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THE ROAD TO WORK

Freeing Up the Labour Market

Kayoko Tsumori

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Foreword

If a democratic government wants to bring about some widely-desired objective, there are two ways it can go about it.

The first is to try to take control of as many as possible of the factors that are likely to influence what happens and change them in the desired direction. At first sight, this seems like the obvious strategy, and it is one that governments are constantly tempted to adopt. The logic is that if you can control the causes, you should be able to bring about the effects you want. The problem, however, is that you can never control all the causes, which is why government grand plans always end up producing outcomes that nobody anticipated, and which all too often nobody even wanted.

The alternative strategy is for politicians to relax their controls and try to leave people to work things out for themselves. The logic here is that voluntary co-operation between people is likely to generate positive outcomes (otherwise aggrieved parties will break off the relationship and try something else). To politicians with their hands poised over the levers of power, this may seem a most unlikely strategy for success, for how can desirable outcomes eventuate if nobody imposes their will to make it happen? They are also likely to see it as a very unattractive option, for where is the point of spending years climbing the greasy pole only to do nothing when you get to the top? Yet experience teaches us that, provided certain ground rules are clearly laid down and enforced, leaving people to make their own deals often results in outcomes which, though unplanned

and unforeseen, are nevertheless broadly in line with what most people want.

The superiority of the flexible and open-ended strategy over the rigid and deterministic one is essentially the lesson to be drawn from Kayoko Tsumori's timely book on Australia's industrial relations morass. For 100 years, this country has sought to regulate the relationship between employers and employees through a heavy-handed, centralised, legalistic and bureaucratic set of mechanisms which were always cumbersome, and which in today's flexible and globalised economy have become hopelessly archaic. Through the agency of the Australian Industrial Relations Commission (AIRC), government-appointed commissioners stipulate what wages people will be paid, how much holiday they can take, the conditions under which they may be dismissed, overtime rates, their sick leave entitlement, their superannuation, and much else besides. At state level it's even worse; one NSW award, for example, specifies which culinary items may be included in meals cooked for employees (potatoes, onions, beans, split and blue peas…).[1] For a century, it seems, employers and employees have been considered too immature, irresponsible or helpless to determine these things for themselves. Instead, like schoolkids squabbling over marbles in the playground, they have been separated at the first sign of trouble and dealt with by a higher authority whose decision has been binding on them both.

Although recent reforms have limited the scope of the federal award system and have reduced the number of workers directly subject to the decisions of the AIRC, Tsumori shows that millions of employees are still indirectly affected, for decisions handed down in respect of one group of workers set the framework for many others. As for employers, they have grown so accustomed to having their affairs decided for them by outsiders that some seem to have lost faith in their own ability to organise these matters for themselves. Here, as elsewhere in the public policy arena, lack of responsibility has bred a fatalistic culture of dependency and complacency, for workers and employers alike have become habituated to the

idea that they need other people to tell them how to manage their relationship with each other.

And what has been achieved by this sacrifice of our liberties and abdication of responsibilities to a centralised system of economic planning? Tsumori shows that all too often, the results are quite the opposite of those intended.

When they hand down their decisions on minimum award wages, for example, the AIRC commissioners think they are alleviating hardship among the low-paid, but what they are actually doing is increasing the scale and severity of the poverty problem. Not only are many of the workers on award minimum wages living in relatively prosperous households, but most 'poor' people in Australia are not in paid employment, and by driving up minimum wages, the Commission is making it even more difficult for them to find jobs. Furthermore, Australia's absurd tax and welfare system ensures that most of a minimum wage rise disappears before workers ever see it. Discussing the record 2004 settlement, Tsumori shows how the principal beneficiary was not low income workers but the Federal government (which saved on welfare support payments and gained increased income tax receipts).

It's a similar story with employment protection laws. Tsumori shows how, by making it more difficult for employers to get rid of unsuitable employees, our unfair dismissal legislation is making it less likely that other, more suitable, workers will get taken on. Critics of reform in this area often point to the United States to show how less rigid laws result in much higher rates of worker turnover, but what they ignore is that Americans also find it much easier to find jobs. What we have created in Australia, by contrast, is a set of laws and institutions that protect and support 'insiders' (those who have a job), but which exclude and disadvantage 'outsiders' who are trying to get a first foot on the employment ladder. As Tsumori points out, this is not only inefficient—it is also very unfair.

The trades unions, of course, exist to protect the insiders, which is why they remain implacably opposed to making the labour market more flexible and inclusive. Indeed, Tsumori

shows at the end of her book how, if they had their way, the unions would make matters a lot worse for the outsiders through their current campaigns to extend regulation to working hours and casual employment. Just as their defence of high minimum wages, one-size-fits-all industrial awards and rigid employment protection laws has ended up destroying jobs, so too the unions' latest campaigns would hurt more people than they help if they were ever allowed to succeed.

The recorded rate of unemployment in Australia is at its lowest in 30 years, but we should not be fooled by these figures. There may be less than 6% unemployment, but surveys have identified significant rates of 'underemployment' among workers who wish to do more hours, and there are many more people of working age sheltering elsewhere in the welfare system who should be included in the official count. It is important to find ways of generating more jobs for these people, particularly at the lower end of the wage and skills continuum where the shortfall is most pressing.

We know from past experience here and overseas that quick and painless political fixes like wage subsidies, training schemes, and expansion of public sector employment either do not work or turn out to be a hugely expensive way of creating a few new jobs. We also know what does work, which is removing restrictions and regulations so that employers are encouraged to take on more workers. Reform in this area is fraught with political difficulties, however, for the unions make for deeply conservative and dangerous opponents and public opinion too is cautious. But if we genuinely want a more prosperous and socially inclusive Australia, there is no alternative but to press on with liberalising the economy by freeing up the labour market, the last remaining bastion of centralised planning.

Endnotes

[1] Gerard Boyce, "Allowable matters on menu for union interference', *The Australian Financial Review* (23 July 2004).

Executive Summary

- Labour market regulations are intended to protect workers. But in today's complex economy, they are more likely to have unintended consequences of increasing joblessness among the low-skilled, the most vulnerable of all workers. To prevent them from falling into joblessness and hence into poverty, the labour market needs to be adequately deregulated rather than tightly regulated.
- High minimum wages may appear to help boost the living standards of the low-paid, but this is not the case. Many low-paid individuals are not poor to begin with, while over half of poor individuals are jobless and will not be able to enjoy the benefits of a minimum wage increase.
- A minimum wage increase raises the cost of low-skilled workers and discourages employers from hiring them.
- Unfair dismissal laws, which are intended to make firing difficult, also deter hiring. If a new recruit turns out unsatisfactory, it might already be too late for employers to fire them without going through unfair dismissal proceedings which can be costly and cumbersome.
- Unfair dismissal laws have a greater negative effect on hiring and firing in small businesses, which are more likely than larger businesses to lack the financial and human resources needed to cope with unfair dismissal allegations. A number of surveys show that, had it not been for unfair dismissal laws, small business employment would have grown more strongly than it actually has.

- Despite the hype about the spread of enterprise bargaining and the individualisation of employment arrangements since the early 1990s, the award system continues to play a significant role in Australia's industrial relations. This is because awards still underpin many non-award agreements.
- A typical award, applied to employees across an industry or an occupation, embodies a one-size-fits-all approach that does not take into account individual employees' performance or individual enterprises' capacity to pay. For this reason, the award system can result in low productivity and job losses.
- Employers generally acknowledge the negative economic effects of the award system. Except in some industries, however, there is no pervasive desire to abolish it completely. Employers believe that, even without awards, pattern bargaining and statutory regulations could create equally significant onuses.
- Union campaigns, such as the hours and casuals campaigns in recent years, are ostensibly intended to alleviate workers' plight. However, the evidence supporting these campaigns does not stand up to closer scrutiny.
- If the campaign to limit working hours is successful, increased labour costs would be imposed on employers, which in turn will lead to joblessness.
- If the casuals campaign is successful and casual employees are given the right to convert to permanent employment after six months with the same employer, employers might replace existing casuals with a smaller number of permanent employees or even stop hiring altogether.
- To reform Australia's labour market and create more jobs:

    1. Minimum wages should be frozen in real terms. The after-tax income of the low-paid should instead be boosted by raising the tax-free threshold.

2. Exempt small businesses from unfair dismissal law, monitor the results and if the results are positive, extend the reform to cover medium and large businesses.

3. Make the award system more flexible by:

   (i) Making it easier to access exemption from certain award provisions. In particular, exemption from awards should be allowed on the grounds of **regional differentials**.

   (ii) Outlawing pattern bargaining; and

   (iii) Reinforcing the option to opt out of the award system.

4. Negotiation over employment arrangements should be left to individual employers and employees at enterprise and workplace levels without the interference of trade unions. Current union campaigns should be rejected and:

   i) employers should not be forced to offer permanent positions to casuals after six months;

   ii) working hours should not be limited by law.

Introduction

> Is there a greater tragedy imaginable than that in our endeavour consciously to shape our future in accordance with high ideals, we should in fact unwittingly produce the very opposite of what we have been striving for?
>
> Friedrich A. Hayek[1]

During the final decade of the 19th century, Australia was beset by widespread industrial unrest. The bitter conflict between capital and organised labour gave rise to the belief that industrial peace would never be restored unless enforced by a third party. The result was the Commonwealth Conciliation and Arbitration Act 1904, which set up the Commonwealth Court of Conciliation and Arbitration, an independent tribunal, with powers to prescribe pay and conditions of employment in prevention and settlement of industrial disputes. From then on, employers and trade unions were to communicate their respective claims by way of the Court rather than face to face. Strikes and lockouts were, in theory, rendered unnecessary. The system of compulsory conciliation and arbitration at that time did not only represent a promising measure to attain industrial peace; it was also seen as ethical progress, for it would correct the inequality of bargaining power which was assumed to exist between employers and employees.[2]

In the century that has passed since then, Australian economic life has been completely transformed. Today, goods and services travel across borders more freely than ever. Few

of the products that are consumed locally are likely to be genuinely Australian-made. Many are imported, either wholly or in part, from foreign countries which are, due typically to less expensive labour, able to produce them more cheaply than Australia. Capital has achieved an unprecedented level of mobility as well. Local firms, in search of a more business-friendly environment, can now outsource part of their operation or even relocate themselves entirely to countries with lower labour costs and less cumbersome industrial relations laws. Incumbent governments, irrespective of their persuasions, are under increasing pressure to attract foreign capital by relaxing labour market regulations.

There is growing concern in some quarters that workers' wellbeing, particularly that of low-skilled workers, has been adversely affected. It is claimed that jobs are being lost to overseas workers and that those who have managed to hang on are finding their earnings depressed and their working conditions worsened. Trade unions, and others who espouse this negative view of globalisation, respond by trying to preserve and reinforce whatever regulatory protections that remain, reverse past measures of deregulation and push for new regulations. They are driven by the 100-year-old conviction that employees are in too weak a bargaining position compared to employers and need to be backed by a neutral third party, be it an industrial tribunal or the government.

This sort of thinking does more harm than good. As this monograph will show, labour market regulation raises the cost of hiring and prices out of the market the very workers that it is intended to help: the low-skilled who face one of the highest risks of joblessness to begin with. The attempt to manufacture a 'perfect' employer-employee relationship by regulation 'unwittingly produce[s] the very opposite' of what has been intended.

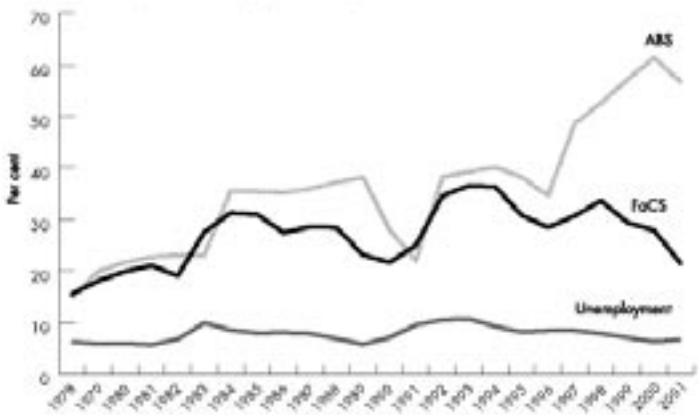
The persistence of joblessness

Since emerging from the global recession of the early 1990s, Australia has been experiencing a steady decline in

unemployment. There appears to be a great deal of optimism about the job market as a consequence. In October 2003, when the unemployment rate hit a 22-year low of 5.6%,[3] Federal Treasurer Peter Costello went as far as to suggest that 'nearly everybody in Australia who wants to work can now find an opportunity'.[4] Such a view, however, is dangerously complacent. It ignores, most of all, the alarmingly large sections of the population that cannot or do not move out of unemployment, such as the long-term unemployed, older unemployed workers who have been reclassified as 'disabled', some young labour market participants and members of jobless households.[5]

Figure 1. Unemployment and long-term unemployment rates, 1978-2001

Proportion of unemployed seeking work for more than 12 months



Note: For definitions of long-term unemployment by the Australian Bureau of Statistics (ABS) and the Department of Family and Community Services (FaCS), see p.4.

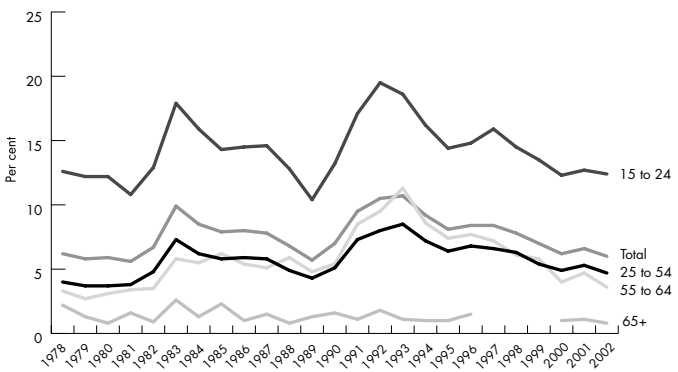
Sources: OECD, *Labour Market Statistics*, Indicators, www.oecd.org; Peter Whiteford and Gregory Angenent, *The Australian System of Social Protection—An Overview*, 2nd edition, Occasional Paper No. 6 (Canberra: FaCS, 2001), Table 11; FaCS, *Income Support Customers: A Statistical Overview 2001*, Occasional Paper (Canberra: FaCS, 2003).

Figure 1 traces, along with the trend in aggregate unemployment, the trend in long-term unemployment continuing for over a year using two different measures. The Australian Bureau of Statistics (ABS) considers employment lasting for two weeks or more as breaking a spell of unemployment. According to this definition, the long-term unemployment rate in recent years has fallen approximately in tandem with that of unemployment. In November 2003, however, nearly one in four unemployed persons had still spent more than a year in unemployment. Income support records compiled by the Department of Family and Community Services (FaCS), on the other hand, ignore any intervening period of employment lasting for fewer than 13 weeks if the relevant claimant had been receiving benefits for over a year. They suggest that, in 2001, 57% of those on unemployment allowances were long-term unemployed—a far bleaker picture than painted by the ABS.

The high rate of long-term unemployment raises serious cause for concern, because a prolonged spell of unemployment tends to decrease the likelihood of re-employment.[6] The longer a person is unemployed, the

Figure 2. Unemployment by age, 1978-2002

Proportion of age group in labour force seeking full-time work



Source: OECD, *Labour Market Statistics*, Indicators, www.oecd.org.

further their skills deteriorate, and the less motivated they become. Consequently, the long-term unemployed may become practically unemployable. Employers may also use the duration of unemployment as a proxy measure for a job applicant's prospective performance.

Figure 2 shows that the unemployment rate is particularly high among youth aged 15 to 24, although this may overstate the extent of the problem. Unemployed youth are much less likely to remain unemployed over a long period of time than their adult counterparts. An estimate by the ABS shows that around 39% of adults (aged 25 to 54) who had been unemployed in one month were no longer unemployed in the following month, while the corresponding figure for unemployed teenagers (aged 15 to 19) was about 48%. A large proportion of these teenagers (29.3%) left the labour force rather than moved into employment. This arises from the fact that the ABS monthly Labour Force Survey includes those who are in full-time education but are actively looking for part-time work. They may, for instance, only seek work during breaks just to leave the labour force upon returning to study.[7] For many of these students, unemployment is probably not as critical a problem as for, say, jobseekers who have left school permanently. That said, 6.2% of unemployed teenagers, and 17.5% of unemployed persons aged 20 to 24, had been unemployed in November 2003 for more than a year.[8] This is alarming, considering that 'starting off in the labour market as unemployed . . . almost "guarantees" employment problems in the future.'[9]

Households where no adult members are in paid work represent another key social policy challenge. As shown in Table 1, the incidence of jobless households has been generally growing since 1982 despite a slight fall after 1997-98. Nearly 15% of households were jobless in 2001, and 10.9% of adults and 14.6% of children lived there. Children who grow up in jobless households have a greater chance of ending up jobless themselves,[10] a disturbing trend which provides even more reason to tackle household joblessness.

Table 1. Jobless Households, 1982-2001

	Jobless households		*Adults in jobless households*		*Dependent children in jobless households*	
	No.	*%*	*No.*	*%*	*No.*	*%*
1982	558,343	12.7	801,352	9.5	424,295	10.2
1986	641,127	14.9	925,112	10.8	496,474	11.5
1990	649,466	14.2	948,166	10.5	511,367	11.4
1994-95	751,886	15.5	1,112,880	11.8	616,341	14.2
1995-96	754,398	15.1	1,068,740	11.2	565,060	12.9
1996-97	821,939	16.8	1,161,142	12.3	686,529	15.6
1997-98	819,442	16.3	1,165,596	12.1	660,242	15.0
2001	919,003	14.9	1,261,938	10.9	603,367	14.6

Sources: Peter Dawkins, Paul Gregg and Rosanna Scutella, 'The Growth of Jobless Households in Australia', *The Australian Economic Review* 35:2, Table 2 (2002); Rosanna Scutella and Mark Wooden, *The Characteristics of Jobless Households in Australia: Evidence from Wave 1 of the Household Income and Labour Dynamics in Australia (HILDA) Survey*, a paper presented at the Australian Social Policy Research Conference (Sydney: Social Policy Research Centre, The University of New South Wales, 9-11 July 2003), Tables 1 and 2.

The unemployed—or more broadly, the jobless—are more likely to lack skills.[11] Nearly 40% of the unemployed have previously held an occupation that is considered low-skilled (Table 2, p.8). A similar proportion of the long-term unemployed are low-skilled ('Elementary clerical, sales and service workers' and 'Labourers and related workers'), although this is probably a reflection of the fact that the low-skilled are overrepresented among the unemployed to begin with. Young labour market participants almost by definition lack education, experience and skills. Adults in jobless households, too, are more likely to be less educated and less skilled. Of individuals with no qualification beyond primary school, 45.6% were in jobless households in 2001, whereas the corresponding figure for those who had completed secondary school was significantly smaller at just 9.3%.[12]

Joblessness is a major cause of poverty. The risk of falling into poverty, no matter how it may be defined and measured, is significantly higher for those out of work than for those in work. The Smith Family's 2001 report on poverty, for example, sets the poverty line at half the average income of all Australians.[13] This 'half-average' poverty line ends up exaggerating the extent of poverty, because it has considerably risen in tandem with the growth of average income over the past few decades. The report generates questionably high poverty figures, claiming that between 1990 and 2000, the proportion of 'poor' Australians increased from 11.3% to 13.0%.[14] Despite this, the poverty rates among those working full-time were consistently far lower at 4.2% in 1990 and at 4.6% in 2000.[15] Combating joblessness, therefore, is an effective way to combat poverty.

'Active labour market programmes' do not work

The high rates of joblessness among the low-skilled indicate that the demand for low-skilled labour is falling below the supply of that labour. Put simply, there are too few low-skilled jobs for too many low-skilled persons. It follows that there are two broad ways to combat low-skilled joblessness: one is

Table 2. Unemployment and long-unemployment by occupation in the previous job, 2003

	Skill Level[a]	Unemployment		Long-term unemployment	
		April 2003		February 2003	
		'000	% of all unemployed	'000	% of all long-term unemployed
Managers and administrators	1	10.4	3.1	1.9	5.3
Professionals		28.6	8.6	4.0	11.1
Associate professionals	2	20.8	6.3	1.9	5.3
Tradespersons and related workers	3	34.2	10.3	3.5	9.8
Advanced clerical and service workers		6.7	2.0	0.7	2.0
Intermediate clerical, sales and service workers	4	61.4	18.5	4.5	12.5
Intermediate production and transport workers		35.7	10.8	3.7	10.3
Elementary clerical, sales and service workers	5	47.6	14.3	5.3	14.8
Labourers and related workers		86.4	26.0	10.4	29.0
Total		331.9	99.9	35.9	100.1

Table 2 sources: Australian Bureau of Statistics (ABS), *Australian Labour Market Statistics*, Cat. No. 6105 (Canberra, October 2003), Table 3.3; ABS, *Labour Force, Australia*, Cat. 6203.0 (Canberra, February 2003), Table 35.

to raise the skills of the jobless; the other is to increase the number of low-skilled jobs available.

Many commentators advocate pursuing these measures through 'active labour market policies'. Active labour market policies aim to improve the chance of the unemployed landing a job through job-search assistance, training, public-sector job creation and employment subsidies. Reviews of experience across the OECD suggest, however, that these strategies, apart from job-search training, are mostly not cost-effective:

- Returns from public training programmes in Canada, Sweden and the United States have been generally low or even negative relative to the cost involved.[16] Some programmes do work, but their effects were uneven. While adult women appear to benefit most consistently from training, results for adult men vary from case to case. For youths, almost no programmes work;[17]
- Employment subsidies are of little help to 'hard-to-serve' groups, such as the long-term unemployed.[18] When hiring, employers are concerned first and foremost about the quality of applicants. Government subsidies, by serving as a signal of potential problems, may discourage employers from taking on jobseekers who receive them;
- Those who are assigned public sector jobs hardly improve their long-term job prospects or gain the skills or experience that are necessary to secure other jobs.[19]

In addition, the last two policies have the effect of distorting the normal workings of the market. Employment subsidies are associated (i) with 'deadweight losses', where subsidies are 'lost' to positions which would have been created anyway, and (ii) with 'displacement effects', where unsubsidised jobseekers lose to subsidised jobseekers jobs which they would otherwise have gotten. Public-sector job creation programmes, by causing interest rates to rise, 'crowd out' investment in the private sector and result in a less efficient allocation of resources.

Active labour market policies in Australia date as far back as 1945, when the Commonwealth Employment Service

Table 3. The net impact of active labour market programmes in Australia

Programme	Description	Cost per net impact outcome	Outcome[a]		
			Participants	Non-participants	Net impact
Working Nation					
JobStart	*Provides employment subsidies.*	$9,700	50	22	+28
JobSkills	*Provides work experience combined with training for adults over 21.*	$75,700	30	19	+11
New Work Opportunities NOW)	*Provides project-based work for jobseekers faced with difficulties due to a lack of suitable openings.*	$180,000	21	17	+4
SkillShare	*Provides community-based assistance for particularly disadvantaged jobseekers such as youth and the long-term unemployed.*	$79,500	29	23	+6
JobTrain	*Provides off-the-job training.*	$92,700	31	24	+7
Job Clubs	*Provides job-search assistance.*	$16,500	36	24	+12
Mutual Obligation					
Intensive Assistance	*Provides tailored assistance to particularly disadvantaged jobseekers.*	$2,200	31	21	+10
Job Search Training	*Job-search assistance.*	$418	27	24	+3
Work for the Dole	*Requires those who have been unemployed for more than six months to participate in approved activities.*	$1,500	30	17	+13

Note: (a) Outcomes for the Working Nation programmes refer to percentages in unassisted unemployment, and outcomes for the Job Network/Work for the Dole programmes, to percentages off unemployment benefits.

Sources: Department of Employment, Workplace Relations and Small Business (DEWRSB), Work for the Dole: A Net Impact Study (Canberra, August 2000), 5, Attachment E; DEWRSB, *Job Network: A Net Impact Study*, EPPB Report 1/2001 (Canberra, April 2001), 5, Table 2.

(CES) was introduced with the primary purpose of matching jobseekers to vacancies. They were substantially expanded under the Keating Labor government (1991-96). The Working Nation initiative, announced in 1994, paid particular attention to those who had been unemployed for more than 18 months, and offered a wide range of programmes (see Table 3). Total spending on active labour market policies, in current dollars, quadrupled between 1990-91 and 1995-96.[20] After the Howard Coalition government came to power in 1996, the Working Nation programmes were either terminated or streamlined and replaced by the concept of 'mutual obligation'. Services included job-search training and special assistance for the long-term unemployed which were outsourced to private-sector organisations under the Job Network scheme . The Work for the Dole scheme was introduced which required some of those who have been unemployed for six months to take up approved activities, such as community work. Spending on active labour market policies declined as a percentage of GDP from 0.84 in 1995-96 to 0.52 in 1997-98.[21]

Table 3 shows the 'net impact' of these programmes. Relevant government departments carry out post-programme monitoring (PPM) surveys to assess the rate of unassisted employment or the rate of exit from income support among programme participants three months after they complete a programme. Meanwhile, programme non-participants who share certain characteristics with programme participants are selected from social security records, and their move into unassisted employment and/or out of income support is recorded three months later. The net impact refers to the difference in outcomes between programme participants and non-participants.

What is striking in Table 3 is the apparently large net effect of JobStart, an employment subsidy programme. The chance of unassisted employment is shown to have been more than twice as high among participants as among non-participants. This finding has repeatedly been cited by critics of the Howard Coalition government's labour market policy as evidence that employment subsidies can be effective.[22]

The evidence, however, is contested. A study using the Survey of Employment and Unemployment Patterns (SEUP), a longitudinal survey which ran from 1994 through to 1997, finds that the employment effect of JobStart was inconsistent over time, being negative in two periods while positive in others.[23] This could have been due to a change to the programme design.[24] As of July 1994, employers were required to keep a JobStart employee for at least three months after the programme ended, and a $500 bonus was offered to an employer retaining a long-term jobseeker a year after the programme commenced. Cases where a JobStart participant was employed under these circumstances do not comprise 'unassisted' or 'unsubsidised' employment,[25] however the SEUP data treat them as such—a questionable practice.

The net impact figures of the rest of the Working Nation programmes are not particularly impressive compared with those of the Job Network or the Work for the Dole programme. Their costs, in addition, are enormous.

The March 2004 Senate Report on poverty and financial hardship recommends combating unemployment by practically reintroducing the Working Nation programmes.[26] Yet this can hardly be justified in light of the past experience. Although certain types of active labour market policies, such as job search assistance, may be necessary as well as effective, they should be regarded as a supplementary measure. It is far more important to remove over-regulation and boost the ability of the job market to create more jobs.[27]

Unintended consequences of labour market regulations

This monograph[28] will examine four major elements of Australia's labour market regulation that create and perpetuate low-skilled joblessness, and will explore policy options.

Chapter 1 will look at minimum wages. Australia's minimum wage is high by international standards, and due to the unique way in which it is set, the impact of a minimum wage increase on employers' wage bills can be enormous.

Businesses could be left with little option but to cut labour costs, and in that case would first sacrifice workers whose skills are the least scarce in the market: low-skilled workers.

Heavy labour market regulation raises non-wage as well as wage costs. Unfair dismissal laws, the subject of Chapter 2, have the effect of making firing unduly cumbersome and costly. Employers may try to minimise the risk of unfair dismissal allegations by only hiring applicants who are more likely to be productive. Realistically, low-skilled jobseekers are often not among them.

Chapter 3 will turn to the award system. Enterprises which fall under the same award are obliged to offer the same pay and conditions irrespective of their productivity levels. Productive enterprises might be able to cope, but not-so-productive enterprises might be compelled to save on labour costs by reducing the number of employees. The low-skilled might well be the first to be let go.

The labour movement may serve to perpetuate strict labour market regulation. Chapter 4 examines two union campaigns as examples of how trade unions can drive up labour costs in the name of workers' rights. One, which aims to limit hours of work, would most certainly end up raising wage costs, because cutting hours without cutting wages would mean increased labour costs per hour. Higher labour costs in turn might lead to job cuts, which would hit low-skilled employees the hardest. The other campaign, intended to give casual workers additional entitlements, would increase the non-wage costs of casual labour and discourage employers from hiring casuals. As casual employment is an important source of employment for the low-skilled, regulating it would deprive them of valuable opportunities.

Labour market regulation is meant to defend disadvantaged workers, but it is actually putting them at a further disadvantage by destroying their jobs. To help marginalised jobseekers, the labour market needs to be deregulated, not over-regulated.

Minimum Wages

Australia does not have a single statutory minimum wage. It instead has multiple minimum wages enshrined in awards. The award is a legally enforceable document that sets out the terms and conditions of employment typically across an industry or an occupation. It prescribes, among other things, different minimum rates of pay for workers at different skill levels. A minimum wage increase affects not just the lowest-paid but also many more workers. What is conventionally referred to as 'the' Australian minimum wage is simply the lowest of all adult award rates, which is found in the Metal, Engineering and Associated Industries Award.[1]

Once a year, the Australian Industrial Relations Commission (AIRC) reviews the levels of federal award minimum wages. This 'Safety Net Review' is carried out in response to a 'living wage' claim lodged by the Australian Council of Trade Unions (ACTU). The living wage refers to a wage that would meet 'the needs of the low-paid'.[2] In the ACTU's view, award minimum wages must at least keep pace with the living wage. The underlying assumption is that, were it not for an annual minimum wage increase, the low-paid would be left in poverty.

The ACTU, in the 2004 living wage claim, scored the biggest win since the Safety Net Review began in 1997. Although its initial claim—a $26.60 per week increase in all award rates—was not met, the $19 per week increase upheld by the AIRC was still 'the largest yet awarded'.[3] The federal award minimum wage was raised to $467.40 per week. This provoked outcries among employer groups and some commentators, who argued that the

increase was 'excessive and could cost 50,000 new jobs'.[4] The ACTU had maintained that its claim was modest and would have little or no effect on employment.[5] Over the following months, the state industrial tribunals adjusted the award minimum wages in their respective jurisdictions by the same amount.

The Safety Net Review may appear to help boost the living standards of the disadvantaged, but this is not the case for the following reasons:

(i) Many low-paid individuals are not poor, while over half of poor individuals are jobless and will not be able to enjoy the benefits of a minimum wage increase;

(ii) A minimum wage increase will raise the cost of, and therefore discourage employers from, employing those who receive it: low-skilled workers. As a consequence, an increasing number of low-skilled workers will fall into unemployment and poverty.

The low-paid and the poor

'The low-paid' and 'the poor' are by no means synonymous. The low-paid are defined in relation to individuals. An individual who is on a low wage is low-paid irrespective of his or her other financial circumstances. The poor, on the other hand, are defined in relation to households, families or 'income units'.[6] The underlying assumption is that individuals within a household, a family or an income unit share one another's earnings. For example, an individual who is low-paid might nevertheless live with a high-paid individual—say, a spouse—and might actually enjoy more than decent living standards. A low-paid individual can be poor, 'average', or even affluent.

A significant proportion of low-paid individuals live in households, families or income units that have relatively high standards of living. Sue Richardson and Ann Harding estimate that, in 1994-95, approximately 40% of adults receiving the minimum wage or less were located in the top half of the income distribution among income units.[7] They are those who did not earn much themselves but had some other income unit members—typically their spouses—earning a

fair amount of money. There were about 2.6 times as many wage earners in the top 30% as there were in the bottom 30% of the income distribution, indicating that the presence of multiple wage earners was an important reason why so many low-wage earners are found in relatively high-income income units.[8] The absence of dependent children also helps place a low-wage earner on the higher end of the income distribution by boosting the share of the income that each member of that income unit is able to enjoy. One-third of those on a 'low wage' in the top 30% of the income distribution were married women without dependent children.[9]

A similar analysis using the Household Income and Labour Dynamics in Australia (HILDA) Survey, Wave 2 (see Appendix, p. 81), bears out Richardson and Harding's findings. In 2002, 48.5% of adults on the federal award minimum wage or less were in the top half of the household income distribution.[10] Table 1.1, which summarises the characteristics of low-wage earners, further shows that high-income households contained 3.6 times more wage earners than did low-income households, and that 30.2% in high-income households were members of a couple with non-dependent children or without any children at all.[11]

Richardson and Harding find a high proportion of young low-wage earners in low-income income units but caution that this should not be taken at face value.[12] The Australian Bureau of Statistics (ABS) Income and Housing Costs and Amenities, Australia surveys, from which they derive data, record young low-wage earners as constituting separate income units even when they actually live with their parents. Their living standards are not necessarily low because they are likely to benefit from free accommodation, financial support, access to their parents cars, and so forth.

The analysis using the HILDA Survey does not consider youth living with their parents as making up independent households. As a result, it found a significant proportion of young low-wage earners in the top 30% of the household income distribution. A total of 42.4% of low-wage earners in high-income households were between ages 15 and 24, and

Table 1.1 Characteristics of low-wage earners in the bottom 30% or the top 30% of the household income distribution, 2002

	Bottom				Top			
	All		Adults		All		Adults	
	No.	%	No.	%	No.	%	No.	%
Wage earners	988,529	25.55			3,539,744	78.43		
Low-wage earners	145,108	16.57	126,707	17.29	133,505	4.07	99,815	3.32
Minimum-wage earners	-	-	123,500	16.86	-	-	98,192	3.26
Age group								
15 to 19	15,419	11.57			26,631	22.62		
20 to 24	18,778	14.09			23,263	19.76		
25 to 54	78,169	58.64			55,887	47.47		
55 to 64	14,805	11.11			10,410	8.84		
65 or over	6,136	4.60			1,534	1.30		
Relationship in household								
Couple with children under 15	43,991	30.32			18,910	14.16		
Couple with dependent students	7,848	5.41			2,916	2.18		
Couple with non-dependent children and no children under 15 or dependent students	2,769	1.91			5,637	4.22		
Couple without children	16,011	11.03			34,798	26.06		
Lone parent with children under 15	12,111	8.35			-	-		
Lone parent with dependent students but no children under 15	-	-			-	-		
Lone parent with non-dependent children and no children under 15 or dependent students	3,914	2.70			696	0.52		
Dependent student	5,403	3.72			27,408	20.53		
Non-dependent child	15,068	10.38			34,033	25.49		
Other family member	13,925	9.60			4,824	3.61		
Lone person	22,905	15.78			2,425	1.82		
Unrelated to all household members	1,164	0.80			1,858	1.39		
Not an employee	31.385	21.63			29,323	21.96		

Source: Derived from the Household Income and Labour Dynamics in Australia (HILDA) Survey, Wave 2 (2002), confidentialised unit record file.

46.0% identified themselves as either dependent students or non-dependent children (see Table 1.1).

One difference between the HILDA Survey and the ABS Survey is that, with the former, it is possible to isolate 'employees of own business' from those who are genuinely employees. Table 1.1 shows that 21.6% of low-wage earners in low-income households are 'not an employee'; they are either employees of own business or employer/self-employed. Their reported incomes, however, may not accurately reflect their living standards because, for example, some may deliberately understate their income to minimise tax.[13] It is further assumed that they are more or less in control of their own pay, and so calling them low-*paid* would be misleading.

The link between a low wage and a low income is weak. The primary cause of a low income is not a low wage but joblessness. In 2002, 87.4% of working-age individuals (15 to 64) in the top 30% of the income distribution were employed.[14] By contrast, the corresponding figure for the bottom 30% was 43.0%, and the rest were either unemployed (9.9%) or not in the labour force (47.2%). Because the jobless, by definition, receive no wage, no amount of minimum wage increase would help improve their living standards.

The ACTU claims that safety net adjustments provide significant relief for poor households with low-wage earners.[15] The amount of such relief, however, is minuscule due to the 'welfare trap'. Consider a household with one adult receiving the federal award minimum wage, one adult not participating in the labour force and two dependent children under 13. The May 2004 safety net decision increased their weekly before-tax income by $19, but they had to pay $5.70 more in income tax, and their Parenting Payment was reduced by $9.31. In the end they were only $3.99 per week better off. [16]

A minimum wage increase is a drop in the bucket for the working poor and does nothing for the jobless poor. One clear winner is the Federal government, which profits from a reduction in social security spending and an increase in income tax revenue. The minimum wage is obviously a blunt instrument for tackling poverty.

Box 1.1 The Senate Report has got it wrong

The March 2004 Senate Report on poverty and financial hardship,[1] as Peter Saunders of The Centre for Independent Studies observes, is a 'one-sided and misleading polemic which will do little to help poor people'.[2] It relies on flawed statistics, uses evidence in a biased and selective manner, and advocates many policies which 'would almost certainly make things worse than better'.[3] Chapter 4, 'Unemployment and the Changing Labour Market', most alarmingly prescribes recommendations based on a gross misdiagnosis of causes of poverty.

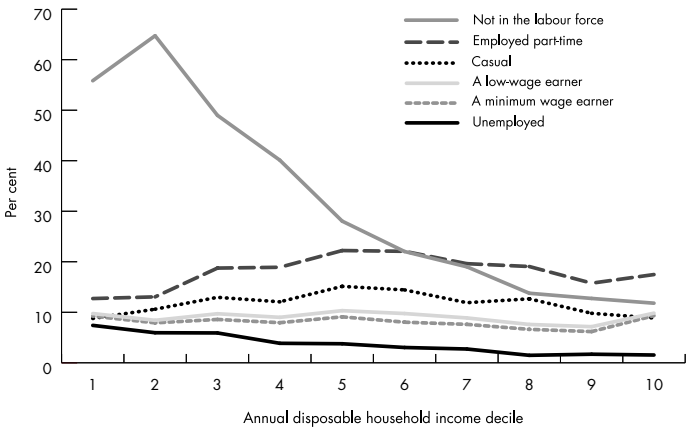
Though research has repeatedly shown that holding down a job is an effective antidote against poverty, according to the authors of the Senate Report, this is no longer the case. They claim that the 'working poor' are on the rise as an immediate consequence of a proliferation of low-paid jobs, such as casual and part-time jobs.[4]

But an examination of the Household Income and Labour Dynamics in Australia (HILDA) Survey makes it abundantly clear that low-paid employment has little to do with poverty, or more precisely, low income. According to household income deciles, Figure 1.1 shows the proportion to the population over 15 of six labour market groups: the unemployed, non-labour market participants, low-wage earners, minimum-wage earners, casual employees and part-time employees.[5] Deciles divide a group of people into ten equal-sized groups and households in the first or bottom decile, for example, are on an income smaller than the remaining 90% of households. If the Senate Report is correct in believing that low-paid employment is an important cause of poverty, disproportionate numbers of low-wage earners, minimum-wage earners, casual employees and part-time employees would be found in the lower deciles. However, this is clearly not the case and low-wage and minimum-wage earners are found in more or less equal numbers across deciles. The incidence of casual employees is smaller in the bottom two deciles than in most other deciles, and so is the incidence of part-time employment. It is the unemployed and to a much greater extent, non-labour market participants who are found in larger numbers in lower deciles.

Contrary to the Senate Report claims, therefore, low-paid, casual or part-time employment does not drive poverty. The accepted wisdom—that joblessness is a major cause of poverty—still seems to hold true.

The Report, based on its partial examination of facts, recommends that award minimum wages be substantially increased and that the growth of casual and part-time jobs be curbed. But because the majority of the low-paid are not poor, these recommendations, if pursued, will aggravate joblessness and hence poverty.

Figure 1.1 Proportion in each annual disposable household income decile, 2002



Source: Household Income and Labour Dynamics in Australia (HILDA) Survey, Wave 2 (2002), confidentialised unit record file.

Notes

[1] Senate Community Affairs References Committee, *A Hand Up Not a Hand Out: Renewing the Fight against Poverty* (Canberra: Commonwealth of Australia, March 2004).

[2] Peter Saunders, *Lies, Damned Lies and the Senate Poverty Inquiry Report*, Issue Analysis No. 46 (Sydney: CIS, April 2004), 2.

[3] As above, 2.

[4] As above, xviii-xix.

[5] The method adopted here to process data is essentially the same as that used for Figure, Chapter 1 (see Appendix, p. 81).

The low-paid and the unemployed

The low-paid are usually low-skilled as well. An increase in the minimum wage raises the cost of low-skilled labour. Employers respond by shedding the number of low-skilled employees in one way or another—for example, by substituting machines for low-skilled employees or by shifting out of labour-intensive goods and services. Standard labour economics theory therefore predicts that a minimum wage rise will increase unemployment among the low-skilled.

But advocates of the minimum wage reject this on a number of grounds.

(i) 'There is no evidence'

Leading US labour economists David Card and Alan Krueger challenged conventional wisdom about the minimum wage in their 1995 book, *Myth and Measurement: The New Economics of the Minimum Wage*.[17] On 1 April 1992, the minimum wage in New Jersey increased from $4.25 to $5.05 per hour. Before and after this date, Card and Krueger carried out a telephone survey of 410 fast-food restaurants in New Jersey and neighbouring Pennsylvania, where no minimum wage increase had occurred. They found that employment in New Jersey had not decreased but increased relative to that of Pennsylvania. These findings soon gained currency around the world, and the ACTU also has relied heavily on them to support its living wage case.[18]

Many economists have, however, pointed to numerous flaws in the Card and Krueger study, questioning in particular the soundness of their telephone survey.[19] It is also inapplicable to Australia because the US minimum wage is comparatively very low. In 2000, the ratio of the minimum wage to the median wage was 0.364 for the United States and 0.577 for Australia.[20] The higher minimum-to-median wage ratio, the higher the minimum wage in relative terms. The US minimum-to-median wage ratio was the lowest among all the OECD countries for which data are available. On the other hand, Australia's minimum-to-median wage ratio

is one of the highest, second only to France (0.608). For this reason, the effect of a given minimum wage increase on labour market performance is more significant for Australia than for the United States.[21] Card and Krueger themselves admitted in their book that, where the minimum wage is much higher, employment losses may not be small.[22] While conclusions from cross-country studies generally remain ambiguous, they, too, generally indicate that an excessively high minimum wage could significantly dampen employment among certain groups, such as teenagers.[23]

Based on his recent study looking inside Australia, Andrew Leigh disagrees with such a view and supports 'regular, moderate' award minimum wage increases.[24] His analysis focuses specifically on statutory minimum wage increases in Western Australia that occurred every year between 1994 and 2001 (except in 1999),[25] and shows that after each increase, the employment-to-population ratio—employed persons as a proportion of the working-age population—in that state dropped relative to that of the rest of Australia. Every 1% increase in the minimum wage would push down the employment-to-population rate by 0.13 percentage points,[26] with young people aged 15 to 24 most adversely affected. According to Leigh's own estimate, the ACTU's 2004 living wage claim—a $26.60 per week or 6% increase—would, if accepted entirely, depress employment by a 0.8 percentage point. He argues that this is a 'relatively small' decrease 'while the chance to provide a boost to the incomes of the working poor is real'.[27]

There are three flaws in this statement. First, wage increases are not very effective in improving the living standards of the poor, as elaborated earlier. Second, whether a 0.8 percentage point annual fall in employment is 'relatively small' is open to question because the long term accumulative effect could be significant. Last but not least, Leigh's estimate fails to take into account an important difference between a statutory minimum wage and award minimum wages: as discussed below, the latter, unlike the former, flows on to workers who are not dependent on it.

Evidence which has recently emerged, in addition, suggests that minimum wages raise the Non-accelerating Inflation Rate of Unemployment (NAIRU).[28] The NAIRU, the rate of unemployment at which inflation is neither accelerating nor decelerating, is a measure of the structural rate of unemployment which exists even when the economy is at full employment.[29] It is, in other words, the permanent component of unemployment. Peter Tulip finds that a minimum wage which is high relative to the average wage appears to affect prices and that higher unemployment is needed to ease the inflationary pressure. The NAIRU, then, will rise, and so will the official unemployment rate. This effect will be particularly large where a minimum wage increase flows on to non-minimum wage workers[30]—as is the case with Australia.

(ii) 'Economic growth will continue to create jobs'

In its submission to the AIRC, the ACTU argued that, given Australia's strong economic performance in recent years, a 'moderate' safety net increase would have no or little effect on employment.[31]

A robust economy will certainly create jobs, and the current low unemployment rate no doubt owes greatly to continuous economic growth since the recession of the early 1990s. However, this does not deny that minimum wage rises have also destroyed jobs in the meantime. In a critique of the Card and Krueger study, Richard Burkhauser, Kenneth Couch and David Wittenburg accounted for macroeconomic influence and found that minimum wage increases during the 1990s resulted in 'modest but statistically significant declines in teenage employment'[32] but that prevailing macroeconomic conditions worked to conceal any negative effect that wage levels might have had on employment.[33] It might be that job destruction due to higher minimum wages has been made up for by job creation due to economic growth.

Yet economic growth cannot continue to create jobs in the future for two additional reasons. First, it cannot be assumed

that the economy will always be as strong as it is now. Second, as persistent unemployment among the low-skilled suggests, economic growth alone does not seem able to deliver jobs to those who need them most.

(iii) 'Very few receive the minimum wage'

Those who support the annual Safety Net Review argue that since the proportion of workers who are on the minimum wage is very small, the effect of a minimum wage increase on employment is insignificant. In 2002, 5.6% of adult employees were receiving the minimum wage or below.[34]

A safety net adjustment, however, does not only extend to federal award minimum wage workers. As Peter Hendy, Chief Executive of the Australian Chamber of Commerce and Industry (ACCI), points out, there are 50,000 award minimum wages, and the Safety Net Review affects not only employees on the so-called minimum wage workers but also extends to every employee who is paid an award rate.[35] A federal award minimum wage increase also flows through to state award workers and workers covered by enterprise agreements.[36] On 30 September 2002, for example, there were 14,450 federal enterprise agreements that contained provisions regarding wages.[37] Among the 1,537,000 employees who were covered by these agreements:

- 21,200 (1.4%) would be granted automatic pay increases in line with safety net adjustments;
- 97,700 (6.4%) would receive increases where consistent with principles behind safety net adjustments;
- 57,700 (3.7%) would receive increases conditional on levels of safety net adjustments;
- 302,100 (19.6%) were covered by agreements that left open the possibility of pay increases based on safety net adjustments.

In considering the impact of a minimum wage increase on employment, it is vital to take into account these indirect effects as well as direct effects.

This, incidentally, is what is missing from Leigh's analysis. His estimate that the ACTU's living wage claim, a 6% increase, would decrease employment by 0.8 percentage point is derived from simple multiplication: -0.13% (the employment effect of a 1% increase in the Western Australian statutory minimum wage) times 6%. The underlying assumption is that an award minimum wage rise, like a WA statutory minimum wage rise which affects a mere 4% of the state's workforce,[38] would only involve employees on 'the' minimum wage. This is clearly not the case and significantly underestimates the real employment cost of the Safety Net Review.

Labour on-costs

A high minimum wage raises not only wages *per se* but also 'labour on-costs'. Labour on-costs in Australia include, for example, leave loadings, superannuation contributions and workers' compensation premiums. Because they are often set proportional to wage costs, an increase in wages by some amount lifts aggregate labour costs by more than that amount in dollar terms.

Labour on-costs in Australia, both in relation to total labour costs and in absolute terms, are relatively low by international standards. One study shows that, in 1995, the ratio of on-costs to total labour costs for Australia was 0.277.[39] Countries with relatively deregulated labour markets had similar ratios: 0.278 for Canada, 0.286 for Britain, 0.286 for Ireland and 0.294 for the United States. Among the OECD countries, Australia was second only to Denmark (0.200). In terms of US dollars per hour, Australia had the third lowest on-costs (US$6.1), trailing Ireland (US$6.0) and the United Kingdom (US$5.9).

Although labour on-costs in Australia are moderate compared with those in other countries, they have also been increasing over time and have increased more significantly than wages and salaries since the 1970s. This is partly due to the expansion of leave entitlements.[40] Data compiled by the International Labour Organisation indicate that, between 1980 and 2000, the proportion of non-wage costs to total

compensation costs in Australia rose by around 6 percentage points.[41] The 2000 figure, 19%, was the 12th highest among 27 countries compared.[42]

Labour on-costs for employers are significant, and safety net adjustments only make matters worse. The Australian Industry Group (Ai Group), the largest employer association in the manufacturing sector, estimates that, because of labour on-costs, a $1.00 wage rise actually represents an additional expense of $1.30 for an average employer.[43] Heather Ridout, Deputy Chief Executive of Ai Group, argued at the time of the 2002 safety net decision that the $18 minimum wage rise would cost employers too much and deliver employees too little.[44] Consider an award employee who had been earning $567.80 per week. After taking labour on-costs into account, the 2002 safety net adjustment is estimated to have cost his or her employer an extra $23.40 per week. His or her family, if consisting of a jobless spouse and one child, would have only gained an extra $7.14 per week.

Tax cuts, not wage increases

A small increase in the award minimum wage triggers a large increase in the national wage bill, which in turn will add to the unemployment problem. The Safety Net Review may benefit some of the 'insiders' (those in jobs) but denies the 'outsiders' (those without jobs and those in precarious jobs) opportunities.[45] Award minimum wage increases do not actually help the most disadvantaged.

Counterintuitive as it may sound, it is a decrease not an increase in the minimum wage that will help marginal labour market participants. The level of the federal award minimum wage should be frozen or reduced in real terms. This is more or less what the 'Five Economists' envisioned when they proposed, in an open letter to Prime Minister John Howard in October 1998, a temporary wage freeze—or a real wage reduction—for low-skilled workers.[46]

Two of the Five Economists, Peter Dawkins and John Freebairn, simulated possible effects of a real wage reduction

for low-skilled labour, using various assumptions. Their findings pointed to an increase in low-skilled employment and a decrease in overall unemployment.[47] In the case where the real wage for low-skilled workers was cut by 10% and the substitution elasticity of low-skilled labour for high-skilled labour was 2.0 (that is, a 1% wage rise for high-skilled labour induces a 2% increase in the demand for low-skilled labour), low-skilled employment grew by 770,000 persons, and unemployment plummeted from 9.0% to 5.5%.

Some might argue that cutting wages for high-skilled workers should also create new job opportunities. Jobs created this way, however, are most likely to be high-skilled jobs. Approximately 40% of the unemployed are low-skilled and thus unqualified to fill these positions.[48] Daniel Hamermesh's extensive work on labour demand in addition indicates that wage reductions for high-skilled workers will generate far fewer jobs than wage reductions for low-skilled workers.[49]

Others might argue that more low-paid jobs for low-skilled workers would create a permanent 'underclass', but this is unlikely. Low-wage earners do not necessarily become locked in low-paid positions, and just over 50% eventually move into higher-paid positions after gaining skills on the job.[50] A minimum wage that is too high will, by destroying jobs, deprive the low-skilled of opportunities to obtain employment and climb up the wage ladder. Worse, unemployment will increase the risk of falling into poverty. At the end of the day, a low-wage job is better than no job at all.

One question that still remains is how best to protect the living standards of low-income families supported by low-wage earners.

The Five Economists have proposed to compensate the earnings of the low-paid by 'in-work benefits', a tax credit for low-income families of which one or more members are in paid work. This, however, is likely to create a whole new set of problems.[51] Evidence from the United States and Britain, where in-work benefit programmes have been in operation for several years, shows that they have a negative as well

as a positive effect on employment: in-work benefits have improved employment among jobless lone parents but have also reduced employment, particularly among married women whose spouses are employed. This appears to be because in-work benefits are eventually phased out, discouraging their claimants from making additional work effort beyond a certain point. In-work benefits, in other words, might well increase dependency on the government.

There is a better alternative for Australia: to raise the tax-free threshold. In a recent paper, Peter Saunders and Barry Maley argue that 'workers should be allowed to earn and retain enough money to meet their own subsistence needs before any tax is taken away from them'. They set such a 'subsistence income' at $12,567 per annum, which is the lowest level of welfare payments that a single person would be entitled to.[52] The existing annual tax-free threshold is about $6,000, less than half. Low-income Australians thus find themselves in an absurd situation. The government takes money away in tax before their income reaches the subsistence level and at the same time gives much of that money back to push them up to the subsistence level. By raising the tax-free threshold, such 'churning' can be prevented.

The main criticism of this proposal is that a higher tax-free threshold would benefit every income taxpayer and thus would be a huge drain on the federal budget. One estimate suggests that raising the tax-free threshold to $10,000 would cost twice as much, and yet would increase labour market participation only by half as much, as introducing in-work benefits.[53] But as Saunders and Maley argue, 'the fact that an increased threshold benefits all taxpayers is the strength of the proposal, not its weakness'.[54] A higher tax-free threshold, precisely because it benefits everybody, avoids punishing those who increase earnings through their own work effort and helps them remain self-reliant. It will also prevent the freezing of the minimum wage from eroding living standards of low-income families that depend on low-wage earners.

Unfair Dismissal Laws

Until the enactment of the Industrial Relations Reform Act 1993 (the 1993 Act) on 24 March 1994, federal unfair dismissal laws did not exist apart from those affecting public sector employees.[1] Opposition to the 1993 Act was fierce.[2] The definition of an unfair dismissal—a termination that is 'harsh, unjust or unreasonable' (s 170DE (1))—was seen as nebulous and wide-open to interpretation. The initial onus of proof was on employers,[3] which was questioned as too heavy-handed. Most of all, many small businesses, which might lack adequate resources to cope with unfair dismissal claims, were apprehensive about the potential adverse effects of the 1993 Act.

A number of attempts were made in subsequent years to reduce the scope of the unfair dismissal laws. Two months after coming to power at the March 1996 Federal election, the Coalition government introduced the Workplace Relations and Other Amendment Bill 1996, which, on 31 December that year, became the Workplace Relations Act 1996 (the 1996 Act). The revised unfair dismissal laws (Division 3, Part VIA) marked a significant break with the 1993 Act. Although 'fair go all around' was accorded to both employers and employees in the handling of unfair dismissal applications (s 170CA(2)),[4] the amendments were nevertheless widely considered to be inadequate.

The Coalition government then tried on numerous occasions—unsuccessfully—to exempt small businesses with fewer than 15 employees from the unfair dismissal laws.[5] The

Workplace Relations Amendment (Fair Dismissal) Bill 2002, introduced on 13 February 2002, represented yet another attempt to exclude small businesses from the unfair dismissal laws (Item 1).[6] This Bill, unlike its predecessors, defined a small business as a business with fewer than 20 employees. It did not affect state unfair dismissal laws or federal legislation regarding unlawful terminations, which was to be dealt with by a separate bill;[7] nor did it apply to persons hired before the amendments came into effect (Item 6).

The Coalition government argued that the Bill would encourage job creation because restrictions on firing discouraged hiring as well. The Labor Party and the Democrats, on the other hand, steadfastly opposed the Bill, contending that the unfair dismissal laws had little to do with unemployment. While the Senate Committee on Employment, Workplace Relations and Education Legislation found the case for small business exemption to be persuasive and commended the Bill,[8] the Senate voted it down on 27 June 2002.[9] Three months later, the Bill was reintroduced in the House of Representatives only to be rejected in the Senate again on 24 March 2003.[10] It was then laid aside.

Why unfair dismissal laws deter hiring

Unfair dismissal legislation is intended to make firing difficult. The 1996 Act requires that the Australian Industrial Relations Commission (AIRC), upon receiving an unfair dismissal application, first attempt to settle it by conciliation (s 170CF(1)). If it is unsuccessful, the applicant may choose to proceed to arbitration (s 170CFA(1)). In arbitration, emphasis is laid on procedural fairness. An employer who wishes to fire an employee, before taking such action, must: (i) have a valid reason for the dismissal, such as incompetence or misconduct on the employee's part; (ii) notify the employee of that reason; (iii) give the employee an opportunity to respond; and (iv) if terminating for reasons of unsatisfactory performance, give the employee warning about it (s 170CG(3)). If the employer fails to prove that he or she has followed these steps, the AIRC may find

the dismissal 'harsh, unjust or unreasonable' and subsequently may make orders for remedies including reinstatement of the employee and an appropriate amount of payment in lieu of reinstatement (s 170CH). All orders are binding (s 170CI), although there are also rights of appeal to the Full Bench of the AIRC (s 45, Division 4, Part II). Firing an employee under the 1996 Act, in other words, is cumbersome. The employer may even end up re-hiring an employee whom he or she finds incompetent, disruptive, and so forth, in addition to having to pay legal fees that may well be enormous.

By making firing difficult, unfair dismissal legislation makes *hiring* difficult as well. Recruitment entails a great deal of uncertainty. Neither a spotless résumé nor a seamless job interview guarantee good performance upon appointment. If a new recruit turns out to be unsatisfactory, it might already be too late for the employer to fire them without paying dearly for such action. Under unfair dismissal laws, therefore, risk-averse employers may choose to encourage their existing employees to work harder and/or longer rather than hiring additional employees.

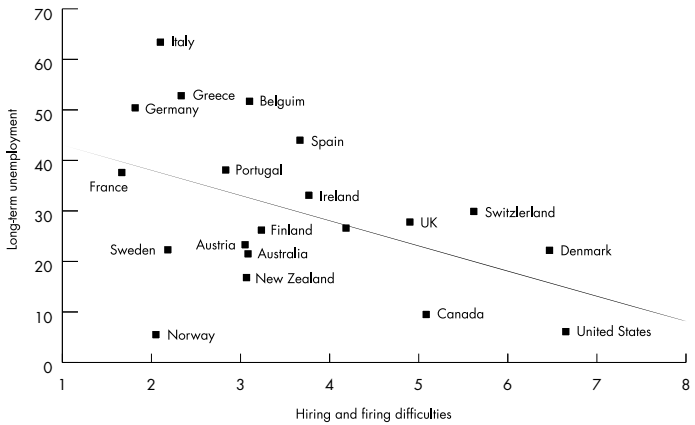
Long-term unemployment and unfair dismissal laws

Unfair dismissal laws tend to reduce flows into and out of unemployment and prolong the spell of unemployment. Several cross country studies demonstrate that there is a positive association between the strictness of unfair dismissal laws—or more broadly, employment protection legislation[11]—and the rate of long-term unemployment.[12]

Figure 2.1 illustrates the association between hiring and firing difficulties and long-term unemployment rates. Long-term unemployment rates are expressed as proportions of those unemployed for over a year to all those unemployed. The rating for hiring and firing difficulties, on the scale of zero to 10, is derived from an Executive Opinion Survey carried out for the World Economic Forum's *Global Competitiveness Report*.[13] Hiring and firing rules made at enterprise or

workplace levels, compared with those imposed by legislation, are assumed to be much less prescriptive, making hiring and firing less cumbersome. Accordingly, higher scores are given to countries where survey respondents thought that enterprise-level or workplace contracts played a larger role in determining hiring and firing procedures. Figure 2.1 points to a broadly negative association between the two variables of interest: the more difficult hiring and firing, the higher long-term unemployment.

Figure 2.1 Hiring and firing difficulties and long-term unemployment, 2003



†(Long-term unemployment)=47.8628-4.9173*(Hiring and firing difficulties); R^2=0.212; significance level=0.041.
Note: For the definition of hiring and firing difficulties, see p. 33-4.
Sources: James Gwartney and Robert Lawson, *Economic Freedom of the World: 2003 Annual Report* (Vancouver: Fraser Institute, 2003); OECD, *Labour Market Statistics*, Indicators, www.oecd.org.

Figure 2.1 shows that Australia, by international standards, is a moderately regulated country with a moderate rate of long-term unemployment. A long-term unemployment rate of 20%, however, means that one in five unemployed persons are spending over a year without a job. This is by no means moderate. Hiring and firing rules in Australia, moreover, are

only moderate compared with countries with heavy labour market regulations and pervasive long-term unemployment, such as Italy, Germany and France. Australia is far behind the United States, which has the least strict hiring and firing rules and the lowest long-term unemployment rate (see Box 2.1).

Unfair dismissal laws protect 'insiders' (those in jobs) at the expense of 'outsiders' (those without jobs).[14] Those who have managed to secure employment may be able to stay there as long as they wish, but jobless labour force participants face a greater risk of remaining unemployed and disappearing into the long-term unemployment statistics. Low-skilled labour market participants are at a particular disadvantage.[15]

That said, unfair dismissal laws can also hurt the insiders by locking them in jobs to which they are ill-suited. Consider, for example, a sales assistant with no aptitude for customer service. Strict unfair dismissal laws would give the employer little choice but continue their employment. Nor would the sales assistant actively look elsewhere for another job, because there would be fewer job vacancies under strict unfair dismissal laws. The sales assistant's 'better match' might well be out there, but they might never find it.

Particular effects on small businesses

Unfair dismissal laws have a greater negative effect on hiring and firing in small business. As noted earlier, firing may cost employers dearly if followed by unfair dismissal allegations. The operators of larger businesses can cope better because they have greater financial and human resources to look after expensive and time-consuming arbitration processes. The operators of small businesses, by contrast, are usually shorter of money, staff and time and simply cannot afford unfair dismissal claims.

Small business is an important source of employment. In 1999-2000, small non-farm businesses accounted for 94% of all non-farm businesses and 39% of all employees (that is, employed persons excluding employers and own account workers).[16] Between 1983-84 and 2000-01, the number of small employing businesses increased by 92%, or at an annual

Box 2.1. Employment protection and long-term unemployment in the United States

Firing as well as hiring rules in the United States are exceptionally flexible by international standards. For example:

- There are no prescribed administrative notification procedures except in some states, which require a 'service letter' noting reasons for dismissal to be given to employees;
- There are no regulations setting the notice period or severance pay, although these can be included in collective agreements and company policy manuals;
- Employees without a written contract can generally be fired for good cause, bad cause, or no cause at all (the 'employment-at-will' doctrine).

Dismissals that are considered unfair include, among other things, those in breach of Equal Employment Opportunity principles, and in these cases, reinstatement and/or compensation may be ordered.[1]

US long-term unemployment, on the other hand, is consistently low (see figure) along with Australia's long-term unemployment.

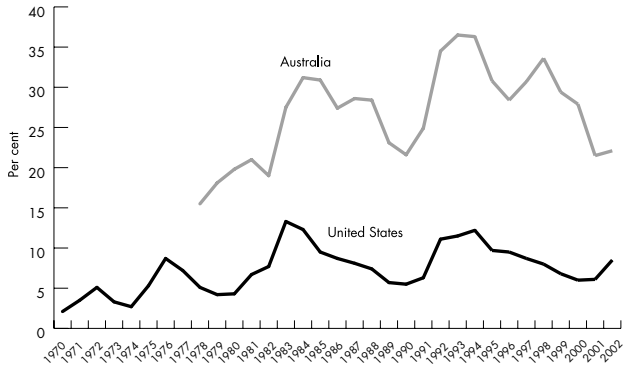
Low long-term unemployment in the United States points to a successful record in job creation—which is a regular source of criticism, not praise. Jobs created in the United States, it is often alleged, are service-sector jobs with low wages and poor working conditions. But an OECD study debunks this 'McJob myth.' A comparison of working conditions, job satisfaction and pay demonstrates that good jobs were not primarily located in the goods-producing sector; many were also in the service sector. The OECD further argues that (i) the high overall employment rate in the United States was driven by the growth not only of poorly paid but also of well paid service-sector jobs and that (ii) jobs in relatively well paid occupations and industries increased far more significantly than poorly paid jobs.[2]

Notes

1 OECD, 'Employment Protection and Labour Market Performance', *OECD Employment Outlook* (1998), Tables 2.A.1 to 2.A.5.

2 OECD, 'The Characteristics and Quality of Service Sector Jobs', *OECD Employment Outlook* (2001).

Figure 2.2 Long-term unemployment, Australia and the United States, 1970-2003



Source: OECD, *Labour Market Statistics, Indicators*, www.oecd.org

average rate of 3.9%.[17] Over the same period, the number of employees in small businesses grew by 81%, or at an annual average rate of 3.6%.[18] After the introduction of the 1996 Act, the number of small employing businesses grew on annual average by 2.3%, and the number of employees, by 3.5%.[19]

It might be argued that unfair dismissal legislation clearly had little effect on small business employment. Survey evidence indicates, however, that, without unfair dismissal laws, small businesses would have grown even more prolifically:

- In 1999, the Australian Chamber of Commerce and Industry (ACCI), in its quarterly Survey of Investor Confidence, asked more than 2,300 employers Australia-wide whether the unfair dismissal laws had any bearing on their hiring decisions during the previous 12 months.[20] The majority, or 53.9%, of small businesses, as compared to 47.7% of medium-sized businesses and 28.2% of large businesses,[21] indicated that they might have hired more people had it not been for the unfair dismissal laws;[22]
- ACCI's pre-election survey of November 2001 asked more than 2,500 employers across Australia to rate the

importance of 63 business-related issues.[23] According to small business employers, unfair dismissal law were the fifth most important issue. Medium business employers and large business employers ranked the issue high as well—third and seventh, respectively;

- A February 2002 survey of 600 small businesses across Australia, carried out by CPA Australia, found that only 5% of respondents considered the unfair dismissal laws a major impediment to hiring (multiple responses were allowed).[24] Contrary to CPA Australia's conclusion, this does not mean that the unfair dismissal laws had a negligible effect on small business employment. The ABS estimates that there were 1,122,000 small businesses in Australia in 2000-01,[25] and if 5% of them created just one extra position, over 56,000 new jobs would have been created;
- A Melbourne Institute survey carried out on behalf of the Commonwealth Department of Employment and Workplace Relations (DEWR) convincingly demonstrates that unfair dismissal laws do reduce employment in small and medium-sized businesses.[26] Interviews were completed with 1,802 businesses employing less than 200 permanent employees. Of the 20.9% that had no employees at the time of the survey, 58% had never had employees and 42% had previously had employees. When asked whether the unfair dismissal laws had any influence on their decision to shed the number of employees, 4.6%, 2.7% and 3.8% indicated that there was a major influence, a moderate influence and a minor influence, respectively. Each of these percentages translates into 34,812, 17,100 and 25,572 jobs lost. In total, 77,482 jobs were destroyed due to the unfair dismissal laws.[27]

The fear is real

An examination of the unfair dismissal disputes that have been brought before the AIRC since 1997 confirms that employers, especially small business employers, have every reason to be apprehensive about possible unfair dismissal allegations. The total number of unfair dismissal and unlawful termination

applications lodged per year between 1997 and 2001 was 7,500 to 8,200 (see Table 2.1).[28] Approximately a third of these were made against small business employers (Table 2.2). Most cases were settled by conciliation. If a case was brought to arbitration, the odds that it was found against the employer were about six out of 10 (see Table 2.3). According to a business adviser, the cost of an unfair dismissal allegation for an employer is seldom less than $3,000 since employees have no incentive to reconcile without recovering their legal fees and receiving a certain level of 'compensation'.[29] This seems to be the case even with unmeritorious applications.

Under current laws it is relatively easy for sacked employees to initiate unfair dismissal proceedings. Even if unfair dismissal allegations are without sufficient foundation and claims are eventually dismissed,[30] employers are still adversely affected by the costs that the proceedings incur. It can wreck havoc on a small business whose financial capacity is more likely to be limited. Small business owners who feel uneasy about unfair dismissal laws have cause to do so.

Table 2.1 Total number of unfair dismissal/unlawful termination applications lodged under the 1996 Act, 1997-2001

State/Territory	*1997*	*1998*	*1999*	*2000*	*2001*
NSW	1,115	1,383	1,274	1,388	1,721
QLD	623	309	365	416	458
WA	272	303	455	401	369
SA	273	284	214	199	170
TAS	117	242	129	127	140
VIC	4,527	5,134	4,627	4,606	4,798
ACT	260	249	230	236	243
NT	277	233	267	236	258
Total	7,464	8,137	7,570	7,609	8,157

Note: The figures for 1997 are based on weekly tallies of lodgements while the figures for 1998 to 2001, on monthly tallies. Therefore, they may not be exactly comparable.

Sources: House of Representatives Official Hansard, No. 4, Tuesday, 19 March 2002 (Canberra: The Parliament of Australia, 2002), 1612.

Table 2.2 Number of unfair dismissal/unlawful termination applications by business size, 1998-2001

	1998	1999	2000	2001
Total No. of Applications	8,137	7,570	7,609	8,157
Total No. of Respondents Whose Business Size Is Known (a)	2,979	2,554	2,471	2,666
Total No. of Small Business Employers among (a)	1,041	849	795	870
% of Small Business Employers among (a)	34.9	33.2	32.2	32.6

Note: The figures are derived from surveys by the Australian Industrial Registry of employers involved in unfair dismissal and unlawful termination cases. They are not complete because employers provide answers solely on a voluntary basis.
Sources: House of Representatives Official Hansard, No. 4, Tuesday, 19 March 2002 (Canberra: The Parliament of Australia, 2002), 1613-14.

Table 2.3 Outcomes of unfair dismissal/unlawful termination applications, 1997-2001

Outcome[1]	1997-98	1998-99	1999-00	2000-01	Total
Dismissed for Lack of Jurisdiction or Out of Time	239	259	238	214	947
Settled by Conciliation	4,094	4,870	4,168	4,447	17,579
Arbitrated (a)	651	277	346	291	1,565
In Favour of the Employee (b)[2]	497[4]	124	150	149	920
In Favour of the Employer[3]	154	153	196	142	645
% of (b) among (a)	76.3	44.8	43.4	51.2	58.8

Notes: (1) Other outcomes reported by the AIRC include: applications withdrawn, settled or discontinued prior to conciliation; applications lapsed due to no election to proceed or to election not to proceed; applications withdrawn, settled or discontinued after conciliation but prior to arbitration; and yet to be finalised; (2) Includes decisions by which either reinstatement or compensation in lieu of reinstatement was ordered and decisions by which no remedy was ordered despite a finding for a breach; (3) Includes decisions by which an application was dismissed on the merits; (4) Includes 282 applications relating to a single employer (Gordonstone Coal Management Pty Ltd).
Sources: House of Representatives Official Hansard, No. 4, Tuesday, 19 March 2002 (Canberra: The Parliament of Australia, 2002), 1615.

Scrapping unfair dismissal laws?

There is little doubt that small business employers are particularly susceptible to the adverse effects of unfair dismissal allegations, and exempting them from unfair dismissal laws would be a great boost to employment. Indeed, there is no reason why medium-sized and large business employers too should not be exempted. Though they have greater resources at their disposal, this does not mean that unfair dismissal claims have insignificant consequences for them. As demonstrated by some of the surveys cited earlier, medium-sized and large businesses also consider unfair dismissal laws as a deterrent to hiring though to a lesser extent. There is a case for scrapping unfair dismissal laws altogether and transferring unfair dismissal jurisdiction from industrial tribunals to general courts.[31]

Considering, however, that even small business exemption has encountered relentless political opposition, immediate and complete abolition of unfair dismissal laws is probably too big an ask. A more plausible option would be to take a smaller step first by just exempting small businesses.

Contrary to popular belief, this would not automatically lead to an explosion of arbitrary dismissals in small business. Employers in most cases benefit by forming a long-term relationship with their employees; longer-serving employees will have a better command of firm-specific knowledge, be more loyal, and so on. It makes little sense for employers to let employees go unless there are good reasons to do so. The absence of unfair dismissal laws is certainly not one of them.

The best form of employment protection is for workers to have as many alternative opportunities as possible, so that, in the event of a dismissal, they would always have other jobs to choose from. Despite their intentions, unfair dismissal laws are not protecting workers. They are depressing the number of available jobs, hitting the most marginalised jobseekers, such as youth, the hardest. An effort to defend unfair dismissal laws is tantamount to an effort to keep the unemployed out of work.

3

The Award System

The award is, as noted in Chapter 1, a legally enforceable document that sets out the minimum rates of pay and conditions of employment. It is usually made by a process that begins with a union serving a log of claims on an employer or a group of employers. These claims are by design extravagant—a 100% pay rise, for example—so that they will be rejected by employers. Thereby arises a 'paper dispute', in which a relevant industrial tribunal is called to conciliate and arbitrate. Conciliation and arbitration are compulsory. Once made, an award is legally binding and remains so commonly for three years.[1]

A typical award applies to employees across an industry or an occupation, and such a one-size-fits-all approach may result in low productivity. Because rates of pay set by an award do not necessarily reflect an employee's performance, workers have little incentive to abandon inefficient work practices. The process of award making, which is set off by creation of a dispute, is also adversarial by nature. It encourages counterproductive confrontation rather than productive cooperation between employers and employees.[2]

Industry or occupational awards have little or no regard for individual enterprises' capacity to pay. Some of the enterprises under a given award may have the capacity to provide wages and conditions as prescribed by that award, while others may simply not be able to afford the consequent labour costs. They may have no choice but to let some employees go or even to close down their businesses. The inflexibility of the award system, then, is responsible for increasing unemployment.

In making their decisions, industrial tribunals are guided by 'comparative wage justice'—a notion that employees performing similar work, irrespective of the enterprise to which they belong, should receive similar pay. In a competitive market, different enterprises would offer different rates of pay according to their productivity. The award system is intended to 'protect' workers from consequent pay differentials, but it instead prices workers out of jobs. The low-skilled, many of whom are dependent on awards for their pay and conditions, are particularly hard hit.

Why the award system is detrimental to the economy

Wage setting in today's Australia remains essentially centralised. Certainly, it is possible by law to adjust award wages upwards (but not downwards), and individual enterprises are allowed to make over-award payments to their employees. Nonetheless, the levels of these payments will still be influenced by base award rates that are centrally determined. There is therefore a broad tendency for wage rigidity—or more precisely, wage relativity between industries and occupations—to persist over time. One study shows that market forces—such as price levels, national productivity and unemployment rates which would determine wage levels in a competitive economy—had little bearing on award wage levels at least before 1997.[3] This is despite the fact that the Australian Industrial Relations Commission (AIRC) is mandated to refer not only to 'comparative wage justice' but also to general economic conditions in performing their tasks (1996 Act, s 90).

Cross-country studies have sharply disagreed on what effect a centralised bargaining system such as the award system might have on economic performance or if there is a link between the two.[4] Yet two recent studies, one by Assar Lindbeck and Dennis Snower and the other by Barry Eichengreen and Torben Iversen, put forward a somewhat compelling though largely theoretical case against centralised bargaining.[5] They both argue that today's industrial economies, which have been

vastly transformed over time, are incompatible with centralised bargaining. Compared with the past, tasks performed by individual workers are far more diverse, and the labour force as a consequence is far more heterogeneous. The 'equal wage for equal work' principle of centralised bargaining, applied under these circumstances, will result in misallocation of resources and lower productivity. According to the authors of these studies, this is why there has been increasing resistance to centralised bargaining in many industrial countries as well as why they need to move further away from their heavily regulated labour market regimes.[6]

This is also why the award system is inefficient. A group of workers who are pigeon-holed by an award and fall under the same occupational category may actually differ in attributes such as judgement, initiative, creativity and competence.[7] Employers should be able to give these workers different sets of tasks and accordingly different wages. Low-skilled workers, a large proportion of whom rely entirely on awards, are no exception.

The outcome of award wage determination might well have been appropriate in the past. But it no longer suits contemporary enterprises or workplaces.

Empirical evidence

Since the AIRC approved enterprise bargaining in October 1991,[8] the locus of industrial relations has, to a remarkable extent, shifted from industries to enterprises. The role of the award system has declined accordingly. Meanwhile, productivity has shot up, and unemployment has fallen. There certainly appears to be a link between less centralised bargaining on the one hand and better economic and labour market performance on the other.

Table 3.1 compares the annual average growth rates of labour productivity, capital productivity and multifactor productivity in Australia.[9] Australia's productivity performance during the growth cycle from 1993-94 through to 1998-99—that is, after the role of enterprise bargaining was enhanced—was unambiguously better than that during any of the preceding

Table 3.1 The rate of annual average productivity growth (%), 1964-1999

Growth cycle	*Labour productivity*	*Capital productivity*	*Multifactor productivity*
1964-65 to 1968-69	2.5	-0.8	1.2
1968-69 to 1973-74	2.9	-0.7	1.5
1973-74 to 1981-82	2.4	-1.5	1.0
1981-82 to 1984-85	2.2	-1.8	0.8
1984-85 to 1988-89	0.8	-0.2	0.4
1988-89 to 1993-94	2.0	-1.3	0.7
1993-94 to 1998-99	3.2	-0.1	1.8
1964-65 to 1998-99	2.4	-0.9	1.1

Source: ABS, *Australian System of National Accounts*, 2000-01, Cat. No. 5204.0, Table 22.

growth cycles. Compared with the previous productivity cycle, both labour productivity growth and capital productivity growth were 1.2 percentage points higher, and multifactor productivity growth, 1.1 percentage points higher.

Survey findings show that firms that opted for enterprise agreements generally had higher productivity than firms that remained on awards:

- A study based on a longitudinal survey of businesses compared the productivity levels of two groups of firms that had adopted different methods of setting wages and working conditions. In the group of firms where all employees were covered by enterprise agreements, productivity levels were on average, 8.8% higher than at firms in which no enterprise agreements existed and all employees instead relied on awards;[10]
- Another survey of businesses asked a sample of 281 Australian firms to rate (i) the current level of employee productivity in comparison with their competitors and (ii) the degree to which they had embraced aspects of industrial relations reform, including enterprise bargaining. The response to each question was given on a scale of one to seven with higher scores indicating higher productivity and responsiveness to reform by self-assessment. The results

> clearly showed that 'pro-reformers were better performers'. Firms that took fuller advantage of the reform reported significantly higher labour productivity compared to their competitors.[11]

These statistics, needless to say, only point to correlation, not causation. The increase in productivity and the decrease in unemployment may have coincided with the spread of enterprise bargaining. Likewise, it is possible that productivity had been higher to begin with at firms that opted for enterprise agreements.

There are, furthermore, a number of factors other than enterprise bargaining that can drive productivity and employment growth. Perhaps the most important of these is technological advance and innovation, which rapidly unfolded in Australia in the 1990s.[12] As a recent review of evidence on the link between enterprise bargaining and productivity suggests, it is a bit too premature to firmly conclude that the decline of the award system has been primarily responsible for the rise in productivity and the drop in unemployment.[13]

That said, it is hard to ignore the fact that all economic indicators have been pointing in the right direction since the early 1990s. There seems little doubt that the reform of the bargaining system has made at least some contribution to the improvements in productivity and labour market performance.

The unfinished business of reform

After the establishment of the compulsory conciliation and arbitration system in 1904, award coverage gradually grew, and stood at 87% of the total workforce in 1974.[14] Although enterprise bargaining has now replaced award making as the predominant method of setting pay, one in five employees still depends entirely on awards and receives wages exactly as prescribed by relevant awards (see Table 3.2). The incidence of award-only coverage is particularly high among the lowest-skilled workers: approximately 42% of 'elementary clerical, sales and service workers' and 34% of 'labourers and related workers' have their pay determined by awards.

Table 3.2 Methods of setting pay, 2002 (%)

Occupation[a]	Skill Level[a]	Awards only[b]	Collective agreements[c]	Individual agreements[d]	Total*
Managers and administrators	1	0.4	20.5	79.1	100
Professionals		7.4	55.7	36.9	100
Associate professionals	2	6.1	37.7	56.2	100
Tradespersons and related workers	3	25.7	27.9	46.4	100
Advanced clerical and service workers		12.1	24.4	63.4	99.9
Intermediate clerical, sales and service workers	4	25.2	35.1	39.7	100
Intermediate production and transport workers		17.7	46.1	36.2	100
Elementary clerical, sales and service workers	5	41.5	35.2	23.3	100
Labourers and related workers		34.4	38.1	27.5	100
All occupations		20.5	38.2	41.3	100

*May not be exactly 100 due to rounding.
Notes: (a) Occupations and skills are classified according to the Australian Bureau of Statistics (ABS), *Australian Standard Classification of Occupations*, 2nd edition, Cat. No. 1220.0 (Canberra: 1997); (b) Employees who had their wages or salaries set primarily by awards and were not paid more than the award rates of pay; (c) Employees who had their wages or salaries set primarily by registered or unregistered collective agreements or enterprise awards; (d) Employees who had their wages or salaries set primarily by registered or unregistered individual agreements.
Sources: ABS, *Employee Earnings and Hours*, Cat. No. 6306.0 (Canberra: 2002), Table 25.

These figures underestimate the continuing effect of the award system, as workers classified under 'collective agreements' or 'individual agreements' in Table 3.2 can still have their pay and conditions influenced by awards in five main ways:

(i) Awards serve as the basis for the majority of enterprise agreements

Enterprise bargaining, after being endorsed by the AIRC, was given a greater role under the Industrial Relations Reform Act

1993 (1993 Act). The Workplace Relations Act 1996 (1996 Act), which amends the 1993 Act, is intended to further facilitate enterprise bargaining. For example, it limits the scope of an award to '20 allowable matters' and encourages employers and employees to include other matters in enterprise agreements.[15] Trade unions negotiate enterprise agreements on behalf of employees at relevant enterprises. Under the 1996 Act, groups of employees are also allowed to undertake enterprise bargaining without union representation.

Once drawn up, an enterprise agreement is brought before a relevant industrial tribunal for a 'no-disadvantage test'. This aims to ensure that pay and conditions established through enterprise bargaining, taken as a whole, are not inferior to those set out in an award that would otherwise be applicable. Enterprise agreements that fail the no-disadvantage test are neither certified by nor enforceable in industrial tribunals. Ultimately, the contents of certified enterprise agreements are to a significant extent dictated by those of corresponding awards.[16]

(ii) 'Comprehensive agreements' remain very rare

Technically speaking, it is possible for a certified enterprise agreement to set all the terms and conditions of employment and thereby to override any relevant awards, but such 'comprehensive agreements' are the exception rather than the rule. Most certified agreements—96.8% according to a 2001 estimate—operate in conjunction with awards.[17] For example, a worker may have his or her pay set by an enterprise agreement and working conditions by awards.

(iii) Increases in award rates flow on to employees whose wages are supposedly set by enterprise agreements

As discussed in Chapter 1, a significant number of employees who have enterprise agreements receive a pay rise conditional on the outcome of the annual award minimum wage review (see page 15).

(iv) 'Pattern bargaining' is common

Pattern bargaining refers to a process of enterprise bargaining whereby trade unions seek uniform pay and conditions for employees across an industry. It is particularly widespread in the building and construction industry, where 61% of workers were covered by pattern agreements in 2000 to 2001.[18] Because pattern bargaining is essentially award making in disguise, it is likely to deliver few if any of the potential productivity or employment gains associated with enterprise bargaining.

(v) Award-only workers who receive 'over-award payments' are classified as being on individual agreements

The 'individual agreements' category in Table 3.2 is not entirely what it seems to be. It includes not only workers who genuinely have individual agreements—for instance, workers whose pay and conditions are set at common law or by certified individual agreements[19]—but also workers who are covered by awards but receive wages that exceed the rates prescribed by those awards (over-award payments).

In short, despite the emerging prevalence of enterprise and individual bargaining, Australia's industrial relations are still greatly influenced by the award system.

For this reason, some commentators regard recent reform as utterly inadequate. Des Moore, for example, argues that the award system as it stands today is still greatly detrimental to the economy and in fact superfluous.[20] In his view, it should be replaced entirely by a system that relies on the common law.[21]

Return to common-law contracts?

Under the common law, freedom of contract is guaranteed. A contract is enforceable at common law as long as it satisfies six prerequisites. Perhaps the most important is the requirement that parties to a contract genuinely consent to its contents. Contracts are void if entered into by mistake, by

misrepresentation, under duress, under undue influence and/or in an unconscionable manner. The other five prerequisites are:[22]

- the parties must have a mutual intention to create a legally enforceable bargain;
- the contract must be made by way of an offer which is made by one party and accepted by the other;
- the contract must be supported by some valuable consideration (that is, it must include a promised wage on which a claim can be enforced);
- the parties must be legally capable of making a contract;
- the contract must not have an illegal purpose.

As Moore puts it, the common law thus 'offers a coherent and viable alternative legal framework within which employment relationships can satisfactorily be established'.[23]

Moore points to two problems that might arise under the common-law contractual regime.[24] One is increased judicial activism. At present, judgements made by industrial tribunals are often seen to be biased against employers,[25] and this might simply be repeated or even escalate under the common law. To counter this, Moore proposes to codify the part of the common law which applies to employment relations and thus to avoid affording undue discretion to the courts.[26] The other possible problem with settling industrial disputes at common law is that it is usually more expensive than using industrial tribunals and would particularly disadvantage those on low incomes. To address such a concern, Moore proposes that the AIRC be replaced by a voluntary (as opposed to compulsory) body that would provide advisory and mediation services to low-income workers 'either on a subsidised basis or free of charge'.[27]

Such an entirely common-law based system appears simple and attractive. It has, however, only limited support among employers.

Box 3.1. Rural and regional unemployment

To divide the whole of Australia into the city and the country is, admittedly, a crude dichotomy. In reality, there is wide variation in economic and other conditions within each of these categories—particularly within the country.

While data on the rural and regional cost of living in Australia are rather sparse, available figures suggest that the cost of living in some regional areas is *higher* than that of their metropolitan counterparts. The Queensland *Index of Retail Prices in Regional Centres* shows that, in October 2001, overall retail prices were higher in 15 out of 45 regional centres than in Brisbane, although the cost of housing was a lot lower in most.[1] Their unemployment rates, on the other hand, tended to be low by state standards. For example, overall retail prices in the Whitsundays were 1.06 times as high as in Brisbane, the highest among all the regional centres surveyed. But its unemployment rate in 2001 was 7.2%—more or less on a par with that of Brisbane (7.3%). Similar data compiled by the Western Australian Regional Development Council indicate that, in November-December 2002, commodity prices, including house prices, in the Pilbara region were 1.11 times higher than those in Perth.[2] Unemployment in the Pilbara region was very low. It stood at 3.0% in December 2000, 3.2 percentage points lower than that in Perth.[3] Pilbara, furthermore, has been a significantly wealthier region than Perth. The average household income in1996, as a ratio to the national average, was 1.22 in the former as opposed to 1.03 in the latter.[4] In 1999-2000, Pilbara's average individual taxable income was 1.32 times higher than that of Perth.[5]

In sum, many regional areas, while having to bear a higher cost of living, enjoy better labour market conditions and a greater share of prosperity.[6] They typically host industries that generate substantial income, such as wine and tourism. In these cases, the introduction of regional award rates would be unnecessary.

Some parts of rural and regional Australia do suffer exceedingly high rates of unemployment and have no viable industries. For example, Whyalla in South Australia and Burnie-Devenport in Tasmania, both of which had

experienced a decline in traditional industries, had exceedingly high unemployment rates in 2001 (13.2% and 12.5%, respectively, as opposed to the national average of 7.4%).[7] It is in those areas that award rates need to be differentiated to help clear the labour market—perhaps even irrespective of the cost of living.

Centralised wage setting, as discussed in this chapter, does not accommodate particular conditions of particular enterprises. Take, for example, a region whose staple industry is declining. Employers in that industry might be struggling to survive, but would not be easily allowed to cut wages if temporarily. The alternative might well be to go out of business entirely. Because wages in this region would not fall while other disadvantages such as remoteness would remain, neither new employers nor new industries would move in. Jobs would continue to disappear, and high unemployment would persist. If exemptions from award wages were granted according to each region's economic and labour market conditions, firms might be encouraged to move into depressed areas to take advantage of low labour costs. New employment opportunities, and even new industries, might emerge as a consequence.

Notes

1 Office of Economic and Statistical Research, *Index of Retail Prices in Regional Centres* (Brisbane: Queensland Treasury, October 2001), Table 1.

2 Regional Development Council, 'Regional Prices Index', www.regional.wa.gov.au.

3 ABS, *2001 Census of Population and Housing: Basic Community Profile*, Cat. No. 2001.0 (Canberra: 2002).

4 Productivity Commission, *Impact of Competition Policy Reforms on Rural and Regional Australia*, Report No. 8 (Canberra: PC, 1999), Table 2.10.

5 Derived from Regional Development Council, *Regional Trends & Indicators*, June 2003, www.regional.wa.gov.au.

6 Tony Sorensen, *Regional Development: Some Issues for Policy Makers*, Research Paper 26, 1999-2000 (Canberra: Parliament of Australia, 27 June 2000).

7 ABS, 'Geographic Distribution of Unemployment', *Australian Social Trends*, Cat. No. 4102.0 (Canberra: 2003), 125-26.

Employers' perception of the award system

Employers seem ambivalent about enterprise bargaining despite its apparent success in boosting productivity at the macro level. The two major industrial relations surveys conducted in the 1990s—the 1995 Australian Workplace Industrial Relations Survey and the 1998 National Institute of Labour Studies Workplace Management Survey—both show that the most common reason why employers adopted enterprise bargaining was to obtain better productivity outcomes.[28] There is, however, little evidence that such expectations had been met before the end of the 1990s. In the 1999 Workplace Agreements Survey of New South Wales Employers, 35% of those who had embraced (any) non-award agreements indicated that profitability had improved as a result, and 39% indicated that labour productivity had increased. Yet on the other hand, 59% claimed that there had been no effect on labour productivity, and 62% indicated that profitability had neither improved nor deteriorated.[29] Of the employers who had no non-award agreements, around half said that this was because they were comfortable with existing awards (55%) and/or because they saw no perceivable advantage in adopting non-award agreements (49%, multiple responses allowed).[30]

Employers thus have mixed perceptions about reform undertaken so far and do not overwhelmingly support it. But does this mean that employers in general *actively support* the award system? To answer this question, The Centre for Independent Studies carried out interviews with several employer associations across Australia while surveying employers' opinions expressed in the media.

The findings show that many employers do see the award system as detrimental to their businesses but that the degree to which they do so differs from one employer to another, depending on the industry to which they belong. Typically, those in agriculture are very critical of awards. The National Farmers' Federation (NFF) has described the award system as 'ancient'[31] and has often expressed strong opposition to the annual safety net decision. For example, the May 2003 safety

net decision, whereby minimum award wages were raised by up to $17 a week, was in the NFF's view 'disappointing when drought had cut 80,000 rural jobs and halved farm incomes' and 'unfair on unemployed rural workers who would be "priced out of jobs".'[32] According to another agricultural employer association, awards are causing farming employers many problems, and they want the award system scrapped.[33]

The strong opposition among farmers to the award system is understandable. Agriculture is particularly susceptible to seasonal fluctuations and weather conditions, and farm incomes are anything but stable or predictable. The award system, which centrally imposes uniform wages and conditions without much regard to local conditions, is impractical for farmers. Industrial tribunals may, in the case of extreme hardship, exempt employers from certain award provisions, but this is very rare.[34] Given such rigidity, the NFF believes that individual employers and employees at workplace levels should make individual agreements, instead of relying on awards or even on enterprise agreements.[35]

An employer association in the building and construction industry similarly thinks that 'there are many' problems with awards.[36] The National Building and Construction Industry Award 2000,[37] the principal award applying to Australia's building and construction industry, is 'highly prescriptive'.[38] Most of all, it specifies 21 allowances and 41 special rates of pay apart from regular wages, which are exceedingly difficult for employers to calculate and keep track of. The Final Report of the Royal Commission into the Building and Construction Industry (the Cole Royal Commission), presented in February 2003, points to this issue and recommends that awards be made less complex.[39] In Commissioner T. H. R. Cole's view, few employees are likely to have a full understanding of their rights, while it is a 'major exercise' for employers to try to ensure that their employees receive precisely what they are entitled to.[40] Allegations of under or non-payment of entitlements are a frequent cause of industrial action in the building and construction industry, which adversely affects productivity.[41]

Similarly, the hospitality and retail industries also suffer under the award system. Awards covering hospitality workers usually set penalty rates for work performed outside the ordinary hours, that is, on weekends and public holidays. The Hospitality Industry—Accommodation, Hotels, Resorts and Gaming Award 1995,[42] for instance, prescribes double time and a half. The Australian Hotels Association (AHA) considered this practice 'outdated' as far as the Tasmanian hotel industry is concerned and said:

> The award system is nearly 100 years old, [and] it was designed for traditional industries where public holiday work was really the exception rather than the rule but our industry is really a 365 day a year industry and public holidays are really a standard working day for those in our industry because we cater to the leisure needs of others.[43]

According to the AHA, the only way for hotels to cover the high labour costs was to raise prices, although most of them were reluctant to do so.[44]

This same award applies not only to Tasmania but also to three other states (New South Wales, Victoria and a part of Queensland). The cost of living, especially that of housing, differs from state to state. The median house price in the March 2003 quarter was $165,000 in Hobart and nearly three times higher in Sydney at $460,000.[45] To rent a two-bedroom flat privately in the same period, Hobart residents would have paid on average $145 per week, while Sydney residents pay almost twice as much at $270 per week.[46] Yet hospitality workers in these cities receive similar wages as long as they belong to the same occupational category. The cost of living also differs between regions within a state, but award workers in city centres would be paid just as much as their country counterparts who fall under the same occupational category. It is questionable whether this is indeed fair for workers in relatively more expensive cities or regions. Neither would it be fair or efficient for regional employers who, while probably

profiting from lower property prices, might be faced with high costs of having locally unavailable goods transported from other areas.

Employers in the Victorian retail industry have also been facing challenges created by awards.[47] In early 2003, the 17,000 retailers that had not been covered by an award were roped into the federal Shop Distributive and Allied Employees Association—Victorian Shops Roping-In (No. 1) Award 2003. They are now obliged to provide their employees with extra payments, such as penalty rates for work performed on weekends and after hours. This represents huge additional labour costs, and many small to medium-sized retailers will not be able to afford them. An association for retail employers noted that the roping-in 'would have quite negative consequences on employment' due to employers who would have to let some workers go or would even be forced out of business.[48] Victorian employers other than those in the retail industry have also been subjected to the same fate since the Federal Awards (Uniform System) Act 2003 came into effect. This means that all Victorian employers, including those who had not been covered by awards before that date, have now been roped into federal awards.

Small business owners in Western Australia had a similar problem when the Gallop government in 2002 abolished state workplace agreements and reinforced the role of awards.[49] The operator of a small patisserie had no choice but to compensate for heavy award penalty rates by a 15% price increase. A letter posted on his shop window read:

> The award system does not provide the seven-day business with the same flexibility that we had with the workplace agreement, where every employee, customer and employer could profit from the advantage. [The price] increase is beyond our control and we apologise for any inconvenience this could cause.[50]

He noted as well that his staff had been satisfied with their previous pay and conditions.[51]

Thus, businesses of certain size and in certain industries find awards contrary to their interests, yet at the same time, there is no pervasive desire to abolish the award system completely.

Broadly speaking, there are two explanations for this. First, the outcomes of enterprise bargaining in some instances may not greatly differ from those which would have been brought about by award making, as is the case with pattern bargaining. As one employers' association pointed out, it is mistaken to assume that, 'in the absence of awards, [employers will] automatically have a better environment'.[52] This may also be true for other certified agreements, the contents of which are largely dictated by those of corresponding awards.

Second, the labour market can be regulated not only through awards but also through statutes. If the award system, including industrial tribunals, were done away with, politicians—of all persuasions—as well as unions and other interest groups would soon begin to fill the legal vacuum with new legislation. Even at present, there is already a myriad of statutes. The New South Wales jurisdiction alone has 49 separate pieces of legislation that govern workplace relations, and statutes regarding occupational health and safety and workers' compensation represent an enormous burden for many employers. An association for retail employers also indicated that small to medium-sized retailers were simply unable to catch up with frequent legislative changes.[53] If awards are removed only to be replaced by statutes, the industrial relations system might end up becoming even more complex. One employer association argued that the award system at least had the advantage of being 'known and understood' among employers.[54]

Toward a more flexible award system

The award system as it currently stands is so rigid that it can act as a deterrent to job creation. Though it may not be realistic to do away with it completely, there is no question about the need for further reform. Such reform should target

specific elements of the award system that are deemed to be particular problems:

(i) Make it easier to access exemption from certain award provisions

Some businesses, small and medium-sized businesses in particular, may find it difficult to comply with awards in times of hardship or in areas with high unemployment. They benefit from obtaining exemptions from award provisions that are deemed particularly onerous. For example, the NFF in October 2003 made an application to the AIRC so that farmers suffering from the prolonged drought would have readier access to wage relief.[55] The AIRC's decision, which accepted the NFF's claim, is thought to have helped minimise further job losses for agricultural workers.[56] Exemptions such as these should be made easier and in particular, exemption should be allowed on the grounds of **regional differentials**.

Regional employers suffer under awards which dictate that workers should be paid the same amount no matter where they live which is inefficient and unfair considering the huge differences in costs of running businesses in different areas. Though some awards used to specify rates of pay for regional employers (now largely out of use),[57] a better solution would be for employers to be able to seek exemption from awards on the *grounds* of regional differentials and set their own rates of pay. Labour costs in country Australia would then be reduced to levels more appropriate to local conditions. Employers would have a greater incentive to open new businesses in and relocate their existing businesses to the country. More jobs would be created as a result (see Box 3.1, p.52). Similar considerations should be made with regard to major city centres whose conditions differ from one to another.

(ii) Outlaw pattern bargaining

The Final Report of the Cole Royal Commission made this proposition with regard to the building and construction industry.[58] A pattern agreement is a quasi-award and is likely

to deliver few of the positive outcomes that may stem from an enterprise agreement. In the case of the building and construction industry, pattern bargaining takes place between union officials and delegates from major contractors and employer associations. Yet the employers who are represented there, Commissioner Cole points out, 'employ relatively few workers', and small subcontractors who employ the most workers in the industry are not involved.[59] The federal 1996 Act, while encouraging enterprise bargaining, does not contain a clause that explicitly precludes pattern bargaining. For this reason, the Cole Royal Commission proposes that such a clause be included in a separate act designed exclusively for the building and construction industry.[60] This should instead be done by amending the 1996 Act so that employers in other industries will also be covered and shielded from the adverse effects of pattern bargaining.[61]

(iii) Reinforce the option to opt out of the award system

Theoretically speaking, employers can offer their employees whatever employment arrangement they may wish, including enterprise or individual agreements which are not certified by industrial tribunals and have the potential to be more flexible. This being the case, why do many employers still choose certified agreements? The answer is enforceability, according to 70% of the managers who responded to the 1998 National Institute of Labour Studies Workplace Management Survey.[62] If conditions provided in certified agreements are breached, remedies can be sought through industrial tribunals. Uncertified agreements, by contrast, can only be enforced at common law. This can be more cumbersome and expensive than going before industrial tribunals. Moreover, while uncertified agreements are not subject to formal no-disadvantage tests, pay and conditions specified by them still have to be at least equal to those of awards or certified agreements that would otherwise be applicable.

There is an argument that employers should have the freedom to do business without undue constraint as long as

their conduct is not in breach of other laws, contrary to public policy, and so forth. If this argument is accepted, then there may be a case for allowing employers to set, in uncertified enterprise or workplace agreements, pay and conditions that reflect their circumstances. Employers, given the discretion to manage the allocation of their resources effectively, might be able to hire extra employees and hence create more job opportunities. This would give rise to a dual system, which would involve on the one hand employment relations operating within the boundaries of the award system and on the other employment relations enforced solely through the common law.

Such a system would only be feasible if two problems were solved. First, it would probably be necessary to set minimum rates of pay and conditions by statute in addition to those set by awards. This is what happened in Western Australia, where, between 1993 and 2002, employers and employees were allowed to enter into workplace agreements that would override awards or other agreements[63] as long as they were in accordance with the Minimum Conditions of Employment Act 1993.

The second problem is that employers opting for the common-law arrangements could face high litigation costs. There are a number of possible solutions to this. One, as Des Moore suggests, is to set up a voluntary body that would advise on and mediate in industrial matters at a low cost.[64] Another is to introduce a user-pay fee into the conciliation and arbitration system, so that those opting in it and those opting for the common-law system would both bear the true cost of the services that they receive. This would reduce the disadvantage of uncertified agreements compared to certified agreements.

Moore's proposal outlined earlier, as well as the Western Australian experience, indicate that a dual system is a practical possibility. If, under that system, the majority of employers opt out of the award system, Australia's industrial relations landscape could entirely be transformed. But if the award system is truly as useful as its staunch supporters say it is, it will survive even without the backing of the government.

4

Trade Unions

The previous three chapters have shown how existing regulations perpetuate joblessness and particularly low-skilled joblessness. They have suggested that, to create more jobs for disadvantaged Australians, it is necessary to further deregulate the labour market. Yet some sections of the community, spearheaded by trade unions, believe that labour market deregulation undertaken so far is solely responsible for the deteriorating wellbeing of the workforce. They thus advocate a variety of measures that would practically re-regulate employment relations.

This is well illustrated by two campaigns currently being waged by unions. The first, which seeks to limit hours of work, is based on the claim that an increasing number of Australians are working longer to the great detriment of their family life, health and safety.[1] Unions thus want hours of work reduced by law.

The other campaign is directed against the growth of casual employment. Casual employees, it is argued, suffer from 'greater insecurity' and 'economic stress' due to irregular hours of work and lower earnings than their permanent counterparts (see also Box 1.1, p. 20).[2] Unions argue that one way to improve the conditions of casual employment is to provide an entitlement for casual employees to convert to permanent employment after six months with the same employer.[3]

Ironically, however, the trends toward longer hours and casualisation emerged in part because of strict labour market regulation. The evidence used by unions to justify these

campaigns, furthermore, does not stand up to closer scrutiny. Even if the hours and casuals campaigns were successful, they would be unlikely to improve workers' wellbeing. Worst of all, the risk of joblessness will further increase among the most disadvantaged sections of the population, the low-skilled.

Limiting hours worked

In 1998, the Australian Council of Trade Unions launched the Reasonable Hours campaign, which sought to introduce into the award system a uniform definition of 'unreasonable hours of work'. Its centrepiece was a claim that two extra days paid leave be provided for workers who have worked in excess of a given number of days or hours over a given period of time.[4] A test case was subsequently opened in November 2001. The Australian Industrial Relations Commission, in its decision eight months later, accepted employees' right to refuse 'unreasonable' overtime—overtime that might pose a risk to health and safety or have a negative effect on family responsibilities—but otherwise rejected the ACTU's claims.[5] The campaign is far from over, and the ACTU is now considering calling for a cap on the number of hours worked per week, which was not among its original claims.[6] In a separate campaign, the Australian Manufacturing Workers' Union in early 2003 sought a 36-hour week across the manufacturing industry, though it was unsuccessful.[7]

These campaigns by Australian unions follow similar initiatives by the European Union, where the total of ordinary and overtime hours is limited to 48 under the Directive on Working Time, and particularly those by France, which has introduced a law capping weekly working hours at 35.[8] The law—sometimes called the Aubry law after Martine Aubry, the former labour minister responsible for it—was touted as an effective way to restore work-life balance and help cut the country's chronically high unemployment by enabling workers to share work. Yet the French government is now under pressure to repeal the law, as will be discussed later.

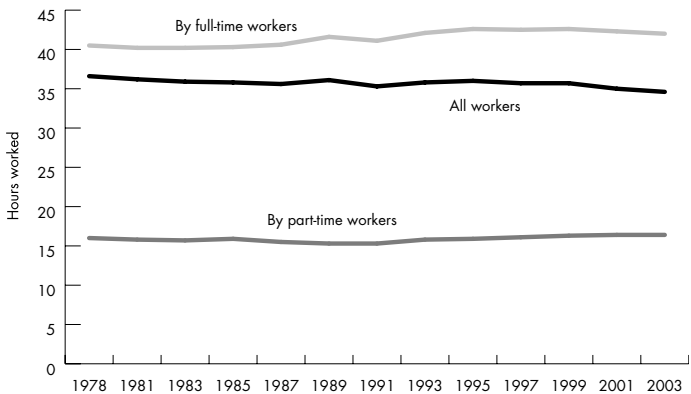
The unions' case for shorter hours is based on two claims. The first is that Australians are spending more and more

hours at work and that limiting hours by law would boost employment as has allegedly occurred in France.[9] The second is that longer hours of work are undermining health and safety as well as family life.

Can workers share hours?

Figure 4.1 shows that, in Australia, the average number of hours worked per week has hardly changed since 1979. Part-time hours have remained more or less constant, although full-time hours have somewhat increased. In 2003, an average full-time worker was working 1.2 hours a week longer than in 1979.

Figure 4.1. Average hours worked per week, 1979-2003

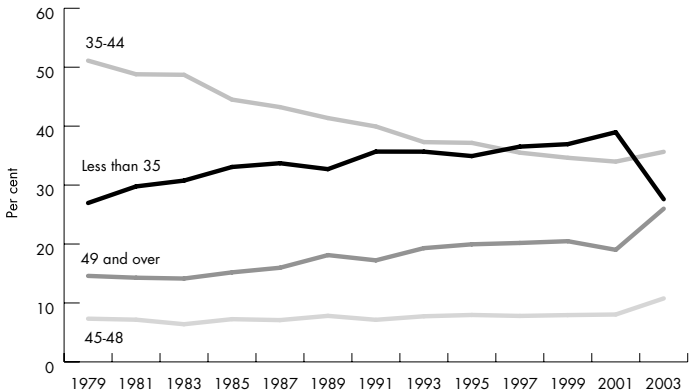


Sources: ABS, *Labour Force, Australia*, Cat. No. 6203.0 (Canberra: various issues); ABS, *Australian Labour Market Statistics*, Cat. No. 6105.0 (Canberra: October 2003).

The incidence of long hours has also risen. Figure 4.2 indicates that, between 1979 and 2003, the proportion of Australians working more than 49 hours per week has increased by about 4 percentage points. According to another source, very long hours are twice as common among the self-employed (own-account workers and employers in

unincorporated businesses), compared with employees.[10] Nonetheless, a significant number of employees—almost one in four—were working 50 hours or more in 2001.[11] Figure 4.2 also shows that the incidence of employees working less than 35 hours per week has increased. This may reflect the growth of underemployment, where the employed want to work more hours but can find no such opportunities.[12]

Figure 4.2. Distribution of hours worked, 1979-2003 (%)



Sources: ABS, *Labour Force, Australia*, Cat. No. 6203.0 (Canberra: various issues); ABS, *Australian Labour Market Statistics*, Cat. No. 6105.0 (Canberra: October 2003).

From Figure 4.2, it is easy to see why the unions claim that limiting and redistributing hours of work could reduce unemployment and underemployment. But as leading French economist Jean-Paul Fitoussi puts it, the claim that a cap on hours will create jobs stems from an 'arithmetical illusion'. It is not possible for eight people working six hours each to produce the same results as six people working eight hours each, because workers are not perfectly homogeneous.[13]

In Australia, there is a skill mismatch between those working short hours and those working long hours. In 2002, 57.4% (1.4 million) of those working more than 49 hours

per week were in high-skilled occupations ('managers and administrators', 'professionals', or 'associate professionals').[14] Cutting their hours might create more work for the 29% (0.8 million) of those working less than 35 hours in these occupational categories, but the remaining 71% (1.9 million), including 33% (0.9 million) in low-skilled occupations ('elementary clerical, sales and service workers' and 'labourers and related workers'), would probably miss out. So would most of the unemployed who are low-skilled.

Furthermore, hours currently worked are largely consistent with workers' preference.[15] Table 4.1, derived from the Household Income and Labour Dynamics in Australia (HILDA) Survey, Wave 2 (2002), shows that the majority of workers are satisfied with their hours. Even the 43.6% working 50 and more hours indicate that they want to work about the same hours.

It is true that, as the number of hours worked increases, the preference for fewer hours grows significantly stronger, and vice versa. But this does not mean that a mandatory limit on hours of work would enable those wanting fewer hours to share their work with those wanting more hours.

Table 4.1. Preference with regard to hours of work (%), 2002

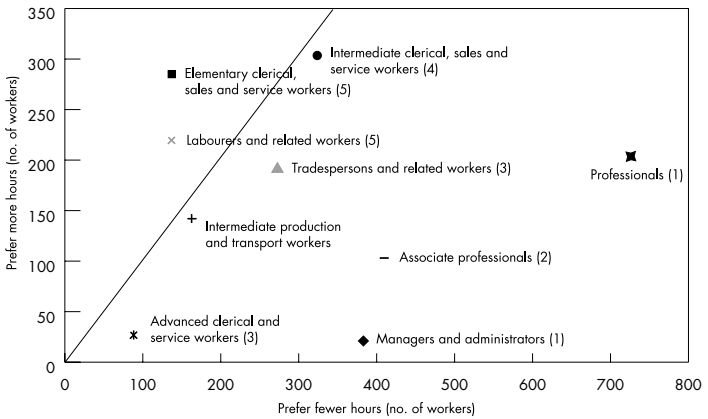
Current hours of work	*Prefer to work*			*Total*
	Fewer hours	*About the same hours*	*More hours*	
Less than 35	8.8	57.0	34.2	100
35 to 39	22.9	59.8	17.3	100
40 to 44	27.6	62.2	10.2	100
45 to 49	42.9	51.3	5.7	100
More than 49	54.2	43.3	2.4	100
Total	28.8	54.9	16.3	100

Source: Derived from the Household Income and Labour Dynamics in Australia (HILDA) Survey, Wave 2 (2002), confidentialised unit record file.

Figure 4.3 plots, occupation by occupation, the number of workers who prefer fewer hours on the *X* (horizontal) axis

and the number of workers who prefer more hours on the *Y* (vertical) axis. Also drawn is a line that connects points where the values of *X* and *Y* are equal. The point representing an occupation will be exactly on this line, if the number of workers wanting fewer hours and the number of workers wanting more hours are exactly the same within that occupation. Redistributing hours from the latter group of workers to the former, then, would eliminate underemployment.

Figure 4.3. Preference of more or fewer hours of work by occupation, 2002



Sources: Derived from Household Income and Labour Dynamics in Australia (HILDA) Survey, Wave 2 (2002), confidentialised unit record file.

Yet if this were to be successful, not only do workers within an occupation need to be completely substitutable with one another, but also the number of extra hours sought by an underemployed worker needs to be exactly the same as the number of hours that his or her 'over-employed' counterpart is willing to give up. Neither of these conditions are realistic.

Even if these conditions were somehow met, the underemployment problem would not be solved, as demonstrated by Figure 4.3. High-skilled occupations—'managers and administrators', 'professionals' and 'associate

professionals'—are located far below the oblique line, indicating that, although a cap on working hours could generate a significant number of additional high-skilled jobs, there would not be enough underemployed workers to fill them. What needs to be created are low-skilled jobs—'elementary clerical, sales and service workers' and 'labourers and related workers'—but in these occupations, there are more workers who prefer more hours than workers who prefer fewer hours. Jobs may be generated by capping hours, but they would elude many of the low-skilled underemployed.

France's persistently high unemployment demonstrates that a cap on hours would not be of much help.[16] While the 35-hour week initially generated 200,000 jobs (equivalent to 0.5% of the population aged 15 to 64 in 2000),[17] Fitoussi points out that 0.2% economic growth would have had the same effect and that dropping interest rates by one point would be more effective in boosting employment.[18] French job market prospects will remain grim unless significant reform is undertaken on the economic and labour market fronts.

Are long hours a problem?

In 2001, an ACTU survey of 50 Australian families concluded that the majority were being negatively affected by unreasonable hours.[19] This finding is at odds with other studies based on larger-scale, more representative surveys.

One, using the results of a survey that ran from 1984 through to 2001, found no significant conflict between long hours and family life.[20] Long hours did not adversely affect satisfaction with family or with life in general, and both job satisfaction and financial satisfaction were higher among those working longer hours.

Another study, which focused on male full-time workers who lived with a partner and had at least one child under 15, similarly concluded that long hours *per se* had little to do with subjective wellbeing.[21] Rather, it depended on the way in which workers *viewed* their working hours. Fathers who enjoyed working very long hours were coping as well as,

or even better than, fathers who enjoyed working 'standard hours' (35 to 40 hours per week). Neither did fathers who did not enjoy long hours appear pervasively worse off than fathers who did not enjoy working standard hours. A similar analysis of a wider range of families also concluded that working more than 48 hours per week had no sizeable adverse effects on family life or general wellbeing.[22]

France's 35-hour week has arguably *undermined* workers wellbeing. A recent study shows that 36% of the French want the 35-hour week scrapped while 18% want it suspended.[23] In total, 54% are opposed. The most enthusiastic supporters of the law are white-collar workers in large businesses, who are now enjoying longer holidays and occasional four-day weekends. Poorer workers are frustrated because they have lost much of an important source of extra income in overtime earnings,[24] and others are stressed because they do not have enough time to get their work done. The adverse effect of the law is most visible at hospitals, where the waiting lists are growing longer. Some blame the 35-hour week for contributing to 15,000 heatwave deaths in the summer of 2003.[25]

Casual rights

Casual employment, as opposed to permanent employment, is now increasingly common. In August 2002, over 27% of Australian employees were casuals. This represents a 8.4 percentage point increase since 1998, the earliest year for which data is available.[26] While the term 'casual' suggests temporariness, today this is not necessarily the case. In 2001, 57% of casual employees had been in their current jobs for more than a year, and the average duration of casual employment was 2.6 years.[27]

Casual jobs are often regarded as 'inferior' to permanent jobs, and employers who hire casuals are sometimes seen as simply trying to cut corners. Consequently, unions have been attempting to give casual employees the right to convert to permanent employment after six months with the same employer. In early 2003, the New South Wales Labor Council

launched a test case seeking this, and the ACTU is pursuing a nationwide campaign.[28] The federal Labour Party has developed a similar platform.[29]

Casual employees, with a few exceptions, have no leave entitlements.[30] Federal and state industrial relations regulations exempt them from a number of leave provisions, such as sick leave, annual leave and parental leave. They are also exempt from unfair dismissal laws. Under the Commonwealth Workplace Relations Act 1996, for example, a casual employee is not eligible to make an unfair dismissal application before completing 12 months of service (s 170CBA(3)(a)). In short, casual employment implies less onus on employers.

The lack of leave entitlements is sometimes seen as a way for employers to save on labour costs. But according to one study based on a 1995 survey, cost-cutting was not the primary motive for employers who hire casuals.[31] Casuals usually receive, in lieu of leave entitlements, a 'loading' of 20% to 30%. The saving made on leave provisions is offset, sometimes more than offset, by these loadings.[32] Many employers indicated that the rigidity of labour market regulations was a more important determinant of their recruitment practices, pointing particularly to unfair dismissal laws. As discussed in Chapter 2, unfair dismissal laws make it more cumbersome and costly for employers to fire employees, even for legitimate reasons, and casual employment offers one way to avoid this possibility.

How do casuals feel about their jobs?

Casual employment appears to have grown due not only to employer preferences but also to the needs of many working-age individuals who want more flexible arrangements than those offered by permanent employment. These include people who have major non-work commitments. In 2001, for example, 28% of casual employees were studying full-time while 17% were women with dependent children. This explains why three-quarters of casual employees work part-time (less than 35 hours).[33] Also reported have been cases where employers had

to offer more diverse forms of engagement, including casual positions, to attract and retain employees.[34]

Job satisfaction among casual employees, moreover, is more or less on a par with permanent employees. The HILDA Survey asks its employed respondents to rate their job satisfaction on a scale of 0 to 10. The higher the score, the higher the satisfaction. As shown in Table 4.2, female casual employees in 2001 were just as satisfied with their jobs as their permanent counterparts and were particularly pleased with the flexibility that casual positions offer. Likewise, overall job satisfaction among male casual employees was fairly high. They were less satisfied with their job security compared with male permanent employees, but this was restricted to those working full-time—a mere 4% of the male working population.[35]

Table 4.2. Job satisfaction of employees, excluding owner managers (mean scores), 2003

	Casual	*Fixed-term[a]*	*Permanent*
All males			
Pay	6.63	6.98	6.79
Job security	6.77	7.26	7.92
Work itself	7.02	7.93	7.56
Hours worked	6.85	7.04	7.10
Flexibility available to balance work and non-work commitments	7.42	7.24	7.15
Overall job satisfaction	7.18	7.75	7.46
All females			
Pay	6.92	6.60	6.63
Job security	7.32	7.28	8.31
Work itself	7.30	8.01	7.69
Hours worked	7.24	7.28	7.36
Flexibility available to balance work and non-work commitments	7.97	7.47	7.38
Overall job satisfaction	7.68	7.90	7.72

Notes: (a) Fixed-term employees refer to those who may have leave entitlements but are on fixed-term contracts.
Source: Mark Wooden and Diana Warren, *The Characteristics of Casual and Fixed-term Employment: Evidence from the HILDA Survey*, Melbourne Institute Working Paper No. 15/03 (Melbourne: Melbourne Institute of Applied Economic and Social Research, June 2003), Tables 5 and 6.

Overall, casual employees were content with their pay as well. Though their earnings ($16.45 per hour) were lower than those of permanent employees ($19.80 per hour), this reflects the fact that many were relatively less educated and less skilled.[36] More than 42% of casual employees at the time of the survey had no post-school qualifications, and about the same proportion were in low-skilled occupations ('elementary clerical, sales and service workers' or 'labourers and related workers').

Casual employment can also serve as a stepping stone to other jobs, particularly for the less educated. Those who lack a secondary school qualification generally do not fare well in the labour market. By contrast, a low level of education *beyond that* decreases an unemployed person's, but not a casual worker's, chance of finding a permanent job. Those who have completed secondary school but may not have any further education are likely to experience difficulty moving from unemployment to permanent employment, but landing a casual job brings them relatively closer to permanent opportunities. The longer the time spent in casual employment, the greater the probability of transition to permanent employment, though not necessarily with the same employer. This points to the importance of experience and a network of contacts acquired through casual work.[37]

Do casuals want or need permanent jobs?

Under the federal Metal, Engineering and Associated Industries Award, casual employees have had the right to convert after six months to permanent employment since 2001.[38] According to one source, not a single casual employee had chosen to do so as of April 2002.[39] They did not see any immediate benefit in having paid annual leave, sick leave and public holidays, and preferred the extra pay from casual loadings and the flexibility of casual employment arrangements.

Many industries need casual employees for a period longer than six months but shorter than 12 months. Take the pharmaceutical and sporting industries.[40] Temporary

assignments in the pharmaceutical industry often involve complex tasks, such as handling of highly toxic substances. The lengthy and costly training that is required is not cost-effective unless the trained casuals are employed for more than six months. In the sporting industry, the AFL season, for example, lasts 33 weeks, longer than six months but not a whole year. In these cases, it would not make economic sense to require employers to grant casual workers permanent status after only six months of employment.

Unintended consequences

The labour movement nowadays appears to have lost much of the relevance that it previously enjoyed, and union membership has significantly declined over the past three decades. In 1982, close to 60% of Australian workers belonged to unions.[41] By 2002, the figure had dwindled to just over 23%.[42] The hours and casuals campaigns can be seen as a manifestation of unions' desperate bid to reverse this trend by imposing union-negotiated conditions and reasserting their relevance.

While these campaigns are allegedly intended to bolster workers' rights and may help a minority of workers, the majority would be hit by unintended, undesirable consequences—that is, diminishing employment opportunities.

In a September 2002 survey exploring businesses' views on the Reasonable Hours Test Case, a significant proportion (49.2%) of employers indicated that, if overtime had been regulated as per the ACTU's claim, there would have been substantial cost implications.[43] Respondents estimated that it would cost an average of $182,348 per company or $3,187 per federal award employee.[44] Asked what would have been the primary source of the possible cost increase, 54.2% pointed to an increase in labour costs.

It is not hard to understand that shorter hours may destroy rather than create jobs. Reducing hours while holding wages constant would mean increased labour costs per hour. Employers who cannot afford higher labour costs could in turn cut jobs. Low-skilled workers are disproportionately affected

because the demand for low-skilled labour is particularly susceptible to the price of that labour.[45]

Likewise, regulation of casual employment would put many jobseekers and casual employees at a disadvantage. Employers, faced with the prospect of having eventually to offer casual employees a permanent status, might stop hiring casuals or begin to replace existing casual employees with a smaller number of permanent employees.[46] Either way, casual jobs are destroyed. Because a large number of casuals as well as jobseekers are low-skilled, the destruction of casual employment opportunities would worsen low-skilled joblessness.

Both the hours and casuals campaigns would harm rather than help most workers. These, importantly, included the most disadvantaged labour market participants, whose interests unions claim to represent.

Deregulation, not re-regulation

Unions appear to be under the impression that more labour market regulations will stop the spread of long hours and casual employment. Evidence shows that the truth is quite the contrary. It is these very regulations that determine businesses' recruitment practices. Employers who wish to avoid unfair dismissal laws, for instance, prefer to rely on casual rather than permanent employees. Similarly, hours of work may have become longer due in part to employers' desire to minimise risks associated with unfair dismissal laws, as noted in Chapter 2. A smaller number of employees means a smaller number of possible unfair dismissal allegations, although each employee would have to work longer. Long hours and casual employment are not necessarily bad things, as the majority of employees are happy with these arrangements. Even if these were to be combated, stricter regulation would merely make matters worse. Unions are barking up the wrong tree.

Some workers do struggle to balance work and non-work commitments and/or have difficulty in moving from casual into permanent employment. But introducing uniform

regulations to cater for the needs of this minority would also affect the majority who are satisfied with the status quo. A less collectivised approach is necessary. Unions should acknowledge that individual employers and employees are free to work out their respective problems at enterprise or workplace levels and negotiate individual enterprise agreements. Workers who do want the help of unions in negotiating pay and conditions should also be able to do so. Heavy-handed regulation is rarely a solution nowadays, and unions need to accept that.

PROPOSALS TO FREE UP THE LABOUR MARKET

1. Freeze the level of the award minimum wage while boosting the after-tax income of the low-paid by raising the tax-free threshold.

2. Exempt small businesses from unfair dismissal law, monitor the results and if the results are positive, extend the reform to cover medium and large businesses.

3. Make the award system more flexible by:
   (i) Making it easier to access exemption from certain award provisions. In particular by allowing exemption from awards on grounds of regional differentials;
   (ii) Outlawing pattern bargaining; and
   (iii) Reinforcing the option to opt out of the award system.

4. Negotiation over employment arrangements should be left to individual employers and employees at enterprise and workplace levels without the interference of trade unions. Current union campaigns should be rejected and:
   i) employers should not be forced to offer permanent positions to casuals after six months;
   ii) working hours should not be limited by law.

Conclusion

The examples of labour market regulation discussed in this monograph demonstrate that in a complex world social engineering rarely works as intended. There is such an enormous number of factors operating in any given system that no social engineer could possibly take them all into account. Intervention designed to bring about change in one part of the system sets in motion an unforeseeable chain of events elsewhere, leading inevitably to unintended and often unwelcome consequences. The annual safety net adjustment, in an effort to allocate uniform sets of prices to diverse groups of workers, does little to lift the living standards of the working poor. It instead raises the cost of low-skilled labour above the level which employers are willing to pay. Jobs that are scarce to begin with disappear in even greater numbers as a consequence. Conditions of employment set in an award have the same effect. Unfair dismissal laws which are intended to deter firing discourage hiring. Limiting hours and regulating casual employment might help a minority of workers but they do so at the expense of the majority. These measures would end up destroying jobs by pushing up labour costs per hour and the cost of casual labour.

Labour market regulation may benefit the 'insiders', or those in work, but harm the 'outsiders', or those marginally in work and those out of work.[1] The myriad of employment laws may afford the insiders higher earnings, protection from dismissals, generous entitlements, and so on. The outsiders, however, pay for this, as their effort to gain employment continues to be frustrated.

The Australian workforce today is not what it used to be at the time the compulsory conciliation and arbitration system emerged. Not only has globalisation transformed the environment surrounding it, but it is also increasingly heterogeneous. 'Fordism', the mass production of standardised commodities that was common in the past, was sustained by a more or less homogeneous workforce using more or less the same set of skills. This is not the case any more. The array of goods and services demanded in the marketplace is now far wider, and accordingly, workers as a whole perform a far wider array of skills. Uniform labour market regulation might have been suited to the uniform workforce of the past; but it is not compatible with the diverse and rapidly evolving workforce of today.

The more appropriate role for the government is to help maximise the capacity of the labour market to create jobs in a manner proposed in this monograph: by freezing minimum wages, phasing out unfair dismissal laws and making the award system more flexible. The government must acknowledge the diversity of the labour market rather than steer it in a single direction by means of heavy-handed regulation.

An adequately deregulated labour market provides the best protection for employees, because it encourages job creation and boosts the employment prospects of jobseekers. Strict regulation which forces employers to pay a certain level of wage and to meet conditions as prescribed ends up destroying jobs. It does not improve but merely undermines the wellbeing of Australian workers and their families.

Appendix

Chapter 1 Data and Method

The characteristics of low-wage earners discussed in Chapter 1 were derived using the Household Income and Labour Dynamics in Australia (HILDA) Survey, Wave 2 (2002) confidentialised unit record file.

The HILDA Survey is a panel survey which aims to track all individuals in the same sample of households over an indefinite time period on an annual basis.[1] The first wave of the survey was carried out in the latter half of 2001, and the second wave, in the latter half of 2002. The initial sample included 12,252 addresses across Australia, of which 804 were, for instance, non-residential and thus identified as 'out-of-scope'. Of the remaining 11,448, 245 addresses contained more than one household, bringing the final number of 'in-scope' households up to 11,693.[2] Interviews were successfully completed with 13,969 individuals in 7,682 households. The household response rate was thus 65.7%.

Sue Richardson and Ann Harding, in deriving the characteristics of low-wage earners as of 1994-95, used the income unit as the unit of analysis,[3] while Chapter 1 focused on the household.

Some households had reported negative incomes, which may have arisen from negative gearing, for instance. These households were retained along with households that had reported zero incomes.

Household financial year disposable incomes were then adjusted to allow for household sizes, using an 'equivalence scale'. A household consisting of a couple, for example, is obviously better off than another consisting of a couple and two children even if they have the same household disposable income. Per capita income for each of these households might be computed simply by dividing their household incomes by two and four, respectively. But this fails to take into account 'economies of scale', or more plainly, the fact that members of a household would share goods such as electrical appliances.

Children also tend to need less than adults. Equivalence scales are intended to avoid these problems.

There are several equivalence scales that are in common use. The Australian Bureau of Statistics, for instance, uses the 'modified OECD' equivalence scale, which allocates 1.0 point to the first adult (aged 15 and over), 0.5 to each additional adult and 0.3 to each child. The 'international' scale, applied in Chapter 1, is simply the square root of the number of persons in each household, which is known nevertheless to yield very similar results as the modified OECD scale.

In deriving per hour wages and salaries, gross annual wages and salaries were divided by hours worked. This meant that either a low annual wage or long hours could result in a low hourly wage. It is questionable, however, whether those who have low hourly wages due merely to very long hours can justifiably called the 'low-paid'. As shown in Chapter 4, employees working very long hours tend to be high-skilled and thus high-paid. Chapter 1, therefore, capped hours worked at 40, as done by Richardson and Harding.[4] Those reporting to have had zero wages and/or worked zero hours were excluded at this stage.

Some wage-earners were found to have had implausibly low wages, that is, wages below the minimum wage level. Richardson and Harding, encountering the same problem, point to two reasons.[5] One is that some workers may end up working more hours than they are paid for. The other is the black economy. Below-minimum wages, in other words, can occur, and were thus included in analysis.

In the HILDA Survey, there are two variables for hours worked: one for those who worked more or less the same hours every week, and the other for those whose hours varied from week to week and therefore reported hours worked in the week previous to the survey. Chapter 1 excluded the latter to avoid misleading results. Analysis including it, which was run for the purpose of comparison, suggested that a significant number of those whose hours varied are 'not an employee', that is, the self-employed or employees of their own business.

Endnotes

Introduction

1 Friedrich A. Hayek, *The Road to Serfdom* (London: Routledge & Kagen Paul, 1979 [1944]), 4.

2 Marian Sawyer, *The Ethical State?: Social Liberalism in Australia* (Melbourne: Melbourne University Press, 2003), 55, 63.

3 Australian Bureau of Statistics (ABS), *Labour Force, Australia*, Cat. No. 6202.0 (Canberra: October 2003), Table 2.

4 Matt Wade, 'Jobs for All, Promises Costello', *The Sydney Morning Herald* (10 November 2003).

5 Unemployment figures are underestimated due to 'hidden' unemployment—unemployment that is not captured by official statistics because of the way in which they are compiled. This includes the sizeable number of working-age individuals who could take up work but are in receipt of Disability Support Pension. See Peter Saunders, *A Self-Reliant Australia: Welfare Policy for the 21st Century*, Occasional Paper 86 (Sydney: The Centre for Independent Studies [CIS], 2003), 41). Lixin Cai has found that, between 1995-96 and 1999-2000, 50% of new disability pensioners in Australia were those previously on unemployment benefits (Department of Family and Community Services [FaCS], *FaCS Research News*, No. 15 (Canberra: March 2003)), 13.

6 Ola Sjöberg, 'Unemployment and Unemployment Benefits in the OECD 1960-1990: An Empirical Test of Neo-classical Economic Theory', *Work, Employment & Society* 14:1 (March 2000), 57.

7 ABS, 'Labour Market Transitions of Teenagers', *Australian Labour Market Statistics*, Cat. No. 6105 (Canberra: October 2003), 14.

8 Derived from ABS, *Australian Labour Market Statistics*, Cat. No. 6105.0 (Canberra: January 2004), Table 3.1.

9 OECD, 'Getting Started, Settling In: The Transition from Education to the Labour Market', *Employment Outlook* (Paris: 1998), 82.

[10] Jocelyn Pech and Frances McCoull, 'Transgenerational Welfare Dependence: Myths and Realities', *Australian Social Policy* 2000:1 (2000), 43-67.

[11] Unemployment is not necessarily synonymous with joblessness. The unemployed refer to those who are out of work and are looking for a job. The jobless are also out of work but may or may not be looking for a job. They consist, in other words, both of those unemployed and of those 'not in the labour force'.

[12] Rosanna Scutella and Mark Wooden, *The Characteristics of Jobless Households in Australia: Evidence from Wave 1 of the Household Income and Labour Dynamics in Australia (HILDA) Survey*, a paper presented at the Australian Social Policy Conference (Sydney: Social Policy Research Centre [SPRC], University of New South Wales), Table 10.

[13] Ann Harding, Rachael Lloyd and Harry Greenwell, *Financial Disadvantage in Australia 1990 to 2000: The Persistence of Poverty in a Decade of Growth* (Sydney: The Smith Family, 2001).

[14] Kayoko Tsumori, Peter Saunders and Helen Hughes, *Poor Arguments: A Response to the Smith Family Report on Poverty in Australia*, Issue Analysis No. 21 (Sydney: CIS, 16 January 2002).

[15] Harding, Lloyd and Greenwell, *Financial Disadvantage*, Table 4. The Henderson poverty line, which was developed in the 1970s, also produces inflated poverty estimates for a similar reason: the average household disposable income, to which it is periodically indexed, has rapidly grown over the past three decades. A study using this poverty line shows that, while 19.6% of all 'income units' (groups of persons within a household who share income) were 'poor' in 1995-96, the corresponding figure for income units containing at least one full-time worker was just 5.3%. See Tony Eardley, *Working But Poor? Low Pay and Poverty in Australia*, SPRC Discussion Paper No. 91 (Sydney: SPRC, UNSW, November 1998), Table 9.

[16] John P. Martin and David Grubb, 'What Works and for Whom: A Review of OECD Countries' Experience with Active Labour Market Policies', *Swedish Economic Policy Review* 8 (2001), 25.

[17] As above, 25.

[18] Martin Evans, *Welfare to Work and the Organisation of Opportunity*, CASE Report No. 15 (London: Centre for Analysis of Social Exclusion, London School of Economics, 2001), 49.

[19] John Freebairn, 'Labour Market Programs', in Business Council of Australia (BCA), *New Directions: Rebuilding the Safety Net* (Melbourne: 2000), 100.

[20] OECD, *Innovations in Labour Market Policies: The Australian Way* (Paris: 2001), 198.

[21] Steve O'Neill, *Changes to Employment Assistance: More or Less Effective*, Research Paper 26 1998-99 (Canberra: Parliament of Australia, 29 June 1999), Table 1.

[22] OECD, *Innovations*, 216-17.

[23] Thorsten Stromback and A. M. Dockery, *Labour Market Programmes, Unemployment and Employment Hazards: An Application using the 1994-1997 Survey of Employment and Unemployment Patterns*, Occasional Paper, ABS Cat. No. 6293.0.00.002 (Canberra: ABS, February 2000).

[24] OECD, *Innovations*, 216-17.

[25] Productivity Commission, *Independent Review of the Job Network*, Report No. 21 (Canberra: AusInfo, 3 June 2002), H.7.

[26] Senate Community Affairs References Committee, *A Hand Up Not a Hand Out: Renewing the Fight Against Poverty*, Report on Poverty and Financial Hardship (Canberra: Parliament House, March 2004), Recommendation 4.32. Although it is hardly clear as to what sort of active labour market programme the authors of the report are recommending, one thing that they seem to have in mind is a job creation scheme developed by the Centre of Full Employment and Equity (CofFEE). Called a Community Development Job Guarantee (CD-JG), it is intended to make a 'buffer stock' of jobs available to target groups. While the Commonwealth government would assume responsibility for funding, jobs would be provided at local government levels in areas such as personal care and reforestation. See William Mitchell, Sally Cowling and Martin Watts, *A Community Development Job Guarantee*, a submission to the Senate Inquiry into Poverty and Financial Hardship (New Castle: CofFee, The University of Newcastle, April 2003). Yet as Mark Wooden had pointed out nearly seven years before, the CD-JG is not very different from the New Work Opportunities (NWO) component of the Job Compact ('The Path to Full Employment? "They're Dreamin'!"' *The Australian Economic Review* 30:4 (December 1997), 445-47). Typical public sector job creation programmes, such as the NWO, are considered ineffective because their participants more likely fail to move on to unassisted employment. This would not be a problem with CofFEE's plan, which is to provide jobs on an ongoing basis. Apart from that, however, the CD-JG is likely to have many of the shortcomings of any other public sector job creation schemes. Among other things, the unemployed, who are on average less skilled and experienced, would end up displacing more skilled and experienced labour, thereby causing a less efficient distribution of employment.

[27] It is also important to remove the interaction between the tax and transfer systems, which weakens work incentives. Under the existing systems,

those who move from welfare to work receive a lot less in income support while paying a little more in income tax. As a consequence, they often end up not much better off than before. Such an anomaly needs to be removed so as to encourage the low-skilled to look for work.

[28] This monograph is based on four previous CIS Issue Analysis papers by Kayoko Tsumori, *Poor Laws (1): The Unfair Dismissal Laws and Long-term Unemployment*, Issue Analysis No. 26 (20 August 2002); *Poor Laws (2): The Minimum Wage and Unemployment*, Issue Analysis No. 28 (2 December 2002); *Poor Laws (3): How to Reform the Award System and Create More Jobs*, Issue Analysis No. 41 (10 November 2003); *How Union Campaigns on Hours and Casuals Are Threatening Low-skilled Jobs*, Issue Analysis No. 44 (22 January 2004).

Chapter 1. Minimum Wages

[1] AW789529. It is at $467.40 per week at the time of writing.

[2] The first attempt at determining a wage in relation to needs was made in the Harvester Judgement of 1907. The Commonwealth Court of Conciliation and Arbitration, in that landmark decision, defined such a wage ambiguously as a 'fair and reasonable wage' that would meet the 'normal needs of the average employee, regarded as a human being living in a civilised community' (*R v. Barger*; *Commonwealth v. McKay* (1908) 6 CLR 41). In a later decision, Justice Henry Bournes Higgins dubbed this the 'living wage', which subsequently became known as the 'basic wage'.

[3] Alan Wood, 'Pay Rise Will Help Destroy Jobs', *The Australian* (6 May 2004).

[4] See, for example, Stefanie Balogh, 'Working Poor Fall through Safety Net', *The Australian* (6 May 2002).

[5] *ACTU Minimum Wages Submission 2003: ACTU Written Submission* (Melbourne: February 2003).

[6] The ABS defines these three concepts as follows (ABS, *Household Income and Income Distribution*, Cat. No. 6523.0 (Canberra: 2000-01), 60-61):

- Household: 'A group of related or unrelated people who usually live in the same dwelling and make common provision for food and other essentials of living; or a lone person who makes provision for his or her own food and other essentials of living without combining with any other person';
- Family: 'Two or more people, one of whom is at least 15 years of age, who are related by blood, marriage (registered or de facto), adoption, step or fostering, and who usually live in the same household';
- Income unit: 'One person or a group of related persons within a household, whose command over income is assumed to be shared.

Income sharing is assumed to take place within married (registered or de facto) couples, and between parents and dependent children.'

7 Sue Richardson and Ann Harding, *Low Wages and the Distribution of Family Income in Australia*, Discussion Paper No. 33 (Canberra: National Centre for Social and Economic Modelling [NATSEM], September 1998), 14-16. The minimum wage, or the lowest adult award rate available, in 1994-95 was about $9.

8 As above, Table 1.

9 As above, 16. Richardson and Harding set the low wage in 1994-95 at $10 for those aged at least 21 and at $6 for those under 21.

10 The federal award minimum wage at the time of the survey was $431.40 per week, or $10.79 per hour assuming a 40-hour work week.

11 The low wage is set at $11 per hour for those aged at least 21 and at $7 for those under 21.

12 Richardson and Harding, 16.

13 Bruce Bradbury, *Are the Low Income Self-employed Poor?* SPRC Discussion Paper No. 73 (Sydney: SPRC, December 1996), 2-3.

14 Derived from the HILDA Survey, Wave 2 (2002).

15 *ACTU Minimum Wages Submission*, Chapter 7.

16 Analysis by the Melbourne Institute of Applied Economic and Social Research, quoted in Balogh, 'Working Poor'.

17 David Card and Alan B. Krueger, *Myth and Measurement: The New Economics of the Minimum Wage* (Princeton: Princeton University Press, 1995).

18 See, for example, ACTU, 'Economics, Science and the Living Wage' (Melbourne: July 1996), www.actu.asn.au.

19 See, for example, Finis Welch, 'Myth and Measurement: The New Economics of the Minimum Wage: Review Symposium: Comments,' *Industrial and Labour Relations Review* 48:4 (1995), 846.

20 OECD, *OECD Labour Market Statistics*, CD-ROM (Paris: 2001).

21 Des Moore, *Minimum Wages: Employment and Welfare Effects, and Why Card and Krueger Were Wrong*, a paper presented at H.R. Nicholls Society XXIII Conference (Melbourne, 22-23 March 2002), 5.

22 Card and Krueger, *Myth and Measurement*, 393.

23 OECD, *Implementing the OECD Jobs Study: Member Countries' Experience* (Paris: 1997); OECD, 'Making the Most of the Minimum: Statutory Minimum Wages, Employment and Poverty', *OECD Employment Outlook* (1998), 31-79.

24 Andrew Leigh, 'Employment Effects of Minimum Wages: Evidence from a Quasi-experiment', *The Australian Economic Review*, 36:4, 361-73; Andrew Leigh, 'Count the Cost of Higher Minimum Wage', *The Australian Financial Review* (14 January 2004). Shortly

after Leigh's paper was published, Raja Junankar of the University of Western Sydney prepared a preliminary critique of it, pointing out a number of alleged errors (*ACTU Minimum Wages Submission*, 95). Leigh, while showing that his findings remain robust after taking most of Junankar's criticisms into account, nevertheless admits that he did make one mistake: he used the ratio of the labour force to the population and referred to it as the employment to population ratio. Correcting this, however, 'makes virtually no difference' to his central findings (Andrew Leigh, '"Employment Effects of Minimum Wages: Evidence from a Quasi-experiment": Response to Professor Raja Junankar's Critique', Attachment 9-B to the Australian Chamber of Commerce and Industry (ACCI), *ACCI Submission—The 2004 Safety Net Review*, www.e-airc.gov.au/wage2004/acci). For that reason, the remainder of this chapter refers to Leigh's original findings unless stated otherwise.

25 Western Australia currently is the only state that has a statutory minimum wage in addition to minimum wages prescribed by federal and state industrial tribunals. Set under the Minimum Conditions of Employment Act 1993, it applies to state, non-award employees.

26 Leigh's amended figure shows that a 1% minimum wage increase would decrease the employment-to-population ratio by a slightly larger margin, or 0.15 percentage points. See n. 24.

27 Leigh, 'Count the Cost'.

28 Peter Tulip, *Do Minimum Wages Raise the NAIRU?* (Washington, D.C.: The Federal Reserve Board, June 2003).

29 Full employment does not mean a zero unemployment rate. It is a theoretical situation where everybody who wants to work can find a job at prevailing rates of pay. It is usually 3 to 6%, because there is always 'frictional unemployment' (unemployment which occurs because there are always some people who are between jobs) and 'structual unemployment' (long-term unemployment which occurs due to structural factos, e.g., a skill mismatch).

30 As above, 6.

31 *ACTU Minimum Wages Submission*.

32 Richard V. Burkhauser, Kenneth A. Couch and David C. Wittenburg, 'A Reassessment of the New Economics of the Minimum Wage Literature with Monthly Data from the Current Population Survey', *Journal of Labour Economics* 18:4 (2000), 676.

33 As above, 653-80.

34 Derived from the HILDA Survey, Wave 2 (2002). This figure excludes employees of own business.

35 Peter Hendy, 'Minimum Wage Must Be a True Safety Net', *The Australian Financial Review* (20 January 2004).

[36] For a detailed description of enterprise agreements, see Chapter 3.

[37] Department of Employment and Workplace Relations (DEWR), *Safety Net Review—Wages 2002-2003: Commonwealth Submission* (Canberra: Commonwealth of Australia, 26 February 2003), www.workplace.gov.au, Figure 6.1.

[38] Leigh, 'Employment Effects', 365.

[39] Derived from M. Walsh, 'Flexibility Key to Labour Gains', *The Sydney Morning Herald* (23 May 1996), quoted in Economic Planning and Advisory Commission (EPAC), *Future Labour Market Issues for Australia*, Commissioned Paper No. 12 (Canberra: Australian Government Publishing Service, 1996), Table 2.3.

[40] EPAC, *Future Labour Market Issues*, 19.

[41] International Labour Organization (ILO), *Key Indicators of Labour Market* (Geneva: ILO), Figure 17c. www.ilo.org. Non-wage costs include employers' contributions to social security and pension schemes.

[42] These include, apart from Australia: Austria, Belgium, Canada, Denmark, Finland, France, Hong Kong (China), Ireland, Israel, Italy, Japan, Luxembourg, Mexico, Netherlands, New Zealand, Norway, Portugal, Republic of Korea, Singapore, Spain, Sri Lanka, Sweden, Switzerland, Taiwan (China), the United Kingdom and the United States.

[43] Australian Industry Group (Ai Group) and Engineering Employers' Association, South Australia, *2003 Safety Net Review Case* (North Sydney: Ai Group, February 2003), 31.

[44] Heather Ridout, 'Pay Rise Short Changes Low-paid Workers', *The Australian Financial Review* (17 May 2002).

[45] Assar Lindbeck and Dennis J. Snower, *The Insider-Outsider Theory of Employment and Unemployment* (Cambridge, Massachusetts: The MIT Press, 1988).

[46] Peter Dawkins, John Freebairn, Ross Garnaut, Michael Keating and Chris Richardson, 'Dear John: How to Create More Jobs', *The Australian* (26 October 1998).

[47] Peter Dawkins and John Freebairn, 'Towards Full Employment', *The Australian Economic Review* 30:4 (December 1997), 410-11.

[48] Derived from ABS, *Australian labour Market Statistics*, Cat. No. 6105.0 (Canberra: October 2003), Table 3.3.

[49] Daniel S. Hamermesh, *Labour Demand* (Princeton: Princeton University Press, 1993). In general, low-skilled labour is more likely to be a 'substitute' for capital (that is, greater use of low-skilled labour entails reduced use of capital) whereas high-skilled labour is more likely to be a 'complement' with capital (that is, greater use of high-skilled labour entails greater use of capital). High-tech machines, for example, may be able to do a job comparable to that of low-skilled

labour, but their operation may call for employment of high-skilled labour. If the cost of low-skilled labour falls for whatever reason, and the price of high-tech machines as a consequence becomes relatively more expensive, then firms will choose low-skilled labour over high-tech machines. This is not the case with high-skilled labour insofar as employment of more high-skilled labour will involve purchase of more high-tech machines, thereby incurring extra costs to firms.

50 Yvonne Dunlop, 'Low-paid Employment in the Australian Labour Market, 1995-97', in *Work Rich, Work Poor*, ed. Jeff Borland, Bob Gregory and Peter Sheehan (Melbourne: Centre for Strategic Economic Studies, Victoria University, 2001), Table 6.3.

51 Kayoko Tsumori, *Is the 'Earnings Credit' the Best Way to Cut the Dole Queues?,* Issue Analysis No. 35 (Sydney: CIS, 13 May 2003).

52 Peter Saunders and Barry Maley, *Tax Reform to Make Work Pay*, Perspectives on Tax Reform (3), CIS Policy Monograph 62 (Sydney: CIS, 2004).

53 H. Buddelmeyer, P. Dawkins, J. Freebairn and G. Kalb, 'Bracket Creep, Effective Marginal Tax Rates and Alternative Tax Packages', *Melbourne Institute Quarterly Bulletin* (January 2004), 17-28, quoted in Saunders and Maley, *Tax Reform*, 12.

54 Saunders and Maley, *Tax Reform*, 12.

Chapter 2. Unfair Dismissal Laws

1 Under s 51(xxxv) of the Australian Constitution, the power of the Commonwealth government in the area of industrial relations is restricted to 'conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one State'. Accordingly, federal industrial courts and tribunals had jurisdiction over only a limited number of matters, which did not include individual dismissals. Employees who fell under the federal jurisdiction and had been unfairly dismissed had little recourse. The 1993 Act, therefore, relied on the external power, which had arisen from the ratification on 26 February 1993 of the International Labour Organisation's Convention 158 on the Termination of Employment. The states, by contrast, have had no such constraint as applied to the Commonwealth, and remedies for wrongful dismissals have existed under common law. After South Australia in addition made a statutory remedy available in 1972, other states followed suit.

2 Bob Bennett, *Workplace Relations Amendment (Fair Dismissal) Bill 2002*, Bills Digest No.79/2001-02 (Canberra: Parliament of Australia, Information and Research Services, 19 February 2002), 3-4.

3 This meant that the employer was required first to prove that the dismissal was not for a proscribed reason.

[4] Ensuring 'fair go all round', a phrase used in *Re Loty and Holloway v Austarlian Workers' Union* [1971] AR (NSW) 95, involves giving consideration to: (a) the importance, but not the inviolability, of the employer's right to manage its business; (b) the nature and quality of the employee's work; (c) the circumstances surrounding the dismissal; and (d) the likely practical outcome if an order for re-instatement is made.

[5] These include the Workplace Relations Amendment Bill 1997, the Workplace Relations Amendment Bill 1997 No. 2, the Workplace Relations Amendment (Unfair Dismissals) Bill 1998, and the Workplace Relations and Other Legislation Amendment (Small Business and Other Measures) Bill 2001.

[6] In addition to the Fair Dismissal Bill 2002, the Coalition government had introduced the Workplace Relations Amendment (Termination of Employment) Bill 2002. Its aim was twofold: to create a single unfair dismissal jurisdiction and to provide a less costly and cumbersome regime for small business. The former was to be achieved by extending the federal jurisdiction to a greater number of workers than at present and excluding the state jurisdictions from hearing most unfair dismissal cases. Proceedings involving small business, on the other hand, was to be handled using different rules, and moreover, the 'qualifying period'—the length of time for which an employee would have to have been with the relevant employer before making an unfair dismissal application—was to be extended from three to six months (Steve O'Neill, *Workplace Relations Amendment (Termination of Employment) Bill 2002*, Bills Digest No. 91, 2002-03 (Canberra: Parliament of Australia, 10 February 2003)). The first Bill, introduced on 13 November 2002, was negatived by the Senate on 11 August 2003. The second Bill was subsequently introduced into the House of Representatives on 6 November 2003 but was rejected by the Senate again on 22 March 2004. See Katharine Murphy, 'National Dismissal Bill Dropped', *The Australian Financial Review* (23 March 2004).

[7] Unlawful terminations are terminations for reasons such as temporary absence from work due to illness or injury, union membership or non-membership, race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction and social origin (the 1996 Act, 170CK(2)).

[8] Senate Employment, *Workplace Relations and Education Legislation Committee, Report on the Provisions of Bills to Amend the Workplace Relations Act 1996* (Canberra: The Parliament of Australia, May 2002), 18.

[9] 'Government Lays Ground for Double Dissolution', *The Sydney Morning Herald* (28 June 2002).

[10] Sophie Morris, 'Senate Delivers Election Trigger', *The Australian* (25 March 2003).

[11] The OECD defines employment protection legislation as legislation imposing restrictions either on hiring or on firing. The former includes, for example, rules favouring disadvantaged groups, and the latter, rules regarding redundancy. That said, the OECD's concept of employment protection legislation is not limited to legislation in the strict sense of the term. It also encompasses prevailing standards governing employment protection no matter what their origins may be. See OECD, 'Employment Protection and Labour Market Performance', *OECD Employment Outlook* (1998), 50-51.

[12] See, for example, Horst Feldmann, 'Labour Market Regulation and Labour Market Performance: Evidence Based on Surveys among Senior Business Executives', *Kyklos* 56:4 (2003), 509-40.

[13] Quoted in James Gwartney and Robert Lawson, *Economic Freedom of the World: 2002 Annual Report* (Vancouver: The Fraser Institute, 2002).

[14] Lindbeck and Snower, *The Insider-Outsider Theory*.

[15] Graeme S. Dorrance and Helen Hughes, *Working Youth: Tackling Australian Youth Unemployment*, CIS Policy Monograph 34 (Sydney: CIS, 1996), 5, 65-66.

[16] ABS, *Small Business in Australia*, Cat. No. 1321.0 (Canberra: 2001), Table 6.1. ABS defines a small business as a business employing less than 20 people.

[17] As above, 13.

[18] As above, 13.

[19] As above, 13.

[20] Quoted in *Small Business Coalition Submission to the Senate Employment, Workplace Relations and Education Committee* (8 April 2002), www.aph.gov.au/Senate/committee/eet_ctte/wrbills2002/submissions/sublist.htm.

[21] Medium-sized and large businesses refer here to businesses with 20 to 99 employees and businesses with more than 100 employees, respectively.

[22] Because the survey was carried out nationwide, the respondents would have in mind both state and federal unfair dismissal laws.

[23] ACCI, *What Small Business Wants: ACCI's Pre-election Survey Results* (Barton, ACT: 2001).

[24] CPA Australia, *Small Business Survey Program: Employment Issues* (Melbourne: 2002), Table 7. CPA Australia is a professional association of Certified Practicing Accountants.

[25] ABS, *Small Business*, Table 3.2.

[26] Don Harding, *The Effect of Unfair Dismissal Laws on Small and Medium Sized Businesses* (Canberra: Department of Employment and Workplace Relations, 29 October 2002).

[27] Harding stresses the importance of asking closed-ended questions which 'specify a limited but exhaustive range of responses'. The question asked in the CPA Australia survey was open-ended ('What do you see as the main impediments to hiring new staff in your industry?'), but the questions asked in the Australian Insitute surveys were closed-ended. This explains much of the difference between these two groups of surveys. Harding also avoids 'leading questions' that assume the existence of certain facts before they are established by respondents' previous answers.

[28] See Ch. 2 n. 7 for the definition of unlawful terminations. They are included in Tables 2.1 to 2.3 because data solely regarding unfair dismissal applications could not be isolated.

[29] Personal communication, 5 July 2002.

[30] For example, Z, a salesperson at a commercial storage facility, was dismissed and filed an unfair dismissal application. Z's job description was to 'source and develop new business opportunities via new and existing clients'. He successfully secured an order worth $1,300 in the third month of his employment, but failed to conclude any other sales for the rest of his six-month tenure. During the appeal process, the AIRC determined that Z was sacked due to his lack of capacity—a valid reason for termination. The appeal was dismissed (Print S5897, 11 May 2000).

In another example, W, a sales assistant at an optical aids retailer, was summarily dismissed after allegedly having misappropriated money from a customer. The customer one day visited the retailer to collect a new pair of prescription glasses. He paid a female sales assistant in cash. When he returned to the store two months later, another sales assistant discovered that, according to the store's records, his glasses were still awaiting collection and payment. He made a positive identification of W during the store's investigation. W refused to meet him face-to-face while continually denying the allegations. The arbitration by the AIRC found the store's investigation to be sufficient and procedurally fair and evidence against W to be convincing. W's application was dismissed (PR913552, 1 February 2002).

[31] The problem here is that, under the Constitution, federal courts do not have jurisdiction over individual dismissals and that employees in the federal jurisdiction would be left without much recourse in the event of an unfair dismissal. The Federal government would need to resort to its corporations power and take over much of state unfair dismissal jurisdiction Under s 51(xx) of the Constitution, the Commonwealth government has the power to make laws with regard to 'foreign corporations, and trading or financial corporations, formed within the limits of the Commonwealth'. The Termination

of Employment Bill 2000, described in Note 89, was to rely on this 'corporations power' in creating a unified unfair dismissal jurisdiction.

Chapter 3. The Award System

1 Parties unsatisfied with the outcome of arbitration may lodge an appeal to the Full Bench of the relevant industrial tribunal.

2 See, for example, Mark Wooden, *Industrial Relations Reform and the Consequence for Working Time, Job Security, Productivity and Jobs*, a paper presented at the Towards Opportunity and Prosperity conference (Melbourne: Melbourne Institute of Applied Economic and Social Research, University of Melbourne, 4-5 April 2002), 2-3.

3 Alison Preston, 'Market and Spillover Forces in Wage Award Determination in Australia, 1986-1997', *Applied Economics* 32 (2000), 1963.

4 For example, Lars Calmfors and John Drifill ('Bargaining Structure, Corporatism and Macroeconomic Performance', *Economic Policy* [April 1988], 14-61), argue that wage bargaining undertaken at the central, or the national, level is less likely than enterprise bargaining to lead to negative consequences such as inflation and unemployment. The central bargainers are compelled to consider the wider implications of wage rises, because the outcomes of their bargaining would affect all workers, not just workers at a particular enterprise. The OECD, on the other hand, finds no statistically significant relationship between bargaining structure and economic performance—although it also stresses that its evidence is by no means conclusive (OECD, 'Economic Performance and the Structure of Collective Bargaining', *OECD Employment Outlook* [1997], 83).

5 Assar Lindbeck and Dennis J. Snower, 'Centralised Bargaining and Reorganised Work: Are They Compatible?' *European Economic Review* 45 (2001), 1851-75; Barry Eichengreen and Torben Iversen, 'Institutions and Economic Performance: Evidence from the Labour Market', *Oxford Review of Economic Policy* 15:4 (1999), 121-38.

6 Lindbeck and Snower, 'Centralised Bargaining', 1873; Eichengreen and Iversen, 'Institutions and Economic Performance', 137.

7 Lindbeck and Snower, 'Centralised Bargaining', 1854, 1869.

8 Australian Industrial Relations Commission (AIRC), Print K0300.

9 Labour productivity is usually measured as the amount produced per hour worked. This measure can be affected by technological changes and changes in other inputs (e.g. capital), as well as changes in labour efficiency. Capital productivity is measured as the amount produced per unit of capital services employed. Equipment, structures, land

and inventories are forms of capital goods used in the production of goods and services. Multifactor productivity refers to real GDP per combined unit of labour and capital.

[10] Yi-Ping Tseng and Mark Wooden, *Enterprise Bargaining and Productivity: Evidence from the Business Longitudinal Survey*, Working Paper No. 8/01 (Melbourne: Melbourne Institute of Applied Economic and Social Research, University of Melbourne, July 2001).

[11] Tim R. L. Fry, Kelly Jarvis and Joanne Loundes, *Are Pro-reformers Better Performer?* Working Paper No. 18/02 (Melbourne: Melbourne Institute of Applied Economic and Social Research, University of Melbourne, September 2002), 10-13.

[12] Wooden, *Industrial Relations Reform*, 5. See also, Dean Parham, Trevor Cobbold, Robert Dolamore and Paul Roberts, *Microeconomic Reforms and Australian Productivity: Exploring the Links*, Volume 1: Report, Commission Research Paper (Melbourne: PC, November 1999), 72-80.

[13] Joanne Loundes, Ye-Ping Tseng and Mark Wooden, 'Enterprise Bargaining and Productivity in Australia: What Do We Know?' *The Economic Record* 79: 245 (June 2003), 245-58.

[14] Derived from D. Plowman, S. Deery and C. Fisher, *Australian Industrial Relations* (Sydney: McGraw-Hill, 1980), Table 5.1.

[15] 'Twenty allowable matters' are: (a) classifications of employees and skill-based career paths; (b) ordinary time hours of work and the times within which they are performed, rest breaks, notice periods and variations of working hours; (c) rates of pay generally such as hourly rates and annual salaries, rates of pay for juniors, trainees or apprentices, and rates of pay for employees under the supported wage system; (d) piece rates, tallies and bonuses; (e) annual leave and leave loadings; (f) long service leave; (g) personal/carer's leave, including sick leave, family leave, bereavement leave, compassionate leave, cultural leave and other like forms of leave; (h) parental leave, including maternity and adoption leave; (i) public holidays; (j) allowances; (k) loadings for working overtime or for casual or shift work; (l) penalty rates; (m) redundancy pay; (n) notice of termination; (o) stand-down provisions; (p) dispute settling procedures; (q) jury service; (r) type of employment, such as full-time employment, casual employment, regular part-time employment and shift work; (s) superannuation; (t) pay and conditions for outworkers, but only to the extent necessary to ensure that their overall pay and conditions of employment are fair and reasonable in comparison with the pay and conditions of employment specified in a relevant award or awards for employees who perform the same kind of work at an employer's business or commercial premises.

[16] The other type of certified non-award agreement that was made possible by the 1996 Act is the Australian Workplace Agreement (AWA). The AWA is struck between an employer and an individual employee, although employees have an option to engage in bargaining jointly. A no-disadvantage test similar to that for enterprise agreements applies. AWAs that fail to satisfy the no-disadvantage test are not enforceable in the AIRC. The primary responsibility to administer the non-disadvantage test for AWAs lies with the Office of Employment Advocate (OEA), a statutory body established under the 1996 Act. The AIRC is nevertheless involved where the OEA is unable to reach a decision whether to certify an agreement. AWAs allow more flexibility compared with awards or certified enterprise agreements. But the no-disadvantage test means that the award system still exerts influence on the contents of AWAs. In any event, the incidence of AWAs remains very low. Although it increased at an average annual rate of 21% between 1999 and 2001, only 1.7% of wage and salary earners are estimated to have been covered by AWAs in 2001. See DEWR and the Office of the Employment Advocate (OEA), *Agreement Making in Australia under the Workplace Relations Act: 2002 and 2001* (Canberra: Commonwealth of Australia, 2002), 149-50.

[17] DEWR and OEA, *Agreement Making in Australia*, Figure 2.7.2.

[18] As above, Figure 3.7.1.

[19] See Ch. 3 n. 16.

[20] Des Moore, 'An Alternative to the Australian Industrial Relations Commission', *Australian Bulletin of Labour* 26:2 (June 2000), 140-41.

[21] It needs to be noted that every existing employment arrangement is underpinned by a common-law contract, be it written or oral. Provisions in a contract cannot be less generous than those of a corresponding award.

[22] James J. Macken, Paul O'Grady and Carolyn Sappideen, *The Law of Employment*, 4th Edition (North Ryde: LBC Information Services, 1997), 74-94.

[23] Moore, 'An Alternative', 141-43.

[24] As above, 140.

[25] See, for example, Des Moore, *Judicial Intervention: The Old Province for Law and Order*, an address to The Samuel Griffith Society's 13th Conference (Melbourne, 31 August-2 September 2001), www.hrnicholls.com.au.

[26] Moore, 'An Alternative', 142.

[27] As above, 143.

[28] Mark Wooden, *The Transformation of Australian Industrial Relations* (Leichhardt: The Federation Press, 2000), 47-48.

[29] Richard Hall and Kristin van Barneveld, *Working It Out? Why Employers Choose the Agreements They Do—A Survey* (Sydney: Australian Centre for Industrial Relations Research and Training, University of Sydney, October 2002), Table 17.

[30] As above, Table 1.

[31] 'National Farmers' Federation Opposes Wage Rise', *ABC Online*, www.abc.net.au (19 February 2000).

[32] Paul Robinson, '$17 Wage Rise Ruling Angers Farmers', *The Age* (7 May 2003).

[33] Interview, 19 September 2003.

[34] An employer association, interview, 29 September 2003.

[35] 'Workplace Agreements Should Replace Awards', News Release, The National Farmers Foundation (24 January 2002).

[36] Personal communication, 13 October 2003.

[37] Award ID AW790741.

[38] Royal Commission into the Building and Construction Industry, *Final Report: Reform—National Issues Part 2*, Vol. 8 (Melbourne: Royal Commission into the Building and Construction Industry, 24 February 2003), 43.

[39] As above, Chapter 9.

[40] As above, 50.

[41] As above, 50.

[42] Award ID AW783479.

[43] 'Hospitality Award Needs Reform—AHA', *ABS News* (7 June 2003).

[44] Kane Young, 'Hotels Say Public-Holiday Wages Too High', *Hobart Mercury* (7 June 2003).

[45] Spatial and Distributional Analysis Section, Department of Family and Community Services, *Australian Housing Market: Statistical Update—June 2003*, www.facs.gov.au.

[46] As above.

[47] The legal environment surrounding Victorian employers is somewhat unique. After having abolished the state award system in 1993, Victoria in 1996 ended up referring most of its industrial relations powers to the federal government. As a result, there is now a dual system. On the one hand, there are workers who are covered by federal awards or certified agreements, and on the other, there are workers whose minimum terms and conditions of employment are provided by Schedule 1A of the federal 1996 Act.

[48] Personal communication, 2 October 2003.

[49] The WA *Workplace Agreements Act* 1993 allowed employers and employees to enter into workplace-level agreements that, unlike federal workplace agreements, overrode awards. Both collective and individual workplace agreements were possible, while the latter took

precedence over the former. The *Labour Relations Reform Act* 2002, however, replaced all state workplace agreements with 'employer-employee agreements' that are subject to certification by the WA industrial tribunal and are thus less flexible.

[50] Ben Harvey, 'Prices Up As Shops Face New Pay Law', *The West Australian* (2 December 2002).

[51] Surveys carried out by the Chamber of Commerce and Industry in Western Australia in November 2000 and January 2002 suggest that the majority of WA employees were indeed satisfied with workplace agreements. Fifty percent of survey respondents believed that their earnings were likely to be higher under an individual workplace agreement, whereas only 13% indicated that this would be the case under an award; 52% believed that their working life was likely to be more flexible under an individual agreement, whereas only 13% indicated that this would be the case under an award; 50% wanted to be on an individual workplace agreement, whereas only 14% wanted to be on an award; and finally, a whopping 84% supported further deregulation of industrial relations.

[52] Personal communication, 29 September 2003.

[53] Personal communication, 2 October 2003.

[54] Personal communication, 29 September 2003.

[55] 'Farmers on EC Shouldn't Pay Wage Rises—NFF', *Australian Associated Press* (21 October 2003).

[56] 'NFF Scores Industrial Relations Win for Struggling Farmers', National Farmers' Federation News Release (20 November 2003), www.nff.org.au.

[57] For example, a December 1989 decision by the AIRC documents a case where regional differentials for the coutry printing industry were removed as part of 'award restructuring' (AIRC Print J0813). Award restructuring, initiated in 1988, refers to a process of revising awards by removing obsolete classifications, reducing the number of classifications and redefining the range of tasks falling under each classification.

[58] Royal Commission into the Building and Construction Industry, *Final Report: Reform—Establishing Employment and Conditions*, Vol. 5 (Melbourne: Royal Commission into the Building and Construction Industry, 24 February 2003), 61.

[59] As above, 59.

[60] As above, 61. Commissioner Cole's recommendation discussed here is as follows:

An Act dealing specifically with the building and construction industry, provisionally called the Building and Construction Industry Improvement Act:

(a) prohibit 'pattern bargaining', that term being defined broadly along the lines adopted in the Workplace Relations Amendment Bill 2000 (C'wth);
(b) provide that, on application of an interested person or the proposed Australian Building and Construction Commission, the Federal Court may grant an injunction (interim, interlocutory or permanent) restraining any person or the servants or agents of any person from engaging in pattern bargaining; and
(c) provide that it is a ground for the deregistration of any employer organisation or union registered under the Workplace Relations Act 1996 (C'wth) that such an organisation has contravened or failed to comply with the terms of such an injunction.

61 The federal Coalition government introduced in November 2003 the Building and Construction Industry Improvement Bill, which aims, among other things, to provide injunctions to stop pattern bargaining.

62 Mark Wooden, *The Transformation*, Figure 3.5 (multiple responses allowed).

63 See Note 163.

64 Moore, 'An Alternative', 143.

Chapter 4. Trade Unions

1 ACTU, 'Reasonable Hours', www.actu.asn.au.

2 Paul Robinson, 'ACTU to Launch Casuals' Test Case', *The Age* (6 August 2003).

3 Another campaign component aims to entitle casual employees to unpaid maternity leave.

4 The part of the proposed award clause referred to here is as follows:
28.3.1 If an employee works
(a) an average of 60 hours per week over a four week period; or
(b) 26 days over a four week period; or
(c) an average of 54 hours per week over an eight week period; or
(d) 51 days over an eight week period; or
(e) an average of 48 hours per week over a twelve week period; or
(f) 74 days over a twelve week period;
then it is an incident of the employee's employment that he or she will have a 2 day rest break during which time he or she is paid.
See ACTU, *The Reasonable Hours Test Case Background Paper* (Melbourne: ACTU, n.d.), www.actu.asn.au.

5 'Abbott Welcomes Hours Decision', *Australian Associated Press* (23 July 2002).

6 ACTU, 'ACTU Examines the Cap Option on Hours' (Melbourne: 29 November 2002), www.actu.asn.au.

[7] Mark Skulley, 'Unions Target Manufacturing in Wage Push', *The Australian Financial Review* (13 January 2003); Australian Industry Group, 'The Unions' Campaign 2003', www.aigroup.asn.au.

[8] ACTU, 'ACTU Examines the Cap Option'; ACTU, *The Submission of the ACTU in the Reasonable Hours Test Case* (Melbourne: September 2001), 464.

[9] ACTU, *The Submission of the ACTU*.

[10] ABS, 'Paid Work: Longer Working Hours', *Australian Social Trends* (Canberra: 2003), 120.

[11] As above, 120.

[12] In 2002, 27.3% of part-time workers were underemployed, see ABS, *Australian Social Trends*, Cat. No. 4102.0 (Canberra: 2003).

[13] Henry Samuel, '£11bn Cost of 35-hour Week Splits the French', *The Daily Telegraph* (UK) (4 October 2003).

[14] Derived from the Household Income and Labour Dynamics in Australia (HILDA) Survey, Wave 2 (2002).

[15] Mark Wooden and Joanne Loundes, *How Unreasonable Are Long Working Hours?* Melbourne Institute Working Paper No. 1/02 (Melbourne: Melbourne Institute of Applied Economic and Social Research, February 2001), 9.

[16] France's unemployment rate, after having continually grown since the early 1970s, hit 12.3% in 1994. In September 2003, it still remained at 9.5% despite a small economic boom in the late 1990s (OECD, *Labour Market Statistics: Indicators*, www.oecd.org; OECD, *Standard Unemployment Rates*, www.oecd.org).

[17] Derived from OECD, *OECD Labour Market Statistics*, CD-ROM (Paris: 2001).

[18] Judith Larner, 'Labouring Over the 35-hour Week', *The Guardian* (11 October 2003).

[19] Babara Pocock, Brigid van Wanrooy, Stefani Strazzari and Ken Bridge, *Fifty Families: What Unreasonable Hours Are Doing to Australians, Their Families and Their Communities*, a report commissioned by the Australian Council of Trade Unions (Melbourne: ACTU, July 2001), www.actu.asn.au.

[20] Jonathan Kelly, 'Consequences of Working Long Hours', *Australian Social Monitor* 4:4 (December 2001), 99-101.

[21] Ruth Weston, Matthew Gray, Lixia Qu and David Stanton, *The Impact of Long Working Hours on Employed Fathers and Their Families*, a paper presented at the Australian Social Policy Conference (Sydney: SPRC, UNSW, 9-11 July 2003).

[22] Mark Wooden, *Balancing Work and Family at the Start of the 21st Century: Evidence from Wave 1 of the HILDA Survey*, a paper presented at the Pursuing Opportunity and Prosperity Conference (Melbourne:

Melbourne Institute of Applied Economic and Social Research, The University of Melbourne, 13-14 November 2003).

[23] 'France's 35-hour Week under Fire as Economy Wanes', *Reuters* (3 October 2003).

[24] Under existing rules, a worker is allowed to work overtime even if he or she as a result ends up working more than 35 hours in the course of a week. But the total number of hours worked per year cannot exceed 1,600. This means that a worker who works just 35 hours per week would only work 45.7 weeks per year. The remaining 6.5 weeks are a paid holiday . See 'France: Europe's New Weakest Link', *The Business* (19 October 2003).

[25] 'France's 35-hour Week under Fire'.

[26] Derived from ABS, *Australian Social Trends*, Cat. No. 4102.0 (Canberra: various years).

[27] Mark Wooden and Diana Warren, *The Characteristics of Casual and Fixed-term Employment: Evidence from the HILDA Survey*, Melbourne Institute Working Paper No. 15/03 (Melbourne: Melbourne Institute of Applied Economic and Social Research, The University of Melbourne, June 2003), Table 4. Long-term casual employment is possible because law provides no clear-cut guideline as to what a casual employee is (Rosemary J. Owens, 'The "Long-term or Permanent Casual"—An Oxymoron or "A Well Enough Understood Australianism" in the Law?' *Australian Bulletin of Labour* 27:2 (June 2001), 119-21). At common law, casual work is defined merely as 'intermittent and irregular work', and each engagement of a casual worker is understood as constituting a separate contract of employment. Industrial instruments, such as awards and agreements, typically refer to a casual employee as 'one engaged and paid as such', although there is some variety. There is therefore nothing to preclude casual employment from lasting for an indefinite period of time.

[28] Paul Robinson, 'ACTU to Launch Casuals' Test Case.'

[29] Australian Labor Party (ALP), *Draft National Platform 2004* (Sydney: ALP, 29-31 January 2004), 37, www.alp.org.au

[30] Some awards may provide leave entitlements for casuals.

[31] Sally Weller, Jane Cussen and Michael Webber, 'Casual Employment and Employer Strategy', *Labour & Industry* 10:1 (August 1999), 28.

[32] According to one source, a 25% casual loading would approximately match the cost involved in the provision of leave (Personal communication, 6 November 2003).

[33] Wooden and Warren, *The Characteristics*, Tables 3 and 4.

[34] Industrial Relations Society of South Australia, *Industrial Relations Society of Australia Convention Papers*, www.irssa.asn.au.

[35] Wooden and Warren, *The Characteristics*, 18, 26.

[36] As above, 12.

[37] Jenny Chalmers and Guyonne Kalb, *The Transition from Unemployment to Work: Are Casual Jobs a Short Cut to Permanent Employment?* SPRC Discussion Paper No. 109 (Sydney: SPRC, UNSW, October 2000).

[38] AW789529.

[39] Recruitment & Consulting Services Association (RCSA), *Submission to the Senate Employment, Workplace Relations, and Education Legislation Committee regarding Workplace Relations Amendment (Casuals and Fair Termination) Bill 2002*, 12, www.rcsa.com.au.

[40] As above, 8-9.

[41] Jennifer Buckingham, Lucy Sullivan and Helen Hughes, *State of the Nation 2001: A Century of Change* (Sydney: CIS, 2001), Table 10.3.

[42] ABS, *Employee Earnings, Benefits and Trade Union Membership*, Cat. No. 6310.0 (Canberra: August 2002).

[43] John Benson, *Hours of Work: A Report on a Survey of Ai Group/EEASA/AHEIA Members on Hours of Work and the Implications of the ACTU Claim for Changes to the Terms and Conditions Governing Overtime* (22 October 2001), Table 27, www.airgroup.asn.au.

[44] As above, Table 28.

[45] Hamermesh, *Labour Demand*.

[46] For example, Garry Brack, Chief Executive of the employer association Employers First, warned that the unions' claim would force employers to axe casual jobs (Matthew Denholm, 'Union Push for Casuals to Secure Job Status', *The Courier Mail* (6 August 2003).

Conclusion

[1] Lindbeck and Snower, *The Insider-Outsider*.

Appendix

[1] The Melbourne Institute of Applied Economic and Social Research, 'The Household Income and Labour Dynamics in Australia (HILDA) Survey', www.melbourneinstitute.com/hilda.

[2] Nicole Watson and Mark Wooden, *The Household Income and Labour Dynamics in Australia (Survey): Wave 1 Survey Methodology*, HILDA Project Technical Paper Series 1/02 (Melbourne: Melbourne Institute of Applied Economic and Social Research, May 2002), Table 2.

[3] See Note 34.

[4] Sue Richardson and Ann Harding, *Low Wages and the Distribution of Family Income in Australia*, Discussion Paper No. 33 (Canberra: NATSEM, September 1998), 8.

[5] As above, 6-7.

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PO Box 92, St Leonards,
NSW 1590 Australia
Ph: +61 2 9438 4377
Fax: +61 2 9439 7310

PO Box 5529, Lambton Quay,
3785, New Zealand
Ph: +64 4 499 5861
Fax: +64 4 499 5940

Email: cis@cis.org.au

www.cis.org.au