



Centre of Full Employment and Equity

Working Paper No. 06-01

Wages and wages determination in Australia 2005

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March 2006

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1. Introduction

This paper reviews Australian wage outcomes in 2005 and institutional and legislative developments which will influence future wage determination and employment conditions. The latter has been dominated by the passing of the WorkChoices legislation in December which has destroyed the test-case process for the determination of wages and conditions, along with the system of arbitrated industry based awards. The state of the macro-economy in 2005 is reviewed prior to analysing wage outcomes. We outline the 2005 legislative changes and speculate on their consequences for future wage outcomes. Concluding comments follow.

2. Macroeconomic background

The Australian economy grew by 2.6 percent per annum to June 2005 with employment growing by 3.4 per cent over the same period (RBA 2005a:25, 32). Unemployment stood at 5.1 per cent in November 2005 (ABS 2005a) but with rising underemployment and hidden unemployment the official measure seriously underestimates total labour underutilisation.

The average annualised wage increase per employee associated with newly certified Federal agreements (AAWI) was 4 percent to September 2005. However, the Labour Price (formerly Wage Cost) Index increased 4.2 percent over the same period, compared to 3.5 percent in the year to September 2004, which suggests that skill shortages could be impacting on wage settlements (see below). The annual inflation rate of 3.0 percent to September 2005 was at the top of the Reserve Bank's acceptable range (ABS, 2005d:1). The single interest rate increase of 25 basis points in March 2005 appeared to have slowed the housing market (RBA 2005a:25), with prices stabilising in early 2004 (RBA, 2005a).

The debt-servicing costs associated with household borrowing rose to 9.8 per cent of disposable income in the June quarter, from about 6 percent in 1996 (RBA, 2005a:26). As noted in previous reviews, financial over-commitment by some home buyers, which increased the mal-distribution of household indebtedness, has left many families vulnerable to moderate interest rate increases and/or job loss (Watts and Mitchell, 2004:161). The Federal government's pursuit of large budget surpluses has forced dissaving on the private sector. There is evidence that private sector is trying to repair their balance sheets by positive saving which will then bring the fiscal drag inherent in the surpluses into play and unemployment will rise sharply.

3. Wage determination in 2005

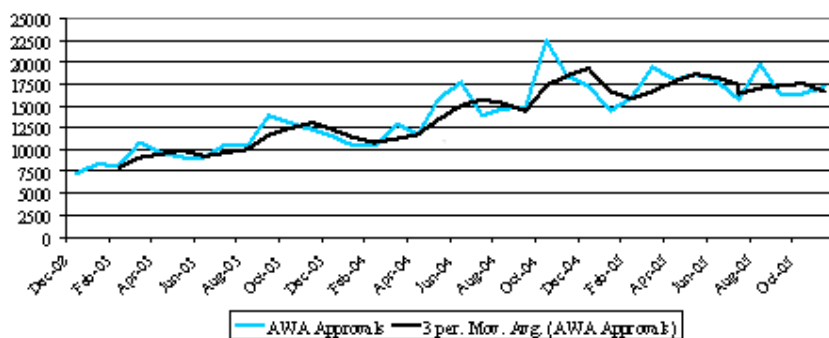
This section considers the 2005 wage outcomes, including the final decision by the Australian Industrial Relations Commission (AIRC) on the safety net adjustment.

3.1 Coverage of agreements

The Australian Bureau of Statistics (ABS) publication, *Survey of Employee Earnings and Hours* (Cat. 6306.0), reports that in May 2004 20.0 percent of all employees were on awards only, representing 24.7 percent of private sector employees and approximately 2.3 percent of public sector employees, as compared to 20.5 percent in 2002 and 23.2 percent in 2000. 38.3 percent of all employees were covered by collective agreements (24.2 percent and 91.8 percent respectively), compared to 36.7 percent in 2000 (ABS 2004:25).

The number of Australian Workplace Agreements (AWAs) approved per month stabilised at about 17,000 during 2005 including those approved by the AIRC (see Figure 1) (OEA, 2005b). By 30 September 2005, 487,900 workers (5.7 percent of salary and wage earners) had extant agreements, which represented an annual increase of 34 percent, albeit from a low base (OEA 2005a, 2005b). AWAs were most likely to cover employees in Retail, Manufacturing, Accommodation Cafes and Restaurants and Property and Business Services. Only 12 percent of current AWAs covered firms with less than 20 employees. The private sector accounted for 87.4 percent of the AWAs approved to September 2005 (OEA 2005a:1).

Figure 1 Monthly Australian Workplace Agreement approvals and quarterly moving average, December 2002-November 2005



Source: OEA (2005a).

1,570,100 workers were covered by registered agreements and 175,300 by non-union certified agreements on 30 June 2005 (OEA 2005a:3). The highest percentages of employees covered by a union certified agreement were in Retail Trade, Government Administration and Defence and Education, whereas the highest percentage of employees covered by Non-Union Agreements were in the Manufacturing, Retail and Finance and Insurance. A total of 1,750,100 employees were covered by Certified Agreements at the end of September, following the certification of an additional 1881 agreements covering 169,900 employees (DEWR 2005a).

3.2 Money wage growth

Since enterprise bargaining commenced, aggregate wage data have been difficult to interpret. Many employees have unregistered agreements and wage increases may be granted in exchange for trade-offs with respect to other conditions. Also there are

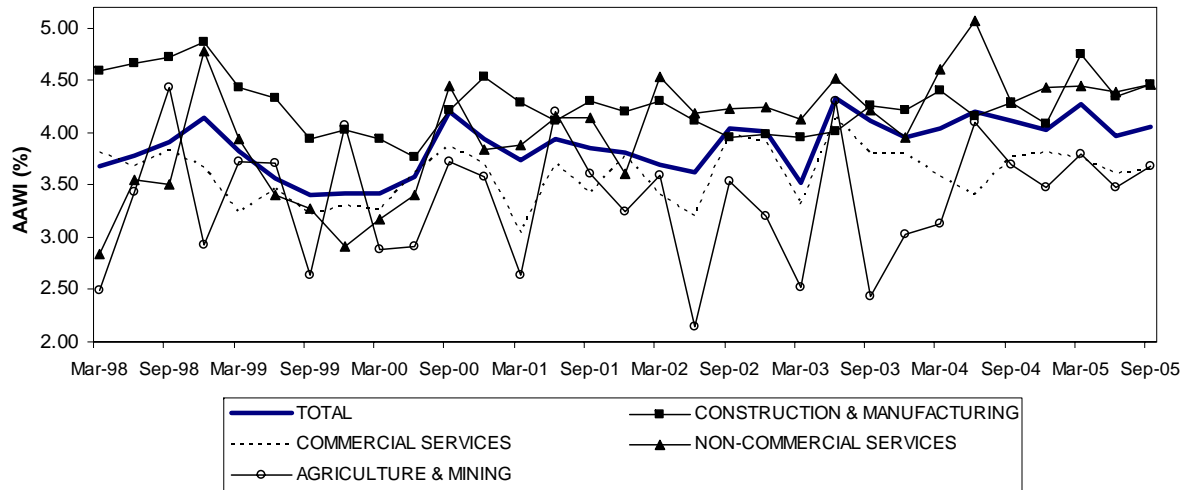
major compositional changes occurring in the workforce (Burgess, 1995). Comprehensive data on AWA outcomes are not available, but see below.

The Department of Employment and Workplace Relations (DEWR) records the average annualised wage increase (AAWI) per employee based on Federal agreements newly certified within each quarter (see Figure 2). There is no evidence of a sustained increase in wage settlements with the current weighted increases over each of the 4 quarters to September 2005 for newly certified agreements being approximately 4 percent (DEWR 2005a:2), which coincided with the AAWIs associated with all extant agreements (DEWR 2005a:3). ACIRRT found AAWIs of about 4 percent for state and federal certified agreements registered in the four quarters to September 2005 (ACIRRT 2005).

Full-time adult Average Weekly Earnings grew 6.2 percent in the year to August 2005 which was the same as for corresponding period in 2004 (ABS, 2005b:6). The data conflate changes in hourly wages, full-time hours and compositional changes. The growth in Average Weekly Ordinary Time Earnings (which excludes the impact of changes in the overtime component of hours, but reflects compositional changes) was 6.3 percent over the same period (5.7 percent in the year to August 2004) (2005b:6).

In the 12 months to September 2005, wage growth, as measured by the fixed weight Labour Price, formerly Wage Cost, Index, grew 4.2 percent seasonally adjusted (see Table 1), compared to 3.5 percent over the previous year (ABS 2005c:6).² The sharpest increases have occurred in Mining, Wholesale, Transport and Storage, Health and Community Services and Cultural and Recreational Services. The DEWR Skilled Vacancy Indexes (SVI) for Health Professionals and Medical and Science Associate Professionals have increased significantly (DEWR, 2005c), but the other occupations cannot be easily mapped into corresponding industries. With the exception of Wholesale and Transport and Storage, these industries experienced sharp increases in employment over the year. ACIRRT (2005:6) note that employers can address wage pressures from skill shortages through promotion structures, performance bonuses or other methods which are not recorded in enterprise agreements. Also, specific initiatives to address the shortages such as training and improved retention can be adopted.

Figure 2: Average annualised wage increase (AAWI) per employee of federal agreements newly certified within the quarter by industry group, March 1998 – September 2005.



Source: DEWR 2005a and author's calculations.

Notes: *Manufacturing* and *Construction* are equivalent to the ANZSIC industries. *Commercial services* consists of wholesale; retail; accommodation, cafes, restaurants; transport; communications; electricity, gas and water; finance and insurance; property and business; cultural and recreation; and personal and other. *Non-commercial services* denote education and health; government administration and defence; and community services. The estimates have been rounded since June 1999. Historical estimates have been updated so that figures may exhibit slight differences as compared to Figure 2 in Watts and Mitchell (2005). The AAWIs are calculated as a weighted sum of the AAWIs per employee per ANZSIC industry with the weights given by the corresponding employment shares.

Table 1 Annual percentage increases in ordinary time hourly rates of pay index, excluding bonuses, by industry, September 2001 – September 2005

	Sept-01	Sept-02	Sept-03	Sept-04	Sept-05
Mining	2.9	4.2	2.8	3.3	5.0
Manufacturing	3.8	3.5	3.4	3.9	3.7
Electricity, gas and water supply	4.4	4.1	4.1	4.8	4.5
Construction	3.6	3.0	3.9	4.5	4.7
Wholesale trade	3.1	3.4	2.9	2.8	4.0
Retail trade	2.3	3.2	2.7	3.3	3.8
Accommodation, cafes and restaurants	3.1	2.9	3.2	2.4	3.2
Transport and storage	3.2	2.3	4.0	2.8	3.9
Communication services	4.0	2.9	3.2	3.2	3.2
Finance and insurance	3.7	3.6	3.4	3.8	4.3
Property and business services	4.4	3.3	3.3	3.0	3.4
Government administration and defence	3.5	3.0	4.6	4.0	5.0
Education	4.3	3.8	3.8	4.8	4.5
Health and community services	3.4	3.0	4.9	3.1	5.0
Cultural and recreational services	3.1	3.5	4.0	2.9	5.0
Personal and other services	3.4	3.5	3.6	3.5	4.0
All industries	3.7	3.1	3.6	3.5	4.2

Source: Australian Bureau of Statistics (ABS 2005c, Table 6; ABS 2003).

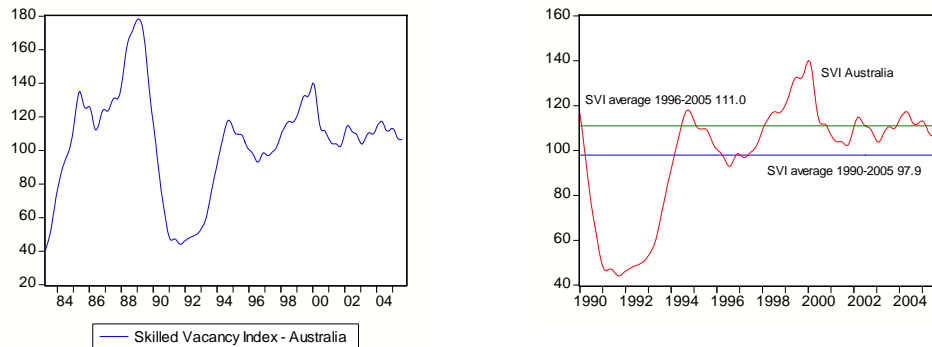
3.3 Skill shortages and wage pressures

Although the labour market has tightened in recent years, there is still only anecdotal evidence that a ‘skills shortage’ is constraining growth and that wage pressures are intensifying. The Australian Chamber of Commerce and Industry (ACCI) cite skills shortages as one of the most significant barriers to investment in Australia (EWRERC, 2003: 12).

In Figure 3 (panel a) the SVI is shown from the earliest available period (July 1983) to November 2005, and in panel (b) the same index since January 1990 to November 2005. The lower horizontal line in panel (b) is the average value over the period 1990-2005 (97.9) while the upper horizontal line is the average value over the period 1996-2005 (111.0). The charts provide no aggregate level indication that there has been a sharp rise in the demand for skills in the last several years.

Mitchell and Quirk (2005) find that: (a) The SVI for tradespersons rose sharply over 2003 and 2004 but declined over the last 18 months. The Professions (since 2001) and Associate Professions (since 1998) have been in trend decline; (b) For Professions and Associate Professions, only the health sector has experienced rapid growth in the SVI in 2005. A relevant issue is the number of immigrants who have foreign nursing or medical qualifications and are not practising in this country as a result of local certification constraints (Hawthorne, 2001); and (c) Skilled vacancies in both NSW and Victoria reveal worsening trends and the recent growth areas of Queensland and Western Australia are now negative (QLD) and flat (WA).

Figure 3 DEWR Skilled Vacancy Index, Australia, various periods



(a) 1983-2005

(b) 1990-2005

Source: DEWR (2005b).

3.4 Australian Workplace Agreements

It is instructive to examine the manner in which AWAs are finalised, as well as their content, since the thrust of the industrial relations reforms is to facilitate their introduction. The government claims that individual contracts will provide employers and employees with increased choice and flexibility, with the latter associated with higher productivity. Contrary to Federal Coalition (2004:5), there is little evidence of employees having any input into the structure and conditions of their AWAs, with 35% of employers not consulting with workers (Gollan, 2000) and some employees having no option to negotiate (Van Barneveld and Waring, 2001). An ‘overwhelming proportion’ of AWAs were based on short-term cost reduction rather than productivity enhancement (Van Barneveld and Waring, 2001). Also pattern AWAs were very common, based on industry-based ‘template’ OEA agreements.

Using ABS data (ABS, 2004), Andrews (2005) claimed that workers on AWAs earned on average 13 percent more per week than workers on certified agreements and 100 percent more than workers on awards. In the December issue of the ADAM report, ACIRRT (2005:12-14) disaggregated the data by occupations and hours. Overall non-managerial employees on AWAs earned 2.1 percent less per hour than employees on collective agreements. Permanent part-time employees on individual contracts earned about 75 percent of those on collective agreements, with the corresponding ratio being 85 percent for casual employees, whereas full-time employees on individual contracts earned 2.1 percent more than employees on collective agreements. Women on AWAs were particularly disadvantaged.

ACIRRT (2005) compared a random sample of 500 AWAs which were certified in 2002 and provided by the OEA in 2004, with a sample of 591 federally certified enterprise agreements (207 non-union and 384 union agreements) from the ADAM database which were registered in 2002-2003. Employees on AWAs received an AAWI of 2.5 percent per annum, as compared to 4.3 percent under union collective agreements and 3.5 percent for non-union enterprise agreements. In addition, higher percentages of workers on AWAs were either not guaranteed a wage increase or were subject to “at risk” wage increases involving performance reviews, meeting key performance indicators or employer discretion. A lower percentage of workers on

AWAs were subject to wage increases linked to external measures (ACIRRT, 2005:13-14 and Table 2.3).

3.5 Wage inequality

Between 1998 and 2004, the real weekly wages of the 80th percentile of adult non-managerial full-time employees grew 4.4 percent, whereas median real wage growth was 2.6 percent and the corresponding increase for the 20th percentile was 1.5 percent (ABS 2004, 2005d). Real wage growth has accelerated since 2002, but at the cost of an increase in the disparity of real wage growth rates and hence higher wage inequality. Inequality is likely to widen further under the new WorkChoices legislation (Briggs 2005).

3.6 Gender wage inequality

The Victorian Pay Equity Inquiry which was released in May 2005 found women working full-time were paid 18.4 per cent less than their male counterparts. There was a 32 per cent pay gap with respect to workers employed under individual agreements, which could worsen under WorkChoices. Twenty recommendations were made in the report, including the adoption of pay audits.

3.7 Executive pay

The average base salary or 'come to work' pay increased 6 percent to \$686,000 in 2005 for chief executives of the top 300 publicly listed Australian companies (AFR 2005, S2), whereas in the year to September 2005 the increase for union and non-union newly certified agreements was 4 percent (DEWR 2005a:2). Taking account of bonuses and benefits the increase in executive remuneration was 11 percent (AFR 2005, S2). Short term incentive bonuses increased 22 percent due to the strong profit performance. Average total remuneration for these executives rose 16 per cent to \$1.9 million (\$5200 a day) which represented 34 times the average earnings of an adult full-time employee (Gittins 2005).

AFR (2005, S2) reported that an average of 40 percent of total remuneration was still paid as fixed salary with a further 10 percent being paid in perks or other benefits, such as retention payments. Long term incentives, such as share options, were valued at 17 percent of the pay of the CEOs, but do not represent actual payments (AFR 2005, S2). Retention payments or 'golden handcuffs' have attracted some criticism when not accompanied by performance hurdles (AFR 2005, S4). Deals, sometimes in the form of consultancies, which prevent the CEO working for a rival company for a number of years, are increasing in frequency (AFR 2005, S4).

Changes to corporate law required companies to prepare remuneration reports in 2005, which explained how pay policies reflected company policy over the previous 4 years. In particular, boards had to explain the criteria for the payment of bonuses, disclose the circumstances under which bonuses were not fully paid and outline company performance and shareholder returns (AFR 2005, S4). Bonuses in some companies were discretionary, whereas, despite the existence of bonus policies, actual payments in some companies were discretionary, due to payment of other incentives in special circumstances. The AFR noted that earnings-per-share and other measures were often used to trigger bonuses, even though they did not always translate into higher share prices or dividends. Also such short-term measures were flawed because businesses were or should be operated with a longer term horizon.

In defence of high rates of remuneration, reference is often made to the world market for executives (Gittins 2005), even though inconsistencies between company size, performance and executive remuneration were noted (AFR, 2005, S5; The Western Australian, 2005). At best, this suggests a poorly functioning market.

4. The living wage case

4.1 Introduction

In late 2004 the Australian Council of Trade Unions (ACTU) filed its Living Wage Claim under the *Workplace Relations Act* (1996). The peak body requested a \$26.60 per week increase in all award rates of pay with an equivalent increase in wage related allowances (AIRC 2005a, para. 1). The Labor State and Territory Governments supported an increase of \$20 per week in all minimum award rates (AIRC 2005a, para. 21).

The Commonwealth argued for an \$11 increase to minimum classification rates at or below the C10 classification in the Metal Industries Award (AIRC 2005a, para. 15). The Commonwealth opposed the ACTU claim because they argued: (a) it was inconsistent with the Act; (b) it impeded employment for the low paid, low skilled and unemployed; (c) it was poorly targeted with respect to assisting low-paid workers and inappropriate as a means of promoting social equity; and, (d) did not further the 'objects of the Act by encouraging agreement-making and promoting high levels of productivity' (AIRC 2005a, paras. 15-16).

The major employer groups supported either a \$10 or \$11 per week increase, with some also advocating that the increase be confined to a limited number of award classifications. The groups cited a number of adverse economic consequences arising from the ACTU claim, including reduced economic security for the low paid, increased inflation due to insufficient productivity growth and rising interest rates, against the backdrop of the ongoing impact of drought (AIRC 2005a, paras. 5-14).

4.2 Economic background

There was a broad consensus that the economy had enjoyed moderate economic growth during 2004 (1.9 percent) and strong employment growth which saw the unemployment rate reach 5.1 percent in March 2005. Annual labour price index growth (3.6 percent) and price inflation (2.6 percent) were modest to December 2004. However productivity growth had declined due to a sharp growth in hours of 2.5 percent to December 2004 (AIRC 2004, para. 17, paras 96-100).

The ACTU again relied on the relatively optimistic Treasury Mid-Year Economic and Fiscal Outlook forecasts to argue that their claim was affordable. Concern was expressed about the capacity of employers to absorb a 5.7 percent increase in the minimum wage in the absence of productivity improvements, when import costs were also rising. A number of medium-term risks were identified in submissions, with the Commonwealth and employer organisations providing a less optimistic perspective, but these risks were not directly associated with the granting of the claim.

The Commission engaged in a comprehensive analysis of economic data and forecasts (AIRC 2005a, paras 148-156). They were sanguine about forecasts of slower output growth and found no evidence of a generalised acceleration of wage increases in the economy. They recognised that the impact of the ACTU's claim on overall earnings growth would be modest.

4.3 Legislative Requirements

The Commission noted that it had to take account of three categories of legislative obligation in determining the magnitude of the safety net adjustment (SNA), namely the economic impact with respect to employment, productivity and inflation; the social (need to provide fair minimum standards for employees, particularly the low paid, taking into account general community living standards); and the maintenance of the incentive to make enterprise agreements (AIRC 2005a, paras. 157-158). No new substantive economic arguments to inform these issues were presented to the AIRC. We now consider each of the Commission's legislative obligations in turn.

4.4 Economic Impact

The Commission expressed concern at the lack of productivity growth over the previous 12 months, but noted that between June 1996 and March 2005 the CPI had remained within the RBA's target range of 2 to 3 per cent per year for all but a few quarters (AIRC 2005a, 10, para. 407).

The AIRC noted that the imposition of a minimum wage had the potential to reduce employment, but at the same time it conferred benefits (including reduced earnings inequality) which must be taken into consideration (AIRC 2005a, 10, para. 410).

The 50 international studies about the impact on employment of a change in the minimum wage to which the Commonwealth referred had been considered in previous safety net review decisions (for example, see May 2004 decision, paras. 229-36). The Commission concluded that the 'research is either largely irrelevant, limited in scope or has serious methodological flaws' (AIRC 2005a, 5.2, para. 17).

Specifically, studies by Leigh (2003) and Harding and Harding (2003) were considered to be 'methodologically flawed' (AIRC 2005a, 5.4, para. 227). In addition, the technical assumptions underpinning the Monash study commissioned by the Commonwealth in 2005 was subject to a stringent critique by Mitchell (Dixon, Madden and Rimmer 2005; AIRC 2005a, 5.3, paras. 202-220; Mitchell 2005b). In particular, the elasticities of labour demand (-0.63) and substitution between award and non-award labour (2.00) were not estimated. The Commission also pointed out that in the 2004 proceedings the Commonwealth relied upon the Harding and Harding study which estimated an elasticity of demand for labour of -0.21 per cent, yet in the 2005 proceedings it relied on the Monash study which assumed an elasticity of -0.63 per cent (AIRC 2005a, 10, para. 409). The AIRC further argued that the ratio of the minimum wage and AWOTE for full-time adults had been in decline since 1996 (AIRC 2005a, 5.4, para. 241). It noted that the minimum wage had been declining relative to bargained wages, the median wage and AWOTE since 1996, with higher Metal Industry award classifications declining even more against AWOTE (AIRC 2005a, 10, para. 401 and Tables 20, 22). All classifications enjoyed real wage increases over the period from the June quarter 1996 to the March quarter 2004 with the C14 classification enjoying an increase of 10.5 percent and C6 0.4 percent, well below the real increase in AWOTE of 16.6 percent

The Commission also reported the equivocal conclusions of the June 1998 Employment Outlook (OECD, 1998) about the employment effects of minimum wages and concluded that there was a continuing controversy amongst academics and researchers about the employment effects of minimum wage improvements. There is nothing before the Commission to indicate that the controversy has been resolved (AIRC 2005a, 5.9, para.279).

As in previous years the Commonwealth claimed that previous Safety Net increases had been to the detriment of employment in the award-reliant industries, despite evidence provided by the ACTU (AIRC 2005a, 5.8, paras. 115, 118-120). The Commonwealth showed that there was a strong negative relationship between the annual change in employee hours worked in the three most award-reliant industries and the size of the Safety Net Adjustment of the Federal Minimum Wage (AIRC 2005a, 5.8, Chart 13). This is a somewhat selective use of data. It would be customary to express both variables in percentage rather than absolute terms. Second, this 'strong' negative relationship is founded on seven observations and cannot be claimed to be robust. The type of econometric critique of the Commonwealth's evidence provided by Mitchell at the 2004 Safety Net case is again relevant (ACTU 2004; AIRC 2004, paras. 160-166).

The Commonwealth also argued that compositional changes in employment between award-reliant and agreement-based workers within each industry should be considered, although interpreting these changes is not straightforward. The Commission largely dismissed all evidence in this regard concluding that there was no necessary association between award coverage, safety net adjustments and employment growth (AIRC 2005a, 5.8, para.278).

4.6 Wage adjustment and the propensity to bargain

A number of submissions again explored the impact of the SNA on the willingness of the parties to bargain which must be considered by the Commission under Section 88A(d)(i) of the legislation. The AIRC noted that employers initiate bargaining and their failure to do so reflects in part the fact that the magnitude of the safety net increases had not provided them with sufficient incentive to do so (AIRC 2005a, 6.1 para. 149).

The Commission noted the Commonwealth claim that safety net increases deterred the spread of enterprise bargaining, but itself highlighted the fact that in award-reliant industries, employment growth had been associated with enterprise bargaining. The Commission concluded that recent SNAs had been consistent with continued growth of bargaining in industries where award reliance was relatively high (AIRC 2005a, 10, para. 417).

4.7 The Needs of the Low Paid

The Commission must "ensure that a safety net of fair minimum wages and conditions of employment is ... maintained" (that is consider the matters specified in ss.88B(2)(a), (b) and (c)), but the needs of the low paid do not assume priority and will depend on prevailing circumstances (AIRC 2005a, 7, para. 332).

The AiG argued that the needs of the low paid were better addressed through the broader social safety net rather than through minimum wages adjustments. The Commission agreed with the AiG and ACCER that if low paid employees gained (or lost) through the tax transfer system then, pursuant to s.88B(2)(c), the impact would be taken into consideration in the SNA, but a mechanistic approach would not be taken. The Commission considered that on balance income should be sourced from earnings rather than welfare (AIRC 2005a, 7, para. 414)³

Contrarily, LaJeunesse, Mitchell and Watts (2005) argue that the annual adjustment of award minima has not been an act of charity, but rather is an appropriate means of ensuring relatively powerless workers participate in productivity growth, thereby

preventing the creation of an underclass of working poor in Australia. It is curious that the Commonwealth and some employer organisations argue forcibly that family circumstances should inform the SNA, given that this principle is not applied to wage bargaining in general and does not appear in corresponding sections of the Workplace Relations Act.

The Commonwealth argued that SNA was poorly targeted because 42.8 percent of low-paid employees were in households with above median gross household income. HILDA data and other research showed that there was considerable upward mobility of income and earnings for low-paid workers (AIRC 2005a, 7, para. 341). It claimed that for many Australians low-paid jobs enabled access to higher paid employment, so that the SNA should not lead to a major loss of employment or inhibit the growth of new low-paid jobs (AIRC 2005a, 7, para. 363).

However, the OECD (1996, 77) maintains that about two thirds of the cross sectional variance in annual earnings in 6 European countries and the USA reflected persistent differences in relative earnings. In a later study (OECD, 1997) persistent and recurrent low paid employment was found amongst women, older and less-educated workers. Also, countries with more deregulated labour and product markets did not appear to have higher relative mobility, nor did paid workers in these economies experience more upward mobility.

The Australian evidence on the mobility of low-paid workers is at best inconclusive. Burgess and Campbell (1998) and Dunlop (2000) fail to find a link between casual employment and permanent employment in Australia. Gaston and Timcke (1999) find some contrary evidence, but their study is confined to data from the Australian Youth Survey and is based on questionable econometric analysis.

The Commission agreed that that bargained wage outcomes arising from agreements should not be transmitted through the award system and that the WPI was the most useful indicator of wage increases.

4.8 The decision

On 7 June the Commission adjusted the safety net by \$17 per week, raising the minimum wage by 3.6 per cent to \$484.40 and the tradesperson classification by 3 per cent (AIRC 2005a, 10, para. 424). The Commission rejected the proposal that the SNA should be confined to employees below the C10 classification, because of the significant erosion of the relativity since 1996 (AIRC 2005a, 10, para. 425, Table 25).

4.9 Postscript

On Wednesday 21 December 2005 the Full Bench of the AIRC decided to adjourn the Safety New Review - Wages 2006 proceedings until the Australian Fair Pay Commission (AFPC) had made its first wage-setting determination in the Spring of 2006 (AIRC 2005b).

5. Industrial relations and labour market reform

5.1 Bargaining Fees

The Workplace Relations Amendment (Extended Prohibition of Compulsory Union Fees) Bill 2005 was introduced into the House of Representatives on 9 March 2005 (Department of Parliamentary Services 2005). It proposed to extend the prohibition on the inclusion of clauses in agreements relating to bargaining agents' fee beyond those

certified under the Workplace Relations Act 1996 to also cover any state employment agreement to which a constitutional corporation is a party (p.7). A Bill had been introduced in 2004 following the decisions of the Western Australian and South Australian Commissions to allow the imposition of a bargaining agent's fee on non-union members (DiGirolamo 2004; Workforce 2004, 1438:1, 8; Workforce 2004, 1441:2).

5.2 Superannuation Choice

Under the Superannuation Legislation Amendment (Choice of Superannuation Funds) Act 2004, employees engaged under a federal award were from 1 July 2005 able to select which super fund their employers should direct their 9 per cent compulsory employer contribution (Fenech 2005:16). The legislation does not cover employees covered by a certified agreement, Australian Workplace Agreement, certain members of defined benefit schemes or a state award or industrial agreement, although legislation in some states also provide for the employee choosing her/his fund.

While promoting choice and apparently more intensive competition within the personal finance sector, this initiative relies for its effectiveness on the well informed consumer. The legislation ignores the significant costs to the employee of becoming better informed and follows initiatives in private health insurance where the patient can choose the best medical professional, and the increased choice of pricing schemes of the utilities.

5.3 Family Provisions Case 2004 - the Work and Family Test Case

On 8 August 2005, the AIRC handed down its decision in the Family Provisions Test Case (AIRC, 2005c). The arguments presented by various parties were documented in Watts and Mitchell (2005). While all parties seemed to agree that greater flexibility in working arrangements was desirable, the ACTU and the employer groups disagreed on what flexibility meant or what form it should take.

Three new award provisions were granted (AIRC 2005c, para. 396) such that an employee was given the right 'to extend the period of simultaneous unpaid parental leave ... up to a maximum of eight weeks' and 'to extend the period of unpaid parental leave ... by a further continuous period of leave not exceeding 12 month' and 'to return from a period of parental leave on a part-time basis until the child reaches school age.' The 'reasonable grounds' for refusal may 'include cost, lack of adequate replacement staff, loss of efficiency and the impact on customer service' (para. 396). All further unresolved claims in the case were referred back to a single commissioner for further conciliation.

The decision immediately inserted the test case standards into the 12 federal awards represented by the ACTU claim. The provisions do not apply to State awards or voluntary agreements. In the light of the WorkChoices legislation it is unlikely that the decision will spread in any significant way to other federal awards or place pressure on employers to include the provisions in negotiated agreements.

6. The future of wage determination

6.1 Overview

The Workplace Relations Amendment (Work Choices) Bill 2005, hereafter WorkChoices was passed by both Houses of Parliament in December. The AFPC will

set and adjust the standard Federal Minimum Wage and minimum award classification rates of pay; special Federal Minimum Wages for junior employees, employees with disabilities or employees under training arrangements; minimum wages for piece workers; and casual loadings (House of Representatives 2005:11).

The 'no disadvantage test' in which an agreement was assessed on the basis of the relevant award has been replaced by the requirement that the agreement satisfy six statutory minimum standards – the Australian Fair Pay and Conditions Standard (AFPCS). The AFPCS specifies the minimum award wage, four leave entitlements (personal/carers, unpaid parental, compassionate and annual leave) and ordinary working hours. However ordinary working hours can be averaged over a year, enabling high weekly hours of work during peaks without overtime/penalty rates being paid. In addition, two weeks of annual leave can also be cashed out.

6.2 The Commonwealth rationale for change

The Commonwealth has argued that the AIRC safety net adjustments have retarded employment growth and the provision of apprenticeships and traineeships and that 'safety nets' should only apply to low paid workers (Howe et al. 2005: 4). Further, minimum wage determination should encourage labour market entry which is the stepping stone to higher paying jobs over time (Australian Government, 2005: 64). Without providing specific estimates, DEWR argued that the operation of the AFPC would benefit employment creation.

DEWR has provided considerable evidence of the negative effects on employment arising from the operation of the current *Workplace Relations Act 1996* where the Australian Industrial Relations Commission (AIRC) continues to grant large wage rises in the annual Safety Net Review...The AFPC will ensure a better balance between fair pay and employment DEWR (2005c, W319-06).

However, as reported in these reviews, the evidence provided by the Commonwealth and the major business lobby groups at Safety Net Hearings has been largely rejected by the AIRC. Watson (2004) presents a comprehensive survey and analysis of recent Australian and international studies of the relationship between changes in the minimum wage and employment and argues that no significant and consistent negative relationship between minimum wages movements and employment growth (or levels) has been found.

The proposition that wage increases adversely affect employment is grounded in orthodox microeconomic theory. Significant interdependencies between labour demand and supply are typically ignored by those who use 'text-book' theory as an 'authority' for their claims (Thurow, 1983).

The structure and proposed operation of the AFPC is documented in detail elsewhere (see Cowling and Mitchell, 2005). While the Commonwealth argues that the AFPC will be independent, the claim is compromised by the short-term nature of appointments and Government's capacity to remain obedient to the selection criteria but appointing Commissioners sympathetic to its view about the need for slower real wages growth.

The Commonwealth wants 'a more consultative approach to minimum wage setting in Australia' (DEWR 2005c: 20) and to move away from the 'legalistic and adversarial' process of minimum wage determination before the AIRC. However, the AIRC Safety

Net decisions were based on the application of appropriate standards of evidentiary proof to the submissions of all parties (Briggs and Buchanan 2005: 188) which were exacting and transparent. The Full Bench published a detailed evaluation and assessment of the evidence presented to explain the basis of its determination. Also it was recognised that specialised judicial processes were apposite in the case of labour relations (see also Mitchell 2005a). Conversely, the AFPC will only need to publish its decisions with no legislative requirement for its processes or reasoning to be transparent.

Finally, unlike the AIRC (under Section 88B of the Workplace Relations Act 1996), the AFPC is not required to consider fairness in its decisions. Rather it must now only focus on four economic criteria (see House of Representatives 2005: 49):

- 1 The capacity of the unemployed and the low paid to remain in employment.
- 2 Employment and competitiveness across the economy.
- 3 Providing a safety net for the low paid.
- 4 Providing minimum wages for junior employees, employees to whom training arrangements apply and employees with disabilities that ensure those employees are competitive in the labour market.

6.2 The likely effects on wage levels

Under WorkChoices nominal minimum and award classification wages will be protected at the level established by the 2005 Safety Net Review decision. The weekly Federal Minimum Wage cannot fall below \$484.40, which translates to an hourly rate of \$12.75 (House of Representatives 2005: 19).

However, since the Federal Government's rationale for the creation of the AFPC is based on the view that the AIRC has been overly generous with respect to SNAs, future nominal minimum wage adjustments are likely to be smaller and less frequent. Accordingly, we expect the real minimum wage to fall over time or grow at a considerably slower rate. The adoption of (c) will lead to the narrowing of the cohort to which the decisions of the AFPC will apply.

DEWR (2005c: 14) states that the narrower focus of the AFPC reflects the Government's commitment to using the tax transfer system in conjunction with the workplace relations system to address the needs of the low paid. Howe *et al.* (2005: 4) argue that if the AFPC restricted real wages growth to the lowest classifications within a rationalised award structure the result would be 'a compression of award rates towards a de facto single minimum wage.'

Given economic criterion (d) noted above, it is likely that the AFPC will cut the real wages of the most disadvantaged, since persons aged 15-19 years and those with disabilities have high relative unemployment rates (8.3 per cent in November 2003 and 16.3 per cent in October 2005, respectively). We also note that in (c), the Government clearly wants to reduce the link between minimum wage adjustments and distributional equity, preferring a more coordinated approach via adjustments to wage, tax and transfer systems (House of Representatives 2005). However, the chimera that the AFPC will focus exclusively on wage settings *per se* is belied by the fact that Government settings of rates and thresholds within the personal income tax system and the level, and targeting, of income support payments will impact on its decisions

Briggs (2005:4-5) argues that low paid jobs will expand under *WorkChoices* via: (a) Award-dependent employees with low bargaining power will be transferred to low pay AWAs/non-union collective agreements by their employers who will exploit the five minimum standards of the AFPC to avoid paying overtime/penalty rates and casual loadings; (b) Employees can be converted into contractors who are not covered by minimum labour standards and will have no recourse against exploitative arrangements; (c) New employees can be presented with 'take-it-or-leave-it' AWAs. Also the liberalised transmission of business⁴, greenfield agreement⁵ and unfair dismissal provisions will make these transitions easier; (d) Existing employees can be subjected to lower wages and reduced conditions of employment. Workplaces with terminated agreements will become permanently award-free and the *WorkChoices* legislation shifts the balance of power towards employers; (e) Employees working for corporations under state awards have no mechanism by which to achieve a wage increase during the three year transition period and will likely face a wage freeze.

In addition, even well intentioned employers in cost-sensitive markets will face pressure to extract concessions from their workforce due to more intense wage competition from their less scrupulous competitors (LaJeunesse, Mitchell and Watts, 2005). Briggs (2005:6) notes that the legislation is complemented by tighter welfare to work reforms which will increase pressure on workers to accept poorly paid jobs, rather than suffer loss of benefits. The welfare reforms ensure a ready labour supply for these low paid jobs.

A number of other provisions in the Bill impact on the bargaining power of workers and hence their capacity to secure improvements in pay and conditions. These provisions include the exclusion of firms employing 100 and fewer employees from the Unfair Dismissal provisions, the limitations on strike action arising from the secret ballot provisions, the increased penalties for unlawful industrial action and the new powers for the federal Minister to order protected industrial action to stop where the action threatens life, safety, health or welfare of the population or threatens significant damage to the economy. In addition, the right of entry of unions to workplaces are subject to greater restrictions.

6.3 Postscript

On 21 December the New South Wales Government announced that was about to lodge a High Court challenge against the industrial relations changes. The Western Australian Government is in the final stages of preparing its High Court challenge (ABC, 2005).

7. Conclusion

During 2005 workers continued to enjoy modest wage increases, which have been augmented by changes in income tax rates and welfare entitlements. However, the rate of labour underutilisation persists at high levels, which reflects the absence of a coherent full employment policy.

The future determination of wages and conditions has been profoundly changed by the passing of the *WorkChoices* Bill in December, which replaces union-oriented arbitration and conciliation processes with the operation of market forces, albeit within a highly regulated environment which strongly favours employers. The requirement that 'a safety net of fair minimum wages and conditions of employment be maintained' (Workplace Relations Act, 1996, s.88B(2)) has now been removed and

replaced by a policy focused on employment and competitiveness, which is likely to become a low wage policy. LaJeunesse, Mitchell and Watts (2005) argue that unemployment is a macroeconomic phenomenon which signifies that the budget deficit is too low, rather than being the outcome of labour market inflexibility

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² The wage cost index measures hourly wages net of bonuses and, in contrast to measures of average weekly ordinary time earnings (AWOTE), is independent of compositional changes, because it is based on a fixed basket of jobs, which, however, includes part-time jobs.

³ ACOSS also advocated reliance on minimum wages rather than transfers to stave off poverty (AIRC 2005, 1, para.23).

⁴ Only current employees are bound by an existing agreement and only for one year if a business transfers its operations to a new entity.

⁵ Greenfield agreement regulations enable allow the employer to determine the terms and conditions for the first 12 months of a new business by making an 'agreement' with themselves (Briggs 2005:15).