

Understanding the Effects of Industrial Regulation in Australia: A Case Study of Minimum Wage Workers in Western Australia

Alison Preston & Therese Jefferson*#

Paper prepared for the 16th Annual Conference on Feminist Economics
Ramkhamhaeng University, Bangkok
Thailand, June 29-July 1, 2007

Abstract

Australia has been praised by the OECD for its ‘remarkable economic progress and is touted as a model for other OECD economies wishing to pursue a ‘deep-seated competition’ culture. There is, however, reason to caution against adoption of the Australian model. Aside from the fact that it contravenes several important ILO conventions, the industrial relations and welfare-to-work reforms have created new groups of vulnerable workers and new forms of vulnerable work. Using an inductive qualitative research approach this paper investigates the effects of labour market deregulation and its associated ‘deep-seated competition culture’ with a view to contributing to the growing literature on vulnerable work and vulnerable workers.

1.0 Introduction

When measured against traditional indicators of economic performance, the Australian economy is performing well. In the words of The Hon Peter Costello (2007), Australia’s Treasurer: “Australia is now in the longest period of continuous economic expansion ever recorded, unemployment at 30-year lows, and inflation is moderate”. Various micro and macro economic reforms are credited with delivering such favourable outcomes, including recent industrial relations reforms:

In the area of workplace relations, the Government has added flexibility, and choice to Australia’s labour market. The new workplace relations system, WorkChoices, which came into effect last year, builds on the Government’s earlier labour market reforms and consigns to history Australia’s tradition of rigid and over-regulated labour markets.

(Costello, 2007)

* Alison Preston and Therese Jefferson are members of WiSER – Women in Social and Economic Research, at Curtin Graduate School of Business, Curtin University of Technology.

Acknowledgements: This research has been supported in part by a grant from the WA Office of Women’s Policy and Curtin University, for which we are particularly grateful. We would also like to acknowledge and thank the participants for giving generously of their time and we are particularly indebted to Sharyn Fahlesson and Stephanie Mitchell for excellent research assistance and administrative support. Stephanie was marvellous in her efforts to recruit participants while Sharyn patiently conducted the majority of interviews and provided transcription services. More details concerning the research project are contained within Preston, Jefferson, Fahlesson and Mitchell (2007).

The OECD, a strong advocate of the micro and macro reforms undertaken, has praised Australia for “its remarkable progress from a very unsatisfactory starting point” (OECD 2004) and suggested that it serves as a model for other OECD countries, notwithstanding the fact that Australia is now in breach of several ILO conventions.¹

In the last decade of the 20th century, Australia became a model for other OECD countries in two respects: first, the tenacity and thoroughness with which deep structural reforms were proposed, discussed, legislated, implemented and followed-up in virtually all markets, creating a deep-seated “competition culture”; and second, the adoption of fiscal and monetary frameworks that emphasised transparency and accountability and established stability-oriented macro policies as a constant largely protected from political debate.

(OECD 2004)

Although the economic climate appears favourable when considered against traditional indicators such as GDP growth and jobs growth, there is growing concern as to the broader consequences of the recent labour market reforms (Pusey, 2003; HREOC 2006). Similar concerns are being debated elsewhere (eg. ILO 1999; ILO 2006).²

In this paper we examine some of the effects of a ‘deep-seated competition culture’ engendered through legislative reforms, namely reform of the industrial relations system and parallel reforms in the welfare-to-work arena. Our goal is to contribute to the growing literature on vulnerable work and vulnerable workers.

The paper is organised as follows. Section 2 contextualises the Australian discussion via an overview of recent legislative reform in the area of industrial relations and welfare. Section 3 describes the research approach adopted in this study. The findings are presented in Section 4 followed by a summary and conclusion in Section 5.

2.0 Vulnerable Work and IR Reforms in Australia

There is a growing awareness of the differentiated affects of globalisation and labour market deregulation on workers and their families. In a recent edited book by Francois Eyraud and Daniel Vaughan-Whitehead (2006) on the *Evolving World of Work in the Enlarged EU* the researchers examine the links between globalisation, labour market deregulation, vulnerable work and vulnerable workers in Europe and note that diminution of traditional systems of collective bargaining has weakened worker’s participation in social dialogue and weakened prevailing working conditions (Eyraud and Vaughan-Whitehead, 2006: 50). Economic considerations such as firm competitiveness, efficiency and productivity have engendered new patterns of work (eg. casual work, shift work, short-term contracts) and have simultaneously created or reinforced the vulnerability of certain categories of workers (*ibid.*: 1). In many

¹ The most recent IR reforms, for example, privilege individual bargaining and allow Australian Workplace Agreements (individual agreements) to over-ride collective agreements. This runs counter to ILO Convention 154 – the Convention Concerning the Promotion of Collective Bargaining

² A primary goal of the ILO is promoting and securing ‘decent and productive work’ for all, with decent work defined as work “in conditions of freedom, equity, security and human dignity” (ILO, 1999).

instances governments have played a central role in promoting these new patterns of work, often as a way of encouraging jobs growth (*ibid.*: 42).

According to the ILO groups deemed to be most at risk in this new world of work include traditional broadly defined 'at risk' groups - women, young people, older people, minority groups, immigrants and lower educated workers. However, new types of vulnerable workers were also identified and included shift workers, atypical employees and employees on insecure contracts (Eyraud and Vaughan-Whitehead, 2006). Identified social effects experienced by vulnerable workers included social exclusion, wage precariousness, prevalence of stress, deteriorating family circumstances and housing affordability problems.

In Australia concepts of vulnerable work (and vulnerable workers) are closely associated with groups of workers traditionally reliant on industrial awards for the determination of their pay and conditions of employment.³ These groups, also sometimes referred to as workers on minimum conditions, have been particularly affected by recent IR reforms (outlined below) which have changed the way minimum conditions of employment are determined and applied.

Recent IR and Welfare Reforms

Since election to power in 1996 the Australian Commonwealth government has used its powers to make significant amendments to the system of industrial relations and gradually weaken the protections afforded to minimum condition workers through the award system. The first major change came in 1996 in the form of the *Workplace Relations Act* (WRA). In a radical departure from the traditional system of collective bargaining, the WRA introduced the option of individual bargaining (in the form of Australian Workplace Agreements or AWAs).⁴ The WRA 1996 also converted all industrial awards to minimum awards and reduced the set of 'allowable matters' (ie. matters which could be bargained over and specified in awards) to twenty.⁵

On 30th June 1999 the government sought to introduce further industrial relations reforms via the *Workplace Relations Legislation Amendment (More Jobs, Better Pay) Bill*. In moving the bill the government invoked the need for a more flexible

³ Awards are industrial agreements that have been developed through the arbitral frameworks of the industrial tribunals in Australia. That is, they are collective (union) agreements, often negotiated at the state or national level. In the state jurisdiction 'common rule' provisions help extend the coverage of awards beyond simply the signed respondents.

⁴ Two State jurisdictions, Victoria and Western Australia, had earlier (1992 and 1993, respectively) introduced individual level bargaining and other reforms to deregulate labour markets within their jurisdictions.

⁵ 1. Classification of employees and skill based career paths; 2. Ordinary time hours of work and the times in which they are performed, rest breaks, notice periods and variations to working hours; 3. Rates of pay generally (including hourly rates and annual salaries), rates of pay for juniors, trainees and apprentices, and rates of pay for employees under the supported wage system; 4. Incentive-based payments (other than tallies in the meat industry), piece rates and bonuses. 5. Annual leave and family loadings; 6. Long service leave; 7. Personal/carer's leave, including carer's leave, sick leave, family leave, bereavement leave, compassionate leave, cultural leave and other like forms of leave; 8. Parental leave, including maternity leave, paternity leave and adoption leave; 9. Public holidays; 10. Allowances; 11. Loadings for working overtime or for casual work or shift work; 12. Penalty rates; 13. Redundancy pay; 14. Notice of termination; 15. Stand-down provisions; 16. Dispute settling procedure; 17. Jury service; 18. Type of employment, such as full-time employment, casual employment, regular part-time employment and shift work; 19. Superannuation; and 20. Pay and conditions for outworkers.

workplace relations system to maintain Australia's competitiveness and enhance the employment competitiveness of the unemployed (Reith, 1999). The bill, as noted by Chin (2005) "...set out a comprehensive blueprint of the Government's ambitions for workplace relations reform...", this included further promoting individual bargaining, restricting the right to strike and restricting access to remedies for unfair dismissal.

The bill failed to win the support of the Australian Senate and was rejected. Thwarted in its efforts to pursue its desired 'big bang' IR reforms the government resorted to incrementally changing the system through smaller bills. In October 2004, however, the political climate changed following a 'historic fourth term' win (including in the Senate) by the Coalition Government. The government quickly set about re-drafting its reforms, including reforms to welfare. The *Workplace Relations Amendment (Work Choices) Bill 2005* was introduced on the 2nd of November closely followed by the introduction of the *Employment and Workplace Relations Amendment (Welfare to Work and Other Measures) Bill 2005* on the 9th of November.⁶ Although the industrial relations bill (WorkChoices) and the welfare-to-work bill were the subject of much comment and critique, there was little time for parliamentary debate.^{7,8} Both bills received Royal Assent on 14 December 2005. WorkChoices came into effect on 27th March 2006, while the welfare-to-work reforms came into full effect on 20th of September 2006.

The key changes brought about via WorkChoices included the roping in of the separate State industrial relations systems into the Federal jurisdiction. Although various State governments objected to this roping in the government's position was upheld in a High Court challenge. Using the Corporations Power of the constitution the government determined that constitutional corporations (eg. incorporated businesses) would automatically come under the Federal jurisdiction and, therefore, the provisions of WorkChoices. The change significantly weakened the coverage of the State systems and with it the capacity of the State systems to counter some of the more radical reforms in the federal jurisdiction (Preston and Jefferson, 2007). Examples of the latter include the provision for individual agreements to over-ride collective agreements, the removal of unfair dismissal protection for employees in organisations of 100 or fewer employees and the further paring back of the award system to five allowable matters (minimum conditions).⁹

Other changes saw the removal of skill-based career classification (and pay) structures from awards and the creation of a new Australian Pay and Classification Scale (APCS). The latter is now the responsibility of a new institution known as the Australian Fair Pay Commission (AFPC). The AFPC is also responsible for setting and adjusting the federal minimum wage (previously the domain of the Australian Industrial Relations Commission). In this new climate economic considerations are at

⁶ For details of various pieces of IR legislation discussed see <http://www.workplace.gov.au/workplace/Category/Legislation/WRAct/>.

⁷ There were over 4,500 submissions to the Inquiry into the provisions of the Workplace Relations Amendment (Work Choices) Bill 2005.

http://www.aph.gov.au/senate/committee/EET_CTTE/wr_workchoices05/index.htm

⁸ http://www.aph.gov.au/senate/committee/clac_ctte/welfare_to_work/report/index.htm

⁹ The five allowable matters or minimum conditions now consist of a minimum hourly rate, ten days sick leave, four weeks annual leave (two weeks of which can be 'cashed out'), unpaid parental leave and a maximum number of weekly working hours).

the fore. In setting the minimum wage the AFPC is, for example, 'obliged' to have regard to: the capacity for the unemployed and the low paid to obtain and remain in employment and employment and competitiveness across the economy (AFPC 2006: 6)

The significance of the industrial relations reforms cannot be overstated. It represents a dramatic break with the past. Aside from imposing significant fines for parties including 'prohibited' content in their agreements (eg. clauses with respect to unfair dismissal), the changes also marginalise 'third parties' (unions and industrial courts) from the industrial relations system. Both groups have been instrumental in raising community (labour) standards in Australia and their exclusion threatens to weaken such standards. The AIRC has also been instrumental in developing wage fixing principles (eg. equal pay for work of equal value), limiting wage inequality and moderating inflation by distributing wage restraint across the labour market (and not just concentrating it on the low paid) (Preston, 2001).

The reforms have effectively dismantled the award system. They also limit avenues for advancing community standards. Historically test cases have been a cherished vehicle through which the unions have been able to win improved working conditions for their members and for the workforce as a whole.¹⁰ Industrial parties could, at any time, apply to the AIRC for a review of conditions of employments in an award. The dismantling of the award system effectively shuts down this option down.

The IR reforms are almost exclusively focused on economic outcomes under the banner of flexibility and productivity. Social dialogue has been circumscribed and there appears to be little concern with the quality of the jobs being created. Indeed the legislation initially removed the requirement that new agreements pass a 'no disadvantage test' (i.e. a test that would ensure new agreements did not leave employees worse off relative to the minimum conditions enshrined within awards). In response to growing community concerns around the level of concession bargaining a 'fairness' test has been reintroduced. Of particular concern is the extent to which AWAs have been used to remove entitlements around working hours and payment for overtime work, shiftwork, public holidays and weekend work (Plowman and Preston 2005)

Promotion of employment and labour participation also underpins the welfare reforms. Amongst other things recent amendments introduce a new job search and activity test for single parents. Effective from 1 July 2006, single parents in receipt of parenting payments are required to look for paid work for 15 hours per week or more once their youngest child turns six. In support of the reforms the government has argued for the need for employment over welfare, the need for single parents to have contact with the job market and the need for children to grow up in households where a parent or guardian works (Andrews 2005a, 2005b).

The welfare reforms, when combined with the IR reforms, create a particular 'vector of vulnerability' for single parents. Lacking the support of an effective bargaining

¹⁰ Recent test case decisions include 1969/72 Equal Pay decision; 1979 Maternity Leave; 1985 Adoption Leave; 1990 Parental Leave; 1994 Family Leave; 1995 Personal/Carer's Leave; 2001 Parental Leave for Casual Employees; 2002 Reasonable Hours/Working Hours; and 2005 Family Provisions.

base these individuals risk losing their welfare payments if they refuse to accept employment (because they refuse to sign an AWA and its attendant conditions) or work less than 15 hours per week (possibly as a result of unfair dismissal).

Reforms and recent labour market trends

Whilst the reforms have coincided with strong employment growth (arguably the product of the boom in the resource sector underpinned by China's remarkable economic growth), there is reason to be concerned about job quality. Many of the sectors exhibiting strongest employment growth are also sectors where wages growth has been slowest. By way of example, between 1994 and 2007 employment in property and business services increased by 87 per cent (the overall mean increase was 37 per cent). Over the same period the average weekly ordinary time (nominal) earnings (AWOTE) of men employed full-time in this sector increased by 59.5 per cent. Across all industries the corresponding nominal wage increase was 69.1 per cent between 1994 and 2006. Similar trends occurred in the accommodation, café and restaurant sector. Between 1994 and 2007 total employment in this sector increased by 51 per cent, while male AWOTE in accommodation, cafés and restaurants increased by only 47.1 per cent (Table 1).

Table 1: Changes in Employment and Nominal Earnings: 1994-2006/07

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

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

Recent jobs growth has also been more concentrated in the part-time sector (Table 1) with the majority of all new part-time jobs filled by women. At May 2007 41.1 per cent of all workers were men employed full-time, 7.2 per cent were men employed part-time, 26.8 per cent were women employed full-time and 21.9 per cent were women employed part-time. Sectors exhibiting strongest part-time employment growth include government administration and defence, property and business services (PBS), communication services and cultural and recreational services (CRS) (Table 2). PBS and CRS are, as noted above, two sectors with below average wages growth.

Much of the part-time employment growth has also occurred in jobs of 16-29 hours duration. It is beyond the scope of this paper to determine the extent to which growth in part-time employment is dominated by demand or supply factors, however, it is worth noting that 27.4 per cent of all men employed part-time would like to work more hours. The corresponding share for all women employed part-time is 19.6 per cent (Table 3). Whilst participation may be high and unemployment at an all-time low, there is evidence of under-employment in the Australian labour market.

Table 2: Employment Growth 1994-2007 by sex and employment status

	Rate of Growth of Employment (Employees): 1994-2007 (%)				May 2007. Employment Shares by Industry	
	Men- FT	Men- PT	Fem- FT	Fem- PT	Men Total (%)	Female Total (%)
	Agriculture, Forestry and Fishing	115	129	83	96	2.5
Mining	156	214	281	68	2.3	0.4
Manufacturing	97	154	90	99	15.5	5.8
Electricity, Gas and Water Supply	90	156	127	169	1.4	0.4
Construction	196	305	168	116	12.0	2.2
Wholesale Trade	94	136	100	112	5.9	3.2
Retail Trade	131	164	125	141	12.3	16.9
Accommodation, Cafes and Restaurants	158	166	138	149	4.4	6.3
Transport and Storage	125	258	139	189	6.2	2.7
Communication Services	150	365	117	198	2.6	1.2
Finance and Insurance	142	296	109	141	3.8	4.4
Property and Business Services	195	244	168	173	12.0	11.7
Government Administration and Defence	108	240	170	215	4.7	5.4
Education	105	220	138	148	4.5	10.9
Health and Community Services	134	178	160	167	4.1	18.7
Cultural and Recreational Services	163	192	159	174	2.4	3.2
Personal and Other Services	130	149	134	161	3.3	4.3
All industries	129	185	135	148	51.3	48.7

Source: ABS supercubes 6291.0

Table 3: Part-Time Employment: Growth Rates and Extent of Underemployment

Hours Worked	Employment Growth by Hours Worked (May 2001-May 2007)		Share of Part-Time Employees Who Want to Work More Hours (By Hours Worked), May 2007	
	Men (%)	Women (%)	Men (%)	Women (%)
1-15	17.3	19.5	70.0	76.3
16-29	42.0	25.4	71.7	79.0
30-34	23.3	23.4	76.2	86.4
Total	30.5	23.6	72.6	80.4

Source: ABS 6291.0 supercubes (eo1_may01.srd)

Aside from employment growth, proponents of the reforms have also emphasised the productivity gains, wage gains and scope to negotiate flexible schedules that facilitate the balancing of work and family responsibilities (Andrews, 2005b). Whilst some sectors of the labour market (eg. skilled, professional workers) may be in a position to negotiate some of their desired flexibilities this does not necessarily extend to all workers (Burgess, Henderson and Strachan 2006). According to ABS data less than a quarter of the workforce (20 per cent for women and 26 per cent for men) can regularly exercise discretion over their start and finishing hours (Jefferson and Preston, 2006).

Similarly, whilst some individual agreements might result in the payment of premium wages (i.e. wages above the prevailing rate in collective agreements) this also doesn't hold for all individual agreements. As Briggs and Cooper (2006) observe, the strategic reasons for using AWAs vary across employers and industries. In some sectors AWAs are used as a way of rewarding senior management (eg. government), in other situations they are used as a union avoidance tool (eg. mining) with an attraction wage often being paid for this purpose. In other sectors such as personal and other services they are used as a way of cost minimisation.

At May 2006 the overall gap in the average total hourly cash earnings of those covered by an AWA relative to those covered by a collective agreement was 2.1 per cent for men and 11.3 per cent for women (Table 4). The gap (or AWA wage penalty) was particularly wide in sectors such as personal and other services, health and community services, transport and storage, wholesale trade, construction and manufacturing. The gap is also larger for part-timers and for those employed on a casual (i.e. insecure) basis. At May 2006, amongst all employees covered by formally registered individual agreements, the casual / full-time (permanent) wage ratio was equal to 68.6 per cent (i.e. a gap of 31.4 per cent) (see Table 5).

Table 4: Ratio (%) of Average Hourly Total Cash Earnings in Australian Workplace Agreements and Collective Agreements, May 2006

	AWA/CA Ratio (%)	
	Men	Women
Mining	98.7	95.5
Manufacturing	90.6	87.1
Electricity, gas and water supply	112.1	*
Construction	83.0	72.7
Wholesale trade	94.9	94.0
Retail trade	120.9	105.8
Accommodation, cafes and restaurants	101.1	101.8
Transport and storage	82.4	71.8
Communication services	159.6	143.7
Finance and insurance	116.8	121.8
Property and business services	126.3	99.1
Government administration and defence	135.9	127.0
Education	*	90.6
Health and community services	80.5	88.3
Cultural and recreational services	111.3	106.1
Personal and other services	62.1	72.1
Total	97.9	88.7

Source: ABS 6306.0, unpublished data. Note: * indicates cell sizes are too small.

Table 5: Earnings Ratios of Part-timers and Casuals. May 2006.

Persons	Permanent part-time / Permanent full-time Earnings ratio (%)	Casual / Permanent full-time Earnings ratio (%)
Award only	106.7	105.6
Registered collective agreements	85.6	81.0
Unregistered collective agreements	89.5	96.1
Registered individual agreements	72.1	68.6
Unregistered individual arrangements	88.2	85.5
All methods of setting pay	87.7	80.4

Source: ABS 6306.0

It is clear from the above that the labour market is far from homogenous. Just as individuals vary in terms of skills, qualifications, motivations etc. so do employers, managers and unions. It comes as no surprise to learn that the IR reforms are impacting differently on different sectors of the labour market. Of interest to us, however, is the link between labour market deregulation and vulnerable work. To what extent are the industrial relations and welfare-to-work reforms a contributory source (a vector) of vulnerable work? In the remainder of this paper qualitative research methods are used to further explore this question.

3.0 Research Approach

This study utilises an inductive, qualitative research method. This method does not aim to verify an existing hypothesis but rather aims to construct key insights directly from rich data. The data were collected through a program of twenty individual, semi-structured interviews designed to capture a wide range of influences on women's pay

and employment conditions including organisational influences, industrial instruments, type of workplace, jurisdiction, discrimination, health and welfare outcomes, and factors typically not collected in published data sources. This type of interview generates high quality, rich data that reflect the concerns and issues of importance to the workers involved in these industries and sectors. In particular, it allows analysis of the potential linkages between possible changes in pay and conditions as workplace regulatory changes proceed, pursuing for example, whether potential trade-offs in rates of pay for more flexible hours are occurring in a form that was helpful to workers meeting the demands of work and family, or indeed, whether there was a demand for such a trade-off.¹¹

In identifying potential participants we imposed two main selection criteria. Firstly the sample was restricted to ‘minimum condition workers’ (vulnerable workers), i.e. employees who have been particularly reliant on the minimum conditions afforded by the previous industrial regulatory regime. We further restricted the sample to women since women represent the majority of such minimum condition workers. The key areas from which participants were drawn included: aged care, child-care, cleaning, hospitality, retail and clerical from metropolitan and regional Western Australia.¹²

Interviews were held at a variety of locations, chosen to accommodate the preferences, convenience and comfort of the interview participants. Venues included private homes, offices at the university, cafes and parks. Whilst most (75 percent) of interviews were face to face, some were telephone based (for logistical reasons). The briefest interview lasted twenty minutes and the longest one and a half hours. Most interviews went for approximately 40-60 minutes.

4.0 Findings

Hours of Work

Participants were asked to describe their hours of work. They were also asked to detail characteristics of their employment that they liked and disliked. Common ‘dislikes’ were hours of work and pay.

Most interviewees worked on a part-time basis, with many working shift-work. The latter was reflective of the sectors targeted (hospitality, cleaning, aged-care and child-care).

Whilst a minority of respondents (notably not those in sectors listed above) had been in a position to negotiate their start and finishing times (eg. to enable them to work around the school hours), the majority had little discretion over their hours, including the scheduling of their shifts which in turn, contributes to relationship and family pressures.

¹¹ For more details on the research approach and data collection methods refer to Preston et al. 2007.

¹² The project met the necessary requirements of confidentiality and voluntary participation. Relevant documentation was submitted to Curtin University’s Human Research Ethics Committee and their approval was granted for the duration of the project (approval reference: GSB097).

... well I've done a permanent early (shift) for six months straight because I have no other qualified [child-care worker] who can do it ... some days I start at six thirty and don't get out until five thirty. My partner is not very happy about it, but you know, its work.

In one case the respondent detailed an incident where inability to work particular shifts (on account of family responsibilities) resulted in job termination

...They gave us an ultimatum and said it was on the basis of equality that everyone had to work early shifts and late shifts.

Respondents also complained about the length of their shifts (too long with no breaks; and too short, to avoid paying for breaks) and discontinuity of working time (and therefore pay):

...I don't like the irregularity of the hours, sometimes you work a two hour shift and then another two hour shift and your whole day would be stuffed up...//... I don't have a dinner break or anything. Four-thirty to 8.30, four hours, that's fine. So what I think is they are actually cutting down on the hours, so they don't have to give you a break. You arrive there and work...I would rather work longer shifts, you know, in a day and work less days. //...We would work 9 hours without having a break and sometimes I did a 10.5 hour shift with no break.//...They only give you a break after you work 6 hours. Q: But if you do a 10 hour shift you'd get a break? Yeah, if you do the 8 you get a break, but there are times when you work a 6, like 10-4 and you don't get a break which I find is terrible. //...even though I am working 9 till 5 I don't work from 9 till 5 in the sense that they don't pay for all those hours. They allow 15 minutes between clients, travelling from client to client ... sometimes it takes a while to get there [aged care worker] //

Overtime work was also fairly contentious with few respondents being paid for any additional (overtime) hours worked or being paid for unsociable shifts. In some cases it was company policy not to pay overtime money. In other cases where overtime is worked it is either paid at normal rates or paid in time in lieu (at employers discretion):

I work a 38-hour week. There's not really a lot of overtime involved, but some days there can be. Um, it's unpaid overtime when there is some.//When I first started they asked me to do overtime, I worked a couple of weekends. I told them because of my children I couldn't do it but they did ask me. Q: Would they have paid more? No, same amount.//I average about 86 hours a fortnight. Q: And do they pay you for the overtime? A: No. I just get paid a flat rate um, which I am not too happy about. // I'm on a salary so I don't get paid over time ... if I do work overtime I accumulate time in lieu and it is at their discretion when I get to take it. //...if the shift starts after that [12 noon] you do get penalties. Except one shift that starts at 11.30 and ends at 6.30, you don't get any penalties at all (laughter).[p.42] //...she's [management] just said "I'm not paying them, not paying them, I've never ever paid overtime and I never will.", so... you know the girls just deal with it [child-care co-ordinator].[p64]

Full-timers felt particularly frustrated by the increased casualisation of the workforce and the fact that many casuals are young people (often students) who have no particular commitment to the job leaving the responsibilities with the full-timers:

...we have a lot of staff but they're always students and students drive me nuts because they can never work. They've always got something on and they are always trying to swap their shifts ... and they really leave it up to us full-timers to do all the work and so they don't have enough staff in that regard ... umm they don't have enough staff for me, with my job being about four jobs rolled into one.

For some the welfare-to-work requirements generated particular stresses around hours of work, particularly in the face of withdrawal of welfare payments for those breaching the activity test (of 15 hours of work per week for single parents whose youngest child is 6 years old).

Q: what about shift loadings or penalty rates? A: We don't get any of that. That's one thing I don't like about ... um with me ... we don't have to work public holidays, but if we do we don't get paid any extra. But I have to work public holidays because I'm afraid that I won't make my hours ... but they told us that straight off, if we decide to work over Good Friday or Easter Monday or Foundation Day we do not get paid any extra. ...And I think you'll find a lot of other people are in the same situation as well because um I don't think Centrelink really care, um about public holidays, um like if your boss doesn't want you to work on that public holiday and you lose that 5 hours, then at the end of the week you are 5 hours short of your 15 and Centrelink don't want to know about it. That makes it hard because if you are employed to work Monday, Wednesday, Friday and there are so many Mondays and Fridays that are public holidays and um you just lose your hours.//

The 15 hours is not much, I'm not complaining. I'm all for people going out to work but they have got to understand that everyone is different and their conditions are different... I think they need more of a safety net than what they've got. You know if people could offer them permanent part-time then that would make things a lot easier, that way you're guaranteed your hours. You see with me I have been exceeding my quota, but you are not always guaranteed those hours. I get those cases that go into hospital or they die or get out of the system for one reason or another and that means you've lost hours and it may take a while for you to get those hours back up. Centrelink don't care about that. They just say get another job, and you've got no choice, they make you go out, and for some it's easier than for others.

Pay, Bargaining and Contracts

Many of the respondents were ignorant as to their employment contract arrangements and entitlements and where to go for information. Many were on verbal agreements.

Q: So they have put you on the award? A: Yeah. Q: And you didn't have to sign a contract, no negotiation? Did you ask them what you'd get paid...? A: no, yeah well you just assume their on a basic award. I think we are a little bit higher than the basics but I'm not sure.//Q So your employer pays your wage and you are not aware of how your wages and conditions of employment are set, whether you're on an award or an individual agreement? A: I don't think it was, no. I don't think it was an individual agreement or anything like that.

For most wage negotiation was not a feature of their employment. Many were also vague as to the process of obtaining a wage or when their rates might be reviewed. For some the newspapers were their source of information, whilst others intimated they had virtually given up on the idea of a pay increase.

You just take what they offer and you kind of don't really ask them, you just compare it with what friends are earning.//You just accept what they give you.//We just accept it and if anything gets better it's sort of just a bonus.//What happened was we found out via papers that we were meant to be getting a pay rise...and it was only when I rang up the hotline to find out ... I found out we were supposed to get a pay rise last August, one in December and one in February.//I mean you've got guys who can come in and bargain straight up 'cause they have training, like any trades position. I mean they name the price they want. Childcare has such a set wage, such direct guidelines.//So technically you have to be working a year and six months to get your raise ... if you get it ... and I know that other people who have been there for years and still never got theirs.

Although for some this reflected their stage in life and attitude to the job

... I guess I don't have that much incentive at the moment to stir the pot because what I am getting paid is not a lot of money. So it is just my casual role. If I was in full-time employment and I had a family and things like that I would be like I think I'm worth more and I have more reason to negotiate and I have no qualifications really for this job.

Others lacked the confidence or assertiveness to bargain:

...No, I'm no good. I mean I don't think that I could go up to them and say I needed extra money. The only thing I would love to do is to go up to them and say "look, um, I'd love to become a permanent part-time" so I would get certain entitlements, but I don't know if they would allow me to do that. I've never gone up and asked them. I don't think they would sack me or anything like that, I'm just not comfortable asking them because I think I know the answer, and I would get too upset. //I don't think I'm smart enough to do that [negotiate wages on own behalf]. //Q would you feel comfortable about that [negotiating your pay and conditions]? A: I think that would be difficult. Because I would like for everyone to get together. I might go and say something and underquote myself, compared to what they're paying another and we're all doing the same job.

although this didn't apply to all:

I'm quite confident going for it myself.

Others still had the confidence to bargain but felt powerless to achieve the desired outcomes:

...you can't ask for any flexible hours, well yeah, you can ask, but you risk being sacked. The same as if you ask for more wages, for um the same sort of reason. You would think in a climate where there are not a lot of qualified childcare workers that you could ask for more ... but no. //I recently asked for a pay rise and got knocked back...so far it has taken 9 months, so I can't see it happening any time soon. //Well you can't [bargain]. How are you supposed to, because you say 'OK, I want a raise' and they say 'OK, well when your next review comes up you can talk about it then'... and you say you want it now, they would say 'well, you're not going to get it, find somewhere else to work'. It's not like they don't have people.

Some saw the bargaining confidence linked to age, with younger workers in particular lacking confidence (especially in the company of a domineering / 'bully' type boss). Others described their discomfort at their vulnerability in the bargaining process.

Well the girls don't really speak up for themselves especially when there's so many ... when they ... they say what's on their mind with everything else, but when they know what's right they don't really say anything. Like with the pay and conditions, they're not going to say anything because they know they're going to get ...not crucified for it, but you know, they are going to be put down ... put in their box for it. // You can't really go in and bargain anymore unless you've got years of experience behind you and that qualification. And then still you've got to go to the most vulnerable place to get that and ... I feel like I'm in a pretty vulnerable place and I tried to do it. //I think you get better at it the older you get. And I think that it is really hard to negotiate if you don't know what other people in the industry are getting. How do you know what you are really worth? //Yeah and because most of the people are young and they don't know what to ask for.

Others complained about being under-paid, short-paid, owed back pay or, worse still, the problem on non-payment (payroll incompetence causing them to miss pay weeks).

The fact that the pay person, or the bookkeeper, I think he is the treasurer; he has got this habit of getting it wrong. He gets it wrong a lot and never gets it wrong in your favour...//I didn't

even get my first pay when I started here because no one asked for my bank details, so I didn't get paid. I worked here for nearly a month before I got paid.

The issue of finance and cost-savings is clearly a concern for most employers, with many employees appearing to subsidise operations through unpaid overtime and through undervalued work.

...I was told I was going to get more...get paid at a level 4, and I think they figured they would try and cut, obviously these companies always do that – trying to save money wherever they can, they changed the job title to Independent Stockroom Controller [from Stockroom Manager]//...I was under the impression that I was on above award wages ..so when it didn't look as if I had got enough I looked into it myself...I haven't received any of that [rates in the award]...Victoria pays a lot higher in childcare than Western Australia does.//I don't mind the responsibility, its just that I've got other stuff I have to do. I don't have time to do stuff that they never told me I would have to do because they are deciding to expand and they don't want to hire more people.

Although as with everything there are good and bad employers:

This is the best retail place I have ever worked for ... they actually pay you for what you know ... if you do well they pay you extra.

Working Conditions

The majority of interviewees came over as dedicated employees concerned with 'doing the right thing' by their employer or, in the case of child-care and aged-care, by their customers (e.g children). They were frustrated with their pay, with being under-valued and with their hours of work but persevered because of a commitment to their career (loved their work) and to their peers (love of working with the 'girls' and with the children).

For others job satisfaction derived from their clients, particularly those working in hotel and restaurant industries. They talked of the customers as being their friends; 'one big happy family'. They described their joy of working with people and of the 'buzz' of meeting different people.

In most cases the working conditions appeared to be far from ideal. Few positions were described by their occupants as 'career jobs' and few offered training opportunities:

...nup, there's no training at all, I can't go up any further than I am now.//But there is absolutely no training there at all. We have to do our First Aid ourselves. Yeah, we don't get reimbursed for that. We don't get reimbursed for uniforms or anything like that. We have to pay for it all out of our own pockets.

Other participants relayed concern for workplace practices and for their complicit involvement in practices that were not in keeping with regulatory requirements (often driven by staff shortages, in turn the product of fiscal pressures).

...at the start of April I actually stepped down as supervising officer. It's only if you are supervising officer that it comes back on you ... Like if there was a wrong birth certificate it would be my fault and there would be a fine to the licensee. So they put their trust in me, but

I couldn't do it. I only did it for about what...4 months. Yeah, I tried but there were just too many mistakes... and if management don't want to fix it...

WorkChoices and the IR climate

Few of the participants interviewed were on an AWA, i.e. were on a formalised written, registered individual workplace agreement. One participant who was (a clerical worker in the building sector) indicated that (a) everyone was on AWAs in her organisation; and (b) that she was happy with the arrangements (although she was concerned that she was being underpaid relative to a male peer in a similar position). She also differed from many other participants in that although she was working in a clerical role she felt she was working below capacity and did harbour managerial level ambitions.

The majority of participants were, instead, on verbal agreements. Some verbal agreements were for above award entitlements, others were for the basic award entitlements. Others, still, had no clear understanding of their conditions and entitlements.

Few were able to articulate any specific consequences arising from the new industrial relations legislation (WorkChoices) although a number were aware of the new unfair dismissal provisions and the risk of dismissal for rocking the boat (including asking for a pay rise).

Um... well I can't think of any overt changes but um... I do know that there is a lot of fear in our workplace. We all know if we don't do something that we should that there is a possibility that we can get sacked on the spot. And a lot of the young girls have got car loans and live out of home and things like that, and they are really quite concerned and don't want to ask for things and don't want to approach the owners if something is broken or needs fixing... because you know one day ... if they are seen as rocking the boat they might be ousted.

In many ways the participants interviewed generally appeared to hail from workplaces and organisations characterised as having poor employee-employer relations; i.e. were far from being described as high performance workplaces. Employers appeared to be as ignorant of their obligations as employees were of their entitlements.

It is possible that WorkChoices has further fuelled the sense of employer prerogative, particularly in the current tight labour market. It is similarly likely that the radical change in arrangements (eg. migration of incorporated companies from the state jurisdiction to the federal jurisdiction) will also have created a level of uncertainty and confusion amongst employers as to their obligations and forms of industrial instruments available for setting pay and conditions. Their ignorance simply compounds the vulnerability of the jobs they offer and the vulnerability of the worker's they employ.

It is clear that the new welfare-to-work provisions, when combined with the IR provisions, have created yet another vector of vulnerability. Participants in this project caught up in the new arrangements all described high levels of stress in meeting their activity test and working on a casual, part-time basis where hours of work were not guaranteed.

With a few exceptions, the new IR arrangements have also done little to facilitate the work and family balancing requirements of the participants in this research project. Indeed the opposite has happened, with shift workers particularly vulnerable and exposed to dismissal if they are unable to meet schedules on account of family needs.

I wouldn't say overly fearful but I am quite concerned that they will say something [about having to take time off for her sick child]. I suppose you could call it fear in a way but they haven't really said anything. I don't think they are as bad as the last company though.

I don't like the way management do things. I don't like the way they get rid of people they don't perceive ... well for whatever reason.

5.0 Summary and Conclusion

Australia has been praised by the OECD for its 'remarkable economic progress' with its structural reforms touted as a model for other OECD countries wishing to engender a 'deep-seated competition culture'. Whilst the economic performance is not in dispute there is reason to caution against the introduction of a model which contravenes basic ILO conventions and supports the growth of vulnerable work and vulnerable workers.

In this paper an inductive qualitative research approach is used to investigate the effects of labour market deregulation and shed further light into the vectors or causes of vulnerable work and thus vulnerable workers.

In keeping with other research in this area we note that in addition to the traditional 'at risk' groups (of women, part-timers, youth, older people and lower educated workers) there are new groups of vulnerable workers. Shift workers and casual and part-time workers on short hours emerge here as particular at risk groups.

Legislative changes which have removed the protection of the award system and weakened the bargaining power of particular groups have exacerbated their vulnerability. Shift workers are, for example, increasingly concerned about the trend towards shorter shifts (to avoid paying breaks) and discontinuity in hours of work. Removal of protection for dismissal has also opened up the vulnerability of particular groups, especially around bargaining over pay and conditions.

It's hard to understand how this particular model can be seen as a 'best practice' model for others in the OECD to pursue. Far from engendering high practice management behaviours it, instead, supports a race to the bottom in terms of pay, conditions, training, career structures and safety.

Australia is currently in the midst of a productivity debate, a debate focused on explaining why labour productivity is declining. Some highlight the marginal product of labour theory. The findings in this paper suggest other factors at work, such as under-employment (with between 20 to 25 per cent of part-time workers wanting more hours) and poor management practices. Worker disillusionment will, in time,

compound the situation, particularly in workplaces which lack any sense of a 'learning culture'.

The consequences for the vulnerable workers are immense, but they are similarly immense for society and for the economy as a whole. As Australia's demographic challenge begins to bite there is a need for more participation and for more workers in critical areas such as child-care and aged-care. Short-sighted employment practices and a concern with cost-minimisation do little to encourage entry and retention in these sectors.

References

- Australian Bureau of Statistics (ABS) (2007), *Average Weekly Earnings Australia*, Catalogue 6302.0, Time Series Spreadsheets, Table 10A and 10D.
- Australian Bureau of Statistics (ABS) (2007), *Labour Force, Australia, Detailed*, Electronic Delivery, Number 6291.0.55.001.
- Australian Fair Pay Commission (AFPC) (2006) *Wage Setting Decision October 2006*. (<http://www.fairpay.gov.au/fairpay/MinimumWageDecision/>).
- Andrews, K. (Hon), (2005a) *Employment and Workplace Relations Amendment (Welfare to Work and Other Measures) Bill* Second Reading Speech: 2005.
From:
<http://www.workplace.gov.au/workplace/Category/Legislation/Other/EmploymentandWorkplaceRelationsLegislationAmendmentWelfaretoWorkandOtherMeasuresBill2005.htm>
- Andrews, K. (Hon), (2005b) Welfare to work doorstep – doorstep interview transcript. Available from:
<http://www.workplace.gov.au/workplace/Category/Legislation/Other/EmploymentandWorkplaceRelationsLegislationAmendmentWelfaretoWorkandOtherMeasuresBill2005.htm>
- Chin, D. (2005). "The Encroaching Federal Industrial Relations System", *Symposium: State Systems of Industrial Relations*, 19 September. Available from:
<http://www.australianreview.net/digest/2005/09/chin.html>
- Costello, P. (Hon) (2007), "Ensuring Australia's Economic Prosperity: The Intergenerational Report:", Speech by the Commonwealth Treasurer, London, April. <http://www.treasurer.gov.au/tsr/content/speeches/2007/004.asp>
- Briggs, C. and R. Cooper (2006), "Between Individualism and Collectivism: Why Employers Choose Non-Union Collective Agreements", *Labour and Industry*, Vol. 17(2), pp. 1-24.
- Burgess, J., L. Henderson and G. Strachan (2006) "I Just Juggle': Work and Family Balance in Australian Organisations", Paper presented at the *Our Work... Our Lives: National Conference on Women and Industrial Relations*, 12-14 July. Available from <http://www.qwws.org.au/OWOL.html>
- Eyraud, F. and D. Vaughan-Whitehead (2006) *Evolving World of Work in the Enlarged EU: Progress and Vulnerability*, International Labour Office and European Commission, ILO, Geneva.
- HREOC (2007) *It's About Time: Women, Men, Work and Family*. Report by the Human Rights and Equal Opportunity Commission, Australia.

- ILO (1999) *Decent Work* : Report of the Director-General to the International Labour Conference,. 87th Session of the ILO. Available from <http://www.ilo.org/public/english/standards/relm/ilc/ilc87/rep-i.htm>
- ILO (2006) *International Institute of Labour Studies Research Conference: Decent Work, Social Policy and Development*, 29 November-1 December, ILO, Geneva.
- Jefferson, T. and A.C. Preston (2006), “WorkChoices and Family Friendly Working Hours.” WiSER Discussion Paper 50. Available from www.cbs.curtin.edu.au
- OECD (2004) *Economic Survey of Australia 2004: Economic performance and key challenges*. Available from http://www.oecd.org/document/29/0,3343,en_2649_34573_34037213_1_1_1_1,00.html
- Plowman, D.H. and A.C. Preston (2005) “The New Industrial Relations: Portents for the Lowly Paid”, *Journal of Australian Political Economy*, December.
- Preston, A.C. (2001), *The Structure and Determinants of Wage Relativities: Evidence from Australia*. Ashgate Publishing Limited.
- Preston, A.C. and T. Jefferson (2007) “Australian Wage Determination and Gender Equity: A View from the West”. WiSER Discussion Paper 51. Available from www.cbs.curtin.edu.au
- Preston, A.C., T. Jefferson, S. Fahlesson and S. Mitchell (2007) Towards an Understanding of the Effects of Workplace Regulation on Minimum Condition Workers in Western Australia. Report to the Western Australian Office of Women’s Policy.
- Pusey, M. (2003) *The Experience of Middle Australia* Cambridge University Press.
- Reith, Peter (Hon) (1999) *Workplace Relations Amendment (More Jobs, Better Pay) Bill 1999: Second Reading Speech*. Minister for Employment, Workplace Relations and Small Business. Available from <http://www.workplace.gov.au/NR/rdonlyres/C3F7198C-D359-46FF-BE37-CFA1C3C811FC/0/secondReading.pdf>