AWA allegations to OWS.
WorkplaceInfo. (2006a, 10 October). Labor, PM, in parliamentary battle over AWAs.
WorkplaceInfo. (2006b, 6 October). Tas petrol station deal may be loophole in transition laws.
Young Workers Advisory Service. (2006). *Submission to QIRC Inquiry into the impact of WorkChoices on Queensland workplaces, employees and employers*. Brisbane: YWAS.