

ONE YEAR ON

The impact of the new IR laws on Australian working families



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ACTU
Australian Council of Trade Unions



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Summary

Reduced job security for working families

- 3,761,000 Australian workers employed in businesses with less than 100 staff have lost protection from being unfairly dismissed since the new IR laws were introduced on 27 March 2006.
- 99% of all private sector employers are now exempt from all unfair dismissal laws.
- Another 6,590,000 workers employed in businesses with more than 100 staff are also not protected from unfair dismissal as long as their employer says the sacking is for so called 'operational reasons'.
- An example of this was the sacking of 29 workers at the Cowra Abattoir who were dismissed for 'operational reasons' and offered their jobs back with a 30% pay cut. The Federal Government's Office of Workplace Services found these sacking were legal under the new IR laws.
- A prominent legal adviser to big business said publicly that any large business that sacks a worker for anything but 'operational reasons' would be crazy.
- There has been a 60% increase in workplace-related complaints to the Human Rights and Equal Opportunity Commission since the new IR laws removed these unfair dismissal protections.

1,000 workers a day are being pushed onto AWA individual contracts

- 1,000 workers a day are being put onto AWA individual contracts under the new IR laws, as at the end of 2006.
- Under the IR laws large businesses have been specifically given the power to:
 - refuse to collectively bargain with workers even where that is what a majority of workers in a workplace want;
 - refuse employment to any worker who won't sign an AWA in terms dictated solely by the employer; and
 - refuse to increase the pay or promote any worker who won't sign an AWA individual contract.
- This increase in employers' power to put workers on AWA individual contracts has led to a jump in the number of Australian workers being put on an AWA.



AWA individual contracts cutting workers' conditions

- The new IR laws have scrapped the 'no disadvantage test' which protected workers from having their pay or conditions changed without appropriate compensation.
- AWA individual contracts now only need contain 5 minimum conditions.
- The Federal Government's own report given as evidence to the Budget Senate Estimates Hearings in May 2006 shows that its new AWA individual contracts are cutting the pay and conditions of Australian workers.
- Of all AWA individual contracts surveyed in the report:
 - 100% cut at least one so called 'protected award condition';
 - 22% provided workers with no pay rise, some for up to 5 years;
 - 51% cut Overtime Loadings;
 - 63% cut Penalty Rates;
 - 64% cut Annual Leave Loading;
 - 46% cut Public Holidays payment;
 - 52% cut Shift Work Loadings;
 - 40% cut Rest Breaks;
 - 46% cut incentive based Payments and Bonuses;
 - 48% cut Monetary Allowances (for employment expenses; skills; disabilities);
 - 36% cut Declared Public Holidays; and
 - 44% cut Days to be substituted for Public Holidays.

Wage rises for all full time workers falling behind inflation

- Since the new IR laws were introduced increases in total earnings for full time workers have been falling behind the rising cost of living.
- Compared to the rate of inflation total average earnings for full time adult workers have dropped by -0.6% over the past 12 months since the new IR laws came into effect.
- For full time workers in the private sector average total earnings have dropped by -1.1%.
- The drop in average earnings for women workers in the private sector is -1.8%.
- For more than a million workers on minimum wages, the increase granted to them by the Government's new Pay Commission saw the real value of their weekly wages fall -0.9% behind the inflation rate.



Lower pay for workers on AWAs

- Even with the higher salaries paid to many workers on AWAs in the mining industry as a result of the resources boom, ABS statistics show workers on AWAs earn an average 90 cents an hour less than workers covered by collective agreements (non-managerial workers).

Many workers on AWAs working longer hours

- ABS data released in March 2007 shows that the average weekly hours worked has increased in the past year. Other recent ABS data also shows people in full time non-managerial jobs that are on AWA individual contracts work 2.3 hours a week more than people on registered collective agreements.

Women workers' wages falling behind

- ABS data issued a year after the new IR laws came into affect shows the gap between full time wages for women and men has blown out to \$100 a week.
- Full time women workers now earn on average 10% a week less than their male colleagues.
- This has taken Australia back to the same pay gap in percentage terms that existed in 1978.

41% of Australians already know a friend or family member negatively affected by the IR laws

- In only 12 months since the new IR laws have been introduced hundreds of workers have already publicly detailed how they have been harmed by the laws.
- Thousands more examples of workers hurt by the laws have not been detailed in public.
- 41% of NSW residents told an independent Galaxy poll published in the Sunday Telegraph (31 Dec. '06) that they knew a friend or family members who had been negatively affected by the new IR laws.
- 2,100 complaints from workers about the IR laws have already been received by the Victorian Workplace Rights Advocate.



68% of new IR laws ‘Employer Greenfield’ Agreements cut workers’ award conditions

- Employer Greenfield Agreements introduced by the Federal Government as part of its new IR laws, allow employers to set work conditions in any new business, part business or undertaking without reference or negotiation with affected employees or unions.
- Employer Greenfield Agreements effectively allow employers to negotiate with themselves the terms and conditions of employment of their workers.
- An estimated 14,400 Australian workers have been put on an Employer Greenfield Agreement since the new IR laws were introduced and the number of employees covered by these ‘agreements’ is growing rapidly.
- 68% of these agreements eradicate workers’ ‘protected award conditions’.
- 75% provide no specified wage increases for workers.

Lost productivity

- Despite the Government’s claims that its IR laws would boost productivity, labour productivity in Australia (GDP per hour worked) declined by 1.6% in the first six months under the new IR laws and barely recovered in the following quarter.

Six key elements of the new IR laws

On 27 March 2006, the Howard Government's new IR laws took effect. These laws mean fewer rights for Australian workers. The laws benefit employers by reducing the rights of working Australians and were introduced despite overwhelming opposition from the community, churches and unions. The new laws:

1. **Remove protection from unfair dismissal** for millions of workers by abolishing unfair dismissal protections for workers in firms with less than 100 workers or for whom *part* of the reason for their dismissal was 'operational'.
2. **Make it easier for employers to push workers onto individual contracts** that undercut take home pay and employment conditions. The laws give legal preference for individual contracts ('Australian Workplace Agreements' or AWAs) over collective agreements (CAs) or awards, for example by enabling AWAs to undercut conditions in Collective Agreements at any time and making it illegal to include in CAs 'prohibited content', such as provisions protecting employees from being given AWAs that cut conditions or enable union training or unfair dismissal protections.
3. **Strip back award conditions and make it easier for employers to cut penalty rates, overtime pay, holiday loadings, public holidays, redundancy pay and work allowances.** Under the new laws any new workplace agreement need only include five basic minimum conditions. Other, former award conditions are no longer protected. The removal of the 'no disadvantage test' is one of the key features of the new laws and why many employers are removing these conditions without providing any compensation to employees.
4. **Make many ordinary union activities illegal.** The laws include restrictions on the right to undertake collective action in ways that are unusual by international standards. They provide employers with the unilateral right to refuse to bargain collectively with workers and unions even if that is what a majority of employees in a workplace want; they restrict workers and unions from using collective bargaining to protect employees from AWAs, unfair dismissal, casualisation of jobs or the use of contractors; and they ban clauses that ensure workers have a right to be represented by a union.
5. **Reduce the power of the Industrial Relations Commission** by removing its core functions, handing them either to specially established government agencies or private corporations.
6. **Change the way minimum wages are set to make them lower.** The so-called 'Australian Fair Pay Commission' now sets minimum wages and in its first decision it failed to provide a real increase in wages for more than a million award-reliant employees.

More workers being pushed onto AWAs

Under the new IR laws, the Federal Government, with support from big business groups, wants individual contracts which are called Australian Workplace Agreements (AWAs) to be the most common form of agreement for workers in the future.

Before the new IR laws, AWAs have mainly been the type of agreement used by senior managers and executives. However the new laws have significantly increased the power of employers to put workers onto AWAs and make it much harder for employees to collectively bargain.

Under the new laws AWA individual contracts:

- can be offered as a condition of employment – if you don't sign the AWA you can be refused the job
- can be offered by employers at any time regardless of whether a current collective or enterprise agreement is already operating in the workplace
- can contain pay and conditions that are less than what other people doing the same job in the same workplace receive
- can pay less than any existing enterprise agreement in force at a workplace
- can contain pay and conditions which are lower than the award
- need only contain five minimum conditions
- can remain in force for up to five years
- permanently remove an employee's award entitlements.

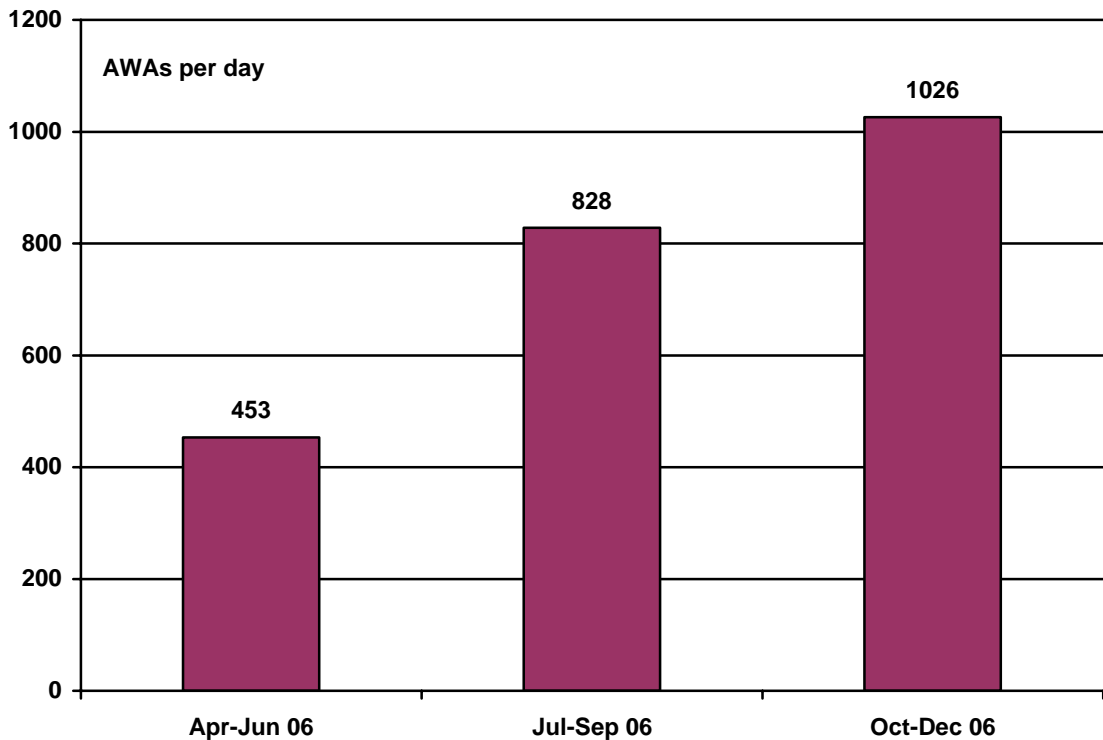
In the twelve months since the introduction of the new IR laws, the ACTU estimates that 306,201 working Australians have been put onto an AWA individual contract (see figure below).

Fig. 1. Employees covered by AWAs registered under new IR laws to March 2007¹

	AWAs	Per day
Apr-Jun 06	41,234	453
Jul-Sep 06	76,161	828
Oct-Dec 06	94,403	1,026
Jan-Mar 07*	94,403*	
TOTAL	306,201	

The rate of AWAs that are being registered under the new IR laws is also rising rapidly and has doubled since the introduction of the laws. As the figure below shows, every day there is an additional 1,026 employees being covered by post-WorkChoices AWAs or EGAs (see figures below).

Fig. 2. Daily registrations of AWAs under new IR laws



Source: OEA data March-Dec 2006.

Loss of award entitlements and real wage cuts

One of the most important changes in the new laws is to make it harder for Australian workers to maintain their wages and conditions. Under the new laws any new workplace agreement only has to include five basic conditions:

- a minimum wage – currently \$13.47 per hour (less for workers under 21)
- annual leave of 4 weeks per year – 2 weeks of which can be ‘cashed out’
- sick/carers’ leave of 10 days per annum
- a 38 hour working week – which can be averaged out to avoid the payment of overtime
- unpaid parental leave of 52 weeks



The Federal Government has said that anything in excess of these minimum conditions is now up for grabs. That means many of the conditions which are now included in an award or enterprise agreement are no longer guaranteed including:

- rostered days off
- payment for public holidays
- annual leave loading
- overtime payments
- penalty rates for shift and weekend work
- meal, travel, clothing, tool, higher duties and other allowances
- paid maternity leave
- part-time loadings
- existing casual loadings
- redundancy pay

The Government's own data shows that every AWA registered under the new laws has removed at least one so-called 'protected award condition'.

Previously, workers were protected by a 'no disadvantage test' that ensured they would be compensated for changes to award conditions. However the new laws abolished the 'no disadvantage test' and we are now seeing the wholesale removal of award conditions without compensation under AWAs.

"We consider that to be a step backwards. In terms of fairness and equity, it seems odd that you should be bargaining for a position where you are worse off than you were before. We cannot understand why that should be enshrined in law; that it is okay to be worse off."

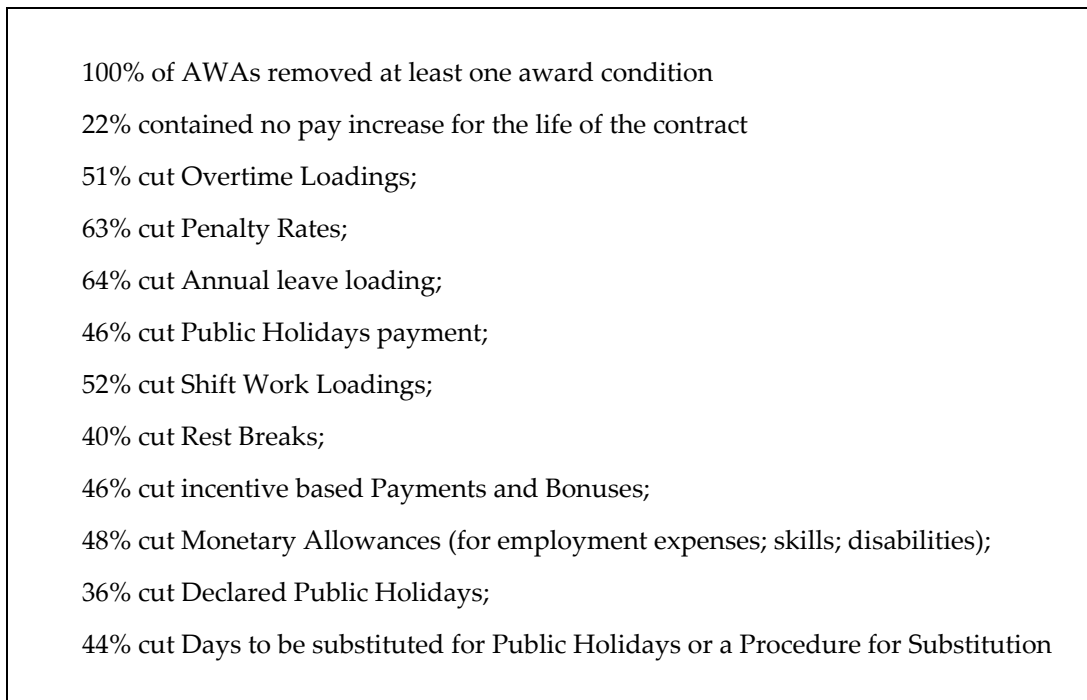
Ms Michelle Burrell, Acting Director of NSW Council of Social Service²

The Budget Senate Estimates Hearing May 29-30 2006 heard evidence from the Office of the Employment Advocate (OEA) — the Federal Government agency charged with monitoring the registration of workplace agreements — that detailed the percentage of so-called 'Protected Award Conditions' excluded from a sample of post WorkChoices AWAs.

The OEA reported that every AWA individual contract it examined removed at least one protected award condition.

It also found that 22% of AWAs contained no wage increase for the life of the agreement (some for up to 5 years) and that a significant proportion removed overtime pay, penalty rates, public holiday payments, rest breaks and other important award conditions (see figure below).

Fig. 3. Wages and conditions under new IR laws AWAs – govt data³



Experts have also noted that the rate at which conditions are being removed is substantially higher under WorkChoices AWAs than under pre-WorkChoices AWAs.

In the case of overtime pay, the rate at which this has been removed through AWAs has doubled, from a quarter of AWAs in 2002-03 to over half of AWAs in 2006. Indeed, overtime and penalty rates are particular targets for removal.⁴

In addition to being abolished outright, many employees are finding their formerly protected award conditions are being substantially reduced under post-WorkChoices AWAs. Again, overtime pay is a particular target with one report showing that only 18% of AWAs registered under the new laws *did not* abolish or modify this condition. Overall, 82% of AWAs reduced or abolished overtime pay, 73% reduced or abolished public holiday payments and 69% reduced or abolished rest breaks (see figure below).

**Fig. 4. Reductions or losses of protected award conditions under AWAs
2002-03 & Apr. 2006 (%)⁵**

	2002-03	2006				2002-03 to 2006
	absorbed (abolished)	abolished	'modified' (reduced but not abolished)	total reduced	un- changed	increase in rate of abolition
Overtime pay	25	51	31	82	18	+104%
Penalty rates	54	63	na	na	na	+ 17%
Annual leave loading	41	64	na	na	na	+ 56%
Shiftwork loading	18	52	na	na	na	+189%
Rest breaks	na	40	29	69	31	na
Public holiday payments	na	46	27	73	27	na
Days substituted for public holidays	na	44	na	na	na	na
Declared public holidays	na	36	na	na	na	na
Incentive based payments/bonuses	na	46	na	na	na	na
Allowances (expenses; skills; disabilities)	41	48	na	na	na	+ 17%

Given the widespread loss of conditions under AWAs, it is not surprising that workers are significantly better off on union-negotiated collective agreements. Research shows that workplaces in which collective agreements applied were over twice as likely to pay penalty rates and overtime rates as workplaces in which individual contracts dominated.⁶

The latest ABS data that compares rates of pay under AWAs with those for award-reliant workers and those on Collective Agreements (CAs) shows that workers on AWAs earn 3% less than those under collective deals. Employee earnings shows that non-managerial workers covered by AWAs earn an average of \$26.40 an hour, 3.3% lower than the \$27.30 earned by their counterparts on registered collective agreements.⁷ This gap has widened from 2.1% in 2004, when AWA workers earned \$23.40 and collective workers earned \$23.90.

Workplace Express reports that the pay gap is narrowest among permanent full-time workers, who earn 1% less if covered by AWAs and that this is a function of the high proportion of mineworkers whose earnings boost this category. In contrast, the pay gap widens for permanent part-timers and casuals, who 'earn 17% less under AWAs than under collective agreements'⁸.



The data shows that AWA workers are paid less but that they also have to work longer hours. Workers on AWAs work 36 hours a week, compared to 31.9 for workers on registered CAs. Even among full-time employees, AWA workers are working more hours - 41.5 a week, compared to 39.2 for workers on registered collective agreements.

Unequal treatment in the one workplace: example of Anna Szwec⁹

Anna is a wife and mother from Fairy Meadow, near Wollongong on the South Coast of NSW. She is the primary carer for her husband, who is on a disability support pension, and two sons who also have disabilities.

Anna has been working part-time at Wollongong Spotlight for the past three years. Anna is covered by the Shop Employees (State) Award, which will be terminated on 27 March 2009, after which she will be covered by the new IR laws.

Since the introduction of the new IR laws, Spotlight has hired new employees on AWAs. These new agreements, as opposed to the state award, do not include rights to penalties, allowances, loadings or minimum rostering conditions, and these have been compensated for by an additional two cents an hour.

By taking away these conditions, Anna has calculated that someone on the Spotlight AWA, working the same hours as her would receive on average \$3,639 per year less (including superannuation, sick leave, annual leave and leave loading). This is equal to a 16.7% pay cut for new employees on the Spotlight AWA.

This means that in Anna's workplace, there are some workers being paid more than others for doing exactly the same work.

Anna fears that workers on the AWA will be given all the weekend shifts, and shifts that would otherwise incur penalty rates, at the expense of workers on the award. As the workers on AWAs are not entitled to penalties and allowances, they will be significantly cheaper for Spotlight to roster.

When questioned before a parliamentary estimates committee, the Federal Government's Employment Advocate Peter McIlwain admitted that his office would not be releasing data on AWA earnings. This suggests that the ABS statistics released in February 2007 are likely to be the only ABS data to be released before the federal election that will provide a guide to comparative earnings between workers on AWAs and Collective Agreements.

The ACTU has recently lodged a freedom of information application with the Federal Employment and Workplace Relations Minister, Joe Hockey, seeking documents, reports and correspondence relating to the job conditions being cut under the Government's AWA individual contracts. The ACTU has called on Workplace Relations Minister Joe Hockey to end the cover-up about these contracts that are cutting the conditions and take-home pay of workers.

Working families suffer real wage cuts

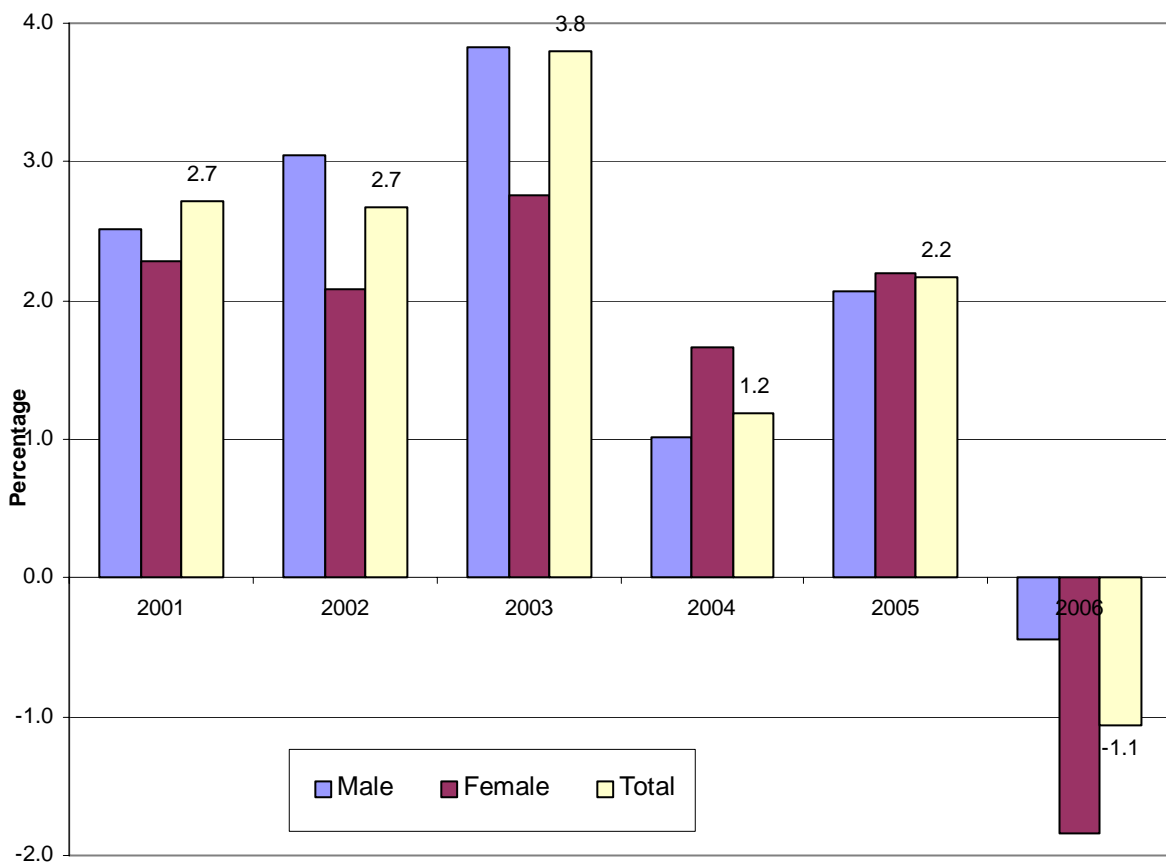
The latest ABS data on Average Weekly Earnings reveals that Australian working families are suffering under the new IR laws with average weekly earnings for full time employees failing to keep up with the increases in the cost of living.

ABS data on Average Weekly Earnings released in February 2007 shows:

- Total earnings for full time workers dropped in real terms by -0.6% in the past year.
- Total earnings for full time workers in the private sector dropped in real terms by -1.1% the past year.
- Women working full time in the private sector have been hit the hardest, suffering a -1.8% drop in real earnings.

These figures provide clear evidence that working families are going backwards under the Government's IR laws. This is the third quarter in a row since the new IR laws came in that has seen real average earnings for full time workers drop below the cost of living for the previous 12 month period.

Fig. 5. Average full time adult total earnings (Private Sector)¹⁰





Working families are already struggling to keep their heads above water and the last thing they can afford is a real drop in their take home pay, but that is exactly what is happening under the new IR laws.

The only other occasion in the last twenty years which have seen such a reduction in real wages in the ABS Average Weekly Earnings (AWE) survey were in 2000 when the GST was introduced. In addition, the decline in real earnings is notable given the current strength of the labour market. Strong labour markets are typically associated with a growth in real wages — even stagnation of real wages would be unusual in the current situation.

Declining real wages are almost unheard of and indicate a redistribution of wealth under the IR laws from employees to company profits.

Minimum award wages decline in real terms

Prior to the introduction of the new IR laws all award workers — around 1.6 million Australians— received an annual pay rise determined by the Australian Industrial Relations Commission after hearing from employers and unions.

But the Federal Government did not like that system and introduced a new organisation, the Australian Fair Pay Commission (AFPC) that is made up of economists and other people appointed by the government.

Award workers suffered an 18 month pay freeze while they waited for the Fair Pay Commission to be established and make its first decision in December 2006.

The AFPC decided to grant a \$27.36 a week increase for workers on up to \$700 a week and \$22.04 a week for workers above this amount. This increase (\$27.36) is actually the second lowest minimum wage increase in real terms for the last ten years and represents a drop in real wages of 0.9 per cent.

In effect, the minimum wage fixing arrangements established under WorkChoices have led to a lengthy pay freeze and a decline in living standards for more than a million low paid working Australian.

As the figure below demonstrates, the inaugural decision of the AFPC on 1 December 2006 represented a real pay cut. On the latest available figures less than 19 per cent of employees on an award wage classification obtained a real increase from the 2006 decision with 81% of award wage workers suffering a decline in real terms.

The head of the Fair Pay Commission, Professor Harper, appears to agree with us on this point when, having noted that the decision delivered an increase at above or equal to inflation at only the two lowest Australian Pay and Classification Scales, he said:

Every other pay classification, ladies and gentlemen, goes down in real terms. The weighted average increase over all the Pay and Classification Scales of this decision is 4.5% over 18 months. Inflation over 18 months we estimate to be about 5.4%.

Professor Ian Harper, AFPC¹¹

It is disappointing that the reduction in the real value of the minimum wage for the lowest paid and most vulnerable Australians is lauded as a positive by the Government. We see such an outcome as a negative and a failure of the AFPC to meet its moral and statutory expectations.

Fig. 6. Change in real value of minimum wage - December 2006

Award Wage Classification	Old Min. wage rate \$ weekly	AFPC Increase \$ weekly	New min. wage * \$ weekly	Nominal Increase %	Inflation over 18 months %	Change in real wage %
C14	484.40	27.36	511.76	5.65	5.4	0.25
C13	501.10	27.36	528.46	5.46	5.4	0.06
C12	523.60	27.36	550.96	5.23	5.4	-0.17
C11	544.50	27.36	571.86	5.02	5.4	-0.38
C10	578.20	27.36	605.56	4.73	5.4	-0.67
C9	599.10	27.36	626.46	4.57	5.4	-0.83
C8	619.90	27.36	647.26	4.41	5.4	-0.99
C7	638.80	27.36	666.16	4.28	5.4	-1.12
C6	680.50	27.36	707.86	4.02	5.4	-1.38
C5	701.40	22.04	723.44	3.14	5.4	-2.26
C4	722.20	22.04	744.24	3.05	5.4	-2.35
C3	763.90	22.04	785.94	2.89	5.4	-2.51
C2a	784.80	22.04	806.84	2.81	5.4	-2.59
C2b	822.50	22.04	844.54	2.68	5.4	-2.72
C1a	906.00	22.04	928.04	2.43	5.4	-2.97
C1b	1031.10	22.04	1053.14	2.14	5.4	-3.26

* 1 December 2006.

Pay gap for women widens

The Federal Government's new IR laws are causing a significant worsening of women's right to equal pay and the right to family-flexible working conditions.

New ABS data issued in March 2007 shows women in full time jobs now earn \$100 a week less than men and that the pay gap for working women is getting wider. Full time women currently earn on average 10% less than men – the same gender pay gap as 1978, almost 30 years ago.

ABS data also shows the real wages of full time female workers in the private sector has fallen 1.8 per cent over the last 12 months (-1.8%).

With almost one in four women (23%) reliant on awards (compared to only 15% of men), the delayed low pay increase provided by the Fair Pay Commission and the erosion of award conditions like penalty rates, leave loading and public holiday payments is having a serious impact on women's take home pay.

Working women have also suffered a major setback with the Federal Government's refusal to include in the new minimum legal standards rights to family-flexible working conditions that were won in the recent Work and Family Test Case.

Despite the overwhelming evidence of a growing gender pay gap, Workplace Relations Minister Joe Hockey has denied there is a problem with unequal pay for. The Minister should not be proud of a system where mothers returning from parental leave are expected to work in the lowest paid jobs in our country and have the least job security and least control over their hours of work.

"Regardless of the political rhetoric, in the real world it is not a level or genuine playing field for women to thrash out their rights and conditions with their bosses."

Ms Jo Jacobson, childcare worker, Penrith ¹²

It is clear that pay equity for women will be harder to achieve under the new laws. The weakening of the award system and the preference for AWA individual contracts will especially affect women workers. There is already a 20 per cent pay gap in hourly rates between women and men on AWAs while this gap is not so for women and men on awards, where the pay gap is minimal. In addition women are being disproportionately affected by the decline in the real value of minimum wages as women are more reliant on minimum wage rates.

As one expert has stated, pay equity for women will be harder to maintain, with more emphasis on individual bargaining and the removal of award system that allowed for test cases to lift basic conditions and entitlements:

It is important to understand that overall this would put downward pressure on minimum wage rates, and as a result some sectors and some groups of individuals will be impacted more. In particular, I am referring to the hospitality, retail, and health and community services sectors, where large numbers of women are employed on award rates only. Relative to other sectors of the labour market, women on minimum wages are likely to experience a decline in real wages over time."

Dr Marian Baird, University of Sydney¹³

The broader impact for the economy is that these additional barriers to the participation of women in the workforce will discourage their rate of participation in the labour market. The new IR laws will thus not only exacerbate the existing problem of a gender wage gap, which will have long-term negative repercussions for women, their families and communities, but will also affect the future prosperity of the nation by reducing participation rates for women.¹⁴

Retail and hospitality workers are hard hit

It is apparent that the two industries hardest hit by the decline in real earnings for workers under the new IR laws are Retail and Hospitality (accommodation, cafes and restaurants).

Professor Peetz's analysis shows that in the two quarters since WorkChoices took effect, hourly earnings growth in these industries (at 1.0 per cent and 0.7 per cent respectively) were 47 per cent and 61 per cent lower than the all-industry average.¹⁵

It is highly likely that this reduction is a reflection of the loss of penalty rates, overtime and other conditions of employment.

It is also clear that women have been particularly affected. They represent the majority of employees in retailing and hospitality.

Many young workers in these industries are also being badly affected.

For example, a recent court case found that 22 young workers at a juice bar in Sydney's suburbs had been underpaid by as much as 75% after losing their weekend and penalty rates. One of the young workers, 16 year old Amber Oswald, was shifted by her employer onto an individual contract (AWAs) on the first day of the new laws, 27 March.



Under the new AWA, Amber's hourly pay rate dropped from \$9.52 to \$8.57 and her penalty rates had been abolished altogether. This reduced her pay by \$5.70 an hour on Sundays and by as much as \$11.25 an hour on public holidays. Amber then received \$40 less for working a seven-hour shift on Sundays.

In another case, 17 year old Saima Tobin was employed by the retail chain Planet Surf in Melbourne under the old award system and then was asked by the management to sign an AWA.

Under the old contract, Saima Tobin was paid \$15 an hour for work on a Sunday at Planet Surf and \$21 an hour for work on a public holiday. Under the new AWA she was urged to sign, she'd get a flat rate of \$9.54 an hour no matter what day she worked — a pay cut of more than 30% for weekend work and more than 50% for public holidays.

There are numerous and widespread examples of the use of AWAs in the retail and hospitality industries to undercut employees' wages and conditions.

For example, a major fast food retailer offered AWAs to an existing workforce which reduced employees' rates of pay by between \$1.00 and \$11.00 per hour for working Saturday, Sunday and after midnight; cut public holiday and annual leave loadings; and substantially reduced overtime payments¹⁶. The AWAs also gave the employer the ability to unilaterally increase or decrease the working hours of part-time employees as well as increased the maximum length of a shift and gave the employer the capacity to require employees to work split shifts necessitating them travelling to and from work twice on the same day¹⁷.

Workers on AWAs work longer hours for less pay

Data released in February 2007 by the Australian Bureau of Statistics show employees in non-managerial jobs that are on the Federal Government's AWA individual contracts are working longer hours and for less pay than workers on collective agreements¹⁸.

The ABS survey of Employee Earnings and Hours shows that the average hourly rate of pay for non-managerial workers on a registered individual contract (AWA) is \$26.40 an hour, or 90 cents an hour less than workers on a collective agreement (\$27.30).

For workers on a typical 38 hour week, this would amount to an average pay gap of \$34 a week between employees on AWA individual contracts and those on registered collective agreements.

The ABS figures shows that the pay gap is worst for women on individual contracts.



Female workers on AWA individual contracts earn an average of \$22.80 an hour and this is \$2.90 an hour less than women on registered collective agreements.

Again, for a typical 38 hours work, this means that women on AWA individual contracts earn an average of \$110.20 a week less than women on registered collective agreements.

However, the ABS data also reveals that workers on AWA individual contracts typically work longer hours than those on collective agreements.

On average, people in full time non-managerial jobs that are on AWA individual contracts work 2.3 hours a week more than people on registered collective agreements.

These figures are further evidence that working families are being hurt by the Government's IR laws and its support for AWA individual contracts. In a country like Australia it is shocking that women on AWA individual contracts earn \$110 a week less than women in a job covered by a union collective agreement.

More pressure on working families

There is evidence that the new IR laws are badly affecting families and vulnerable workers with their impact especially felt in rural areas and by women, young people and low skilled employees.

Because the new laws are resulting in the widespread loss of penalty and overtime rates, with low paid jobs proliferating, and a growth of wage inequality, there is an expectation that this will erode time for families, friends and community life and could 'fracture' social relationships.¹⁹ As the quality of jobs and earnings are undermined, this will further undermine the quality of family life, parenting and health, which are 'already under considerable strain'.²⁰

*'Labour law must protect the employees, particularly employees who are vulnerable ...no-one wants a system where you cannot shed labour, where you cannot go into new innovation. On the other hand, no-one wants a system where people are vulnerable, where people cannot raise families in security.'*²¹

Dr Don Edgar, former Director of the Australian Institute of Family Studies, has argued that bargaining power is tilted in favour of employers under the new laws by the widespread loss of unfair dismissal protection for workers and providing employers with greater power to control job opportunities and working conditions. He states that there is nothing in the new laws that encourages a culture in the workplace that provides respect for the 'ongoing and changing family

responsibilities that all workers have'. Dr Edgar concludes that the laws will have a negative impact on family and community relationships:

'It is my considered view that the IR proposals will damage relationships, inside families, within workplaces, and across the wider community. Without families and the caring work that they do – providing mutual support, nurturing and educating children, looking after the aged and disabled, helping others through voluntary community work – there would be no viable economy at all ... indeed a prosperous economy based on inequality and job conditions not designed to help workers meet their family responsibilities is likely to be a divided and unhappy one for many families.'

Many working families are already struggling under the new laws because they rely on limited wages, whilst meeting hefty mortgage repayments, high petrol prices, and the ordinary costs of raising a family. For them, the prospect of reduced wages through the loss of penalty rates, overtime payments and the like as well as poorer job security through the loss of protection from being sacked unfairly is very worrying.

"For us to drop wages, we have a big mortgage. We are a normal family. We have a large mortgage. We need to both work. Our girls are going to suffer if we cannot do this. We will lose the house. We aspire to send our daughter to university. ... I have worked with my hands my whole life and I do not want that for them, but I will not be able to afford to even keep a roof over their head let alone give them the education that I would love to give them under this new WorkChoices system.

Mr James Nero, Penrith²²

Unfair treatment and dismissals

Under the Howard Government's IR changes unfair dismissal protections have been abolished for all people working in workplaces with fewer than 100 workers.

According to the Australian Bureau of Statistics, the abolition of unfair dismissal protections for employees in businesses with up to 100 staff leaves more than 3,761,000 Australian employees without any protection from unfair dismissal.²³

ABS data suggests only 1.1% of private sector employers have more than 100 staff. This means employees in 99% of private sector businesses — more than 575,800 workplaces — now have no unfair dismissal protections under the Government's new IR laws.²⁴

Employees in large businesses have also lost a significant part of their right to protection from unfair dismissal too.

The Howard Government's IR laws mean that workers who are dismissed for so-called 'operational reasons' are not able to challenge unfair dismissal, no matter what size their workplace. This rationale has been used by business on a number of occasions under the new IR laws with a major test case on the issue resolved in January this year over the sacking of Mr Warren Carter, a cinema manager. Mr Carter's case confirms that employers of large businesses have powers under the new IR laws to sack staff without recourse and with no legal obligation to be fair by hiding behind the excuse of 'operational reasons'. The case was reported as follows:

Warren Carter certainly made a good test case. Village Roadshow moved to sack him after the Doncaster cinema he had been managing was slated for demolition. Mr Carter was multi-skilled, and the company is one in which people often shift posts. He even offered to take six months' long service leave until Village found him a new job, but to no avail. In light of such factors the commission ruled last September that Mr Carter's sacking was not for "genuine operational reasons". But the full bench reversed this decision, making clear a whiff of "operational reasons" is all employers need for valid termination, even if the outcome was avoidable.²⁵

It is also now illegal for workers or their representatives to request that their workplace agreement provides a remedy for unfair dismissal. Workers can be fined up \$6000 just for asking for unfair dismissal protection, even if their employer agrees. Unions can be fined up to \$33,000 for asking on behalf of workers for protection against unfair dismissal.



There are clearly wide-ranging powers for employers to dismiss workers unfairly under the new laws. These powers have prompted a prominent legal adviser to big business has also been reported publicly as saying that any large business that sacks any worker for anything but 'operational reasons' would be crazy.

There have been numerous reports of unfair dismissals and unfair treatment of employees since the introduction of the new IR laws. (It is important to note that while many of these cases have been reported publicly or have come to light through formal proceedings, there are a great many other cases that have not.)

In some instances, publicity and union pressure has led to workers being reinstated or receiving compensation. However it is also a fact that many workers have not reported their dismissal or taken public action on an instance of unfair treatment for a number of reasons, including for fear of it jeopardising their future job prospects. Indeed, the Western Australian Equal Opportunity Commissioner has warned that one consequence of the new IR laws is a fear among workers about lodging complaints concerning discrimination.²⁶

Nevertheless, there has been a 60% increase in workplace complaints to the Human Rights and Equal Opportunity Commission(HREOC) since Work Choices became law. In the first three months after the new IR laws banned unfair dismissal claims for smaller employers (April-June 2006), HREOC received almost five times the number of complaints regarding dismissals, compared to the same period the year before.²⁷ The jump in complaints has prompted the Human Rights and Equal Opportunity Commission President John von Doussa, QC to remind employers they must "strive for workplaces free of discrimination and harassment in the post Work Choices industrial landscape" and referred employers to guidelines on the HREOC website.

Despite these warnings, there have been widespread examples of unfair treatment by employers emboldened by the new IR laws — a sample of the examples collated by the NSW Minister for Fair Trading that cover dismissals soon after the commencement of the new IR laws are provided in the inset below:²⁸

Sacked hours after Workchoices came into effect - *A librarian of 14 years was sacked by fax within hours of the Work Choices legislation coming into effect.*

Sacked hours after Workchoices came into effect - *A sales representative who was injured and absent from work was dismissed from work by email on 27 March – the day the Work Choices legislation came into effect.*

Sacked hours after Workchoices came into effect - *A woman who worked as a cook and function organiser in a small sporting club for ten years was terminated the day the Work Choices legislation came into effect.*

Sacked while on sick leave - *Jane's employer of 15 years sacked her while she was on sick leave, just days after the Work Choices laws came into effect.*

Sacked on the day Workchoices came into effect - *A maritime worker who was involved in disciplinary proceedings with his employer was sacked on the day the Work Choices legislation came into effect.*

Sacked on the second day after Workchoices came into effect - *Nine union-member employees were sacked on the second day of the new industrial relations regime by letter which told them their services were no longer required and their employment was terminated immediately.*

Fired after returning from two weeks sick leave - *A 57-year-old fitter was dismissed by his employer with no reason after returning from two week's sick leave. His employer had stated 'he could not wait for the new laws to come in'.*

Let go after 25 years - *Lyn Barnes, who had worked at an RSL Club for over 25 years was called into the boardroom at 3pm on 31 March and told there was no more work for her and asked for her resignation.*

Operational reasons - *An electrician on the South Coast of NSW lost his job two days after the introduction of Work Choices for 'operational reasons'.*

Fired without notice - *Two final year apprentices were sacked without warning on the day that the Work Choices legislation took effect.*

Dianne Beamer, NSW Minister for Fair Trading, 2006

The loss of protection from unfair treatment and dismissal for many employees has also led to an increase in anxiety about job security. One online survey found that 39 per cent of clerical administrative workers and 42 per cent of blue collar workers felt more scared about their job security now than they did before the new IR laws came into effect.²⁹

'Although there will be many employees unfairly sacked as a result of WorkChoices, there will be a far greater number that will be worse off because they know they can be sacked without reason³⁰.'
Labor Parliamentary Taskforce on Industrial Relations

In September 2006, the Victorian Office of the Workplace Rights Advocate published a study based on 1367 cases involving 2100 complaints received by its Workplace Rights Information Hotline. The majority of complaints (1 in 5 calls) were about employers threatening to sack workers and there are indications that this proportion is increasing:

'There seems little doubt that this is a direct consequence of one of the most significant changes introduced by Work Choices, namely the removal of unfair dismissal protection...'
Associate Professor Peter Gahan³¹

The next significant category of calls to the Victorian hotline related to unfair treatment in the workplace owing to a lack of procedural fairness. Many complaints described attempts by employers to unilaterally change working conditions and entitlements without discussion or negotiation. Many reported refusal by the employer to allow representation by a union.³² The loss of protection from unfair dismissal leaves workers vulnerable to unfair treatment in the workplace and fearful of speaking out.

Evidence shows no link between jobs growth and abolition of unfair dismissal protection

For many years the Coalition Government has wrongly argued that there would be substantial employment growth through the abolition of the 'job destroying' unfair dismissal protections.

There has never been convincing evidence put forward to advance this claim.

The Federal Government has consistently claimed that its proposals to abolish unfair dismissal protections for Australian workers will create between 55,000 and 77,000 jobs. But evidence presented to an inquiry by the Senate Committee for Employment, Workplace Relations and Education found that there was no evidence of a causal link between unfair dismissal laws and jobs growth.

A Full Court of the Australian Federal Court has also found that '*there is no basis for us to conclude that unfair dismissal laws make any difference to employers' decisions about recruiting labour.*'³³

Now that we are one year into the new IR laws, there is still no evidence to support the Government's hollow claim.

As Professor Peetz argues, a useful benchmark to assess the 'job creation effect of WorkChoices', is to compare jobs growth in the recent period with employment growth in the equivalent period after the unfair dismissal laws were introduced at the end of March 1994.

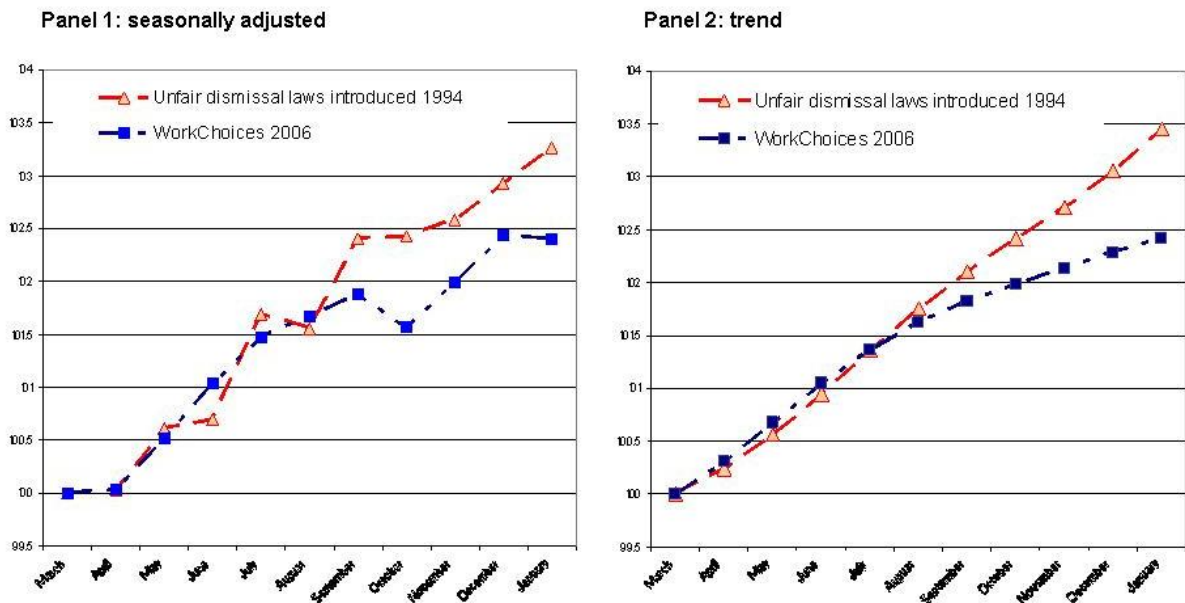
This comparison is shown in the figure below and discussed as follows:

In seasonally adjusted terms (panel 1), over the eight months

- from March to November 2006, employment grew by 241,300 or 2.38 per cent. Over the same eight months after the unfair dismissal laws were introduced in 1994, employment grew by 256,400 or 3.25 per cent.*
- In trend terms (panel 2), employment growth under WorkChoices was noticeably weaker than after the 1994 unfair dismissal laws were introduced.*
- The implication is not that the 1994 unfair dismissal laws were more effective job creators than the law that abolished them; rather, the implication is that the strong growth of employment in 2006 is unrelated to the abolition of the unfair dismissal laws, and instead reflects other factors.³⁴*

It is clear from this brief analysis that while the recent jobs growth in the Australian economy has been strong, it owes less to the introduction of WorkChoices' and 'more to underlying demand in the economy – driven in no small part by the resources boom³⁵.

Fig. 7. Jobs growth over ten months from March 1994 (introduction of unfair dismissal laws) and from March 2006 (partial abolition of unfair dismissal laws)³⁶



Employer greenfield agreements also cut wages

As well as encouraging the use of individual contracts, the Federal Government has introduced a new type of job contract – Employer Greenfield Agreements (EGAs) – that is also being used to undermine the wages and conditions of many employees.

Employer greenfield agreements are not 'agreements' in any normal sense of the word. They are instruments for setting pay and conditions that are determined solely by an employer before it establishes a new 'project' or 'undertaking' – without any reference or negotiation with employees or their union. The employer, in effect 'negotiates' with itself.

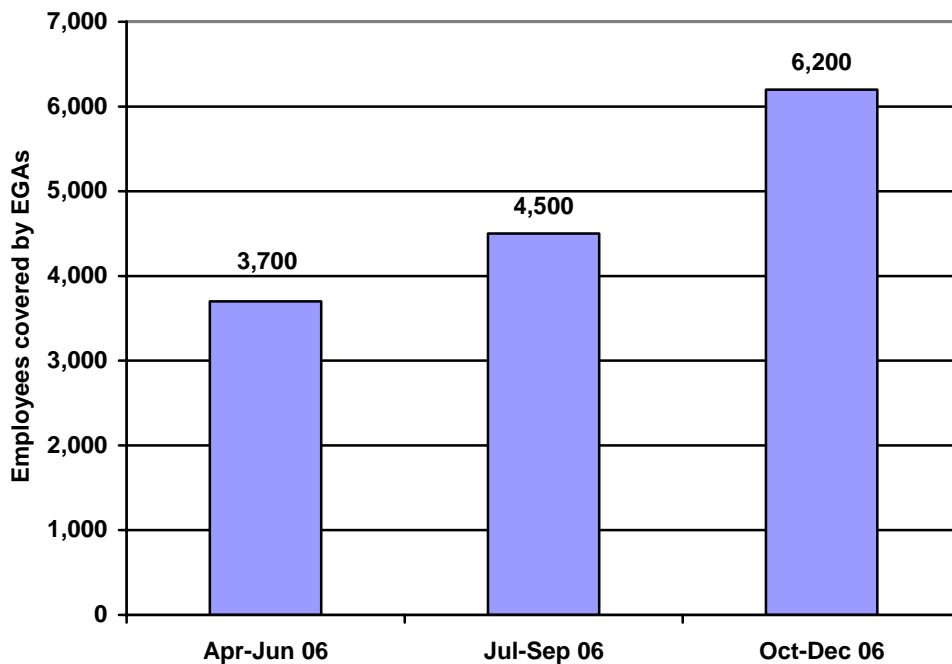
Employees cannot legally take industrial action for 12 months after an employer greenfield agreement comes into force. Prior to the new IR laws greenfield agreements could only be made through negotiations with unions, for genuine new businesses.

However, since the IR laws took effect, the number of union greenfield agreements has dropped away sharply, and now two thirds of greenfield 'agreements' have been employer greenfield agreements³⁷.

During the first quarter of the operation of the new IR laws, 17% of all enterprise agreements lodged were greenfield agreements, with 11% employer greenfield agreements and 6% greenfield agreements negotiated with unions³⁸. In the September quarter 12% of enterprise agreements lodged were greenfield agreements, 8% were employer greenfield agreements while 4% were union greenfield agreements³⁹.

The number of employees covered by employer greenfield agreements in the third quarter since the introduction of the new IR laws grew by 67% over the employees covered in the first quarter (see figure below). In total, 14,400 employees were covered by employer greenfield agreements by the end of the first nine months of the new laws.

Fig. 8. Employees covered by employer greenfield agreements (EGAs)⁴⁰



A major feature of employer greenfield agreements is that more than two thirds (68%) have been found by a Sydney University study to eradicate protected award conditions while only 3% of all currently operating enterprise agreements explicitly exclude award conditions (see figure below).⁴¹

Fig. 9. Comparison of key features of employer greenfield (EGAs) and all enterprise agreements⁴²

	EGAs	All EBAs
Eradication of protected award conditions	68%	3%
Specifies wage increase	25%	69%
Wages as per award / decisions of AFPC	23%	10%
Wages linked to CPI	2%	9%
Average span of ordinary hours	14 hours	13 hours
Employees expected to work reasonable overtime	60%	23%

Online publication *Workplace Express* analysed the content of 34 employer greenfield agreements in November 2006. It found that employer greenfield agreements fell into three categories:

1. Fast food EGAs (the biggest category, which included franchisees of Subway, Hooters, Wok in a Box, Grill'd, Hogs Breath Café and Seaking Seafood) which provided for low wages (typically \$13-15 per hour), mostly abolished penalty rates and excluded protected award conditions;
2. Finance EGAs (mostly Bank of Queensland franchisees) which provided for low wages but retained most protected conditions and severance pay; and
3. Construction EGAs (in roads & mines, in Western Australia and Queensland), which provided for higher wages (\$20 or more per hour) due it seems to labour shortages.⁴³

In sum, the available data indicate a substantial loss of conditions of employment for workers signing AWAs or being employed under employer greenfield agreements as a direct result of the new IR laws.

Reduced employee rights when businesses are sold

The new laws also substantially reduce the rights of employees if the company they work for is sold. Government changes to transmission of business laws mean that, unless an employer agrees, workers can lose their employment conditions 12 months after the company they work for is purchased or taken over by another business. If there is no agreement before the transmission arrangements expire, the working conditions of employees automatically revert back to just five minimum conditions.

The new laws also provide new owners of a business greater power to insist the employees sign an AWA individual contract in order to keep their job.

Previously the Federal Government had promised that under its IR laws the pay and conditions of workers would be protected for 12 months following the transfer of a business to a new owner. However, the cases of Feltex carpets in Victoria, the IGA Hilton supermarket in WA and the United Petroleum takeover of Mobil outlets in Tasmania show there are a growing number of employers exploiting the lack of protection for employees in the new laws when company ownership is transferred. Despite making changes to the laws in November 2006 as part of 'fine-tuning', the Federal Government has failed to restore sufficient protection for workers in this regard.

Hilton IGA and United Petroleum are cases that all involved the sale of a business as an ongoing concern but where the new owner initially refused to honour the existing pay and conditions of the transferring employees.

Feltex workers

Three hundred and twenty production workers at carpet manufacturer Feltex's Melbourne operations faced an uncertain period from September through to December 2006 while the company's new owner used the new IR laws to insist the workers accept a cut to their job conditions and entitlements in order to keep their jobs.

The company's new owner – Geelong-based Godfrey Hirst – refused to employ the Feltex workers unless they signed AWA individual contracts that removed or modified entitlements including annual leave payments, rostered days off, redundancy pay and other job conditions.

Despite arguing publicly that the company was under financial pressure, newspaper reports showed that Godfrey Hirst was buying Feltex's Australian and New Zealand operations with around 1300 employees for around \$140 million and would soon dominate as much as 80% of the Australian carpet market. During the stand-off the



company also spent hundreds of thousands of dollars sponsoring a horse race and hosting a corporate marquee at the 2006 Melbourne Cup.

However, the company maintained its hardline stance against honouring the workers' existing pay and conditions despite a series of adverse rulings by the Australian Industrial Relations Commission (AIRC) that its offer to workers was not up to scratch.

Godfrey Hirst also threatened the workers that they could miss out on redundancy payments if they refuse to accept the company's offer with many long-standing employees standing to lose more than \$50,000 each.

IGA supermarket, Hilton

The IGA supermarket in the Perth suburb of Hilton was sold by Metcash to Ten Talents Pty Ltd with effect from 25 September 2006.

The incoming owner then required the more than 60 staff who worked at the Hilton IGA to sign Australian Workplace Agreements as a condition of their ongoing employment – on a strictly take it or leave it basis.

The AWAs offered by Ten Talents reduced or removed entitlements like rest breaks and future pay increases, which were previously covered by the Metcash collective agreement. Under the Government's industrial relations laws a signed AWA overrides the employees' previously existing entitlements as set out in the collective agreement.

"...not all employers will be exploitative of these arrangements, but I have got enough experience to have seen many who will."
Ms Pat Manser, NSW Office of Industrial Relations⁴⁴

New IR laws are taking our economy in the wrong direction

*'...I would say that my colleagues and I do not think that this is the road that Australia should be travelling at the moment in a globalised economy.'*⁴⁵

There is an emerging consensus that the new IR laws have not only failed in their stated aims but that they are taking the Australian economy in the wrong direction.

The Howard Government promised its laws would increase productivity; keep inflation low; increase jobs; provide better pay; create more cooperative workplaces; and enhance the balance between work and family life.

None of these promises have thus far been fulfilled. If anything, the early trends suggest quite the opposite is occurring. The expert analysis and evidence that has emerged since the new laws took effect a year ago indicate that although the Australian economy is flourishing overall, there is no evidence that this is due in any significant degree to the Howard Government's new IR laws.

As one labour market expert put it, 'The WorkChoices economic miracle has yet to materialise.'⁴⁶

Taking productivity as the first unfulfilled economic promise of the IR laws, the latest data shows that productivity actually declined in the first months of the new IR laws and has barely recovered since. The Howard Government defended the introduction of WorkChoices on the grounds that it would "...generate productivity improvements..."⁴⁷

However a comparative analysis of productivity growth over recent economic cycles by Professor David Peetz shows that the cumulative productivity growth of just 1.8 per cent to 2005-06 is very low — the 'second lowest of any comparable period at this stage of the last eight growth cycles'⁴⁸.

What is more, recent productivity growth of 1.8% is significantly lower than the 2.5% annual growth in productivity achieved under the traditional award system of the 1960s and 1970s — suggesting that the award system is not inefficient and provides a good basis for strong productivity growth⁴⁹.

This is one of a number of analyses that concludes there is no reason to believe that the new laws will produce significantly higher productivity than under the award system⁵⁰. In fact, many experts have the view that the laws may have a negative impact with international evidence suggesting that by making labour cheaper, the incentive to improve productivity through innovation and skill development may be lost.

Dr Marian Baird, Senior Lecturer in the Discipline of Work and Organisational Studies at the University of Sydney, says comparisons with other countries show a very poor relationship between individual contracts and higher productivity. She says individual contracts give employers an incentive to create lower-quality and lower-paid jobs. This takes the economy down 'a low path to development rather than a high-quality route'⁵¹.

Another labour market expert warns against going down the New Zealand path, a country which had locked itself into a 'low wage, low productivity economy' since the introduction of individual contracts in 1991⁵².

'It [productivity] flat-lined after that and now it [New Zealand] has the second lowest productivity levels in the OECD, just ahead of Portugal and it is locked in this sort of low wage, low productivity cycle. Low productivity means there is no capacity to increase wages and you get this sort of cheap labour, low value-added economy'⁵³.

There also appears to be little confidence among a large proportion of small business operators that the laws will deliver productivity gains into the future. In a survey of 1189 small business proprietors and general managers a sizeable 40% believe the new legislation is unfair to many employees, especially the low-skilled.⁵⁴ Only 12% believe it will lead to an increase in business productivity.

The Howard Government's claim of introducing the laws at the behest of small business looks hollow in light of this singularly unenthusiastic reaction⁵⁵. MYOB Australia Managing Director Tim Reed states:

It is safe to assume the Federal Government would have expected greater support of this legislation from its traditional small business supporter base. These must be damning statistics for the Federal Government that has 'sold' this new legislation to small business on its productivity gains and increased employment.'⁵⁶

Closely related to the issue of productivity is the impact of the new laws on skills development. Again, the available evidence shows that the new IR laws are likely to exacerbate the skills shortage in Australia by their removal of incentives for employers to invest in employee training and development. Businesses will be forced to compete on the basis of cheap labour and will not have the resources to invest in employee training⁵⁷.

The loss of skills-based classification structures that are underpinned by effective industrial awards is likely to have an adverse affect on skills and productivity levels for many years to come.

Downward pressure on wages

The Howard Government also promised its new IR laws would deliver higher wages and has even brazenly argued that "...there has been strong wages growth..." since the introduction of the laws.⁵⁸ But, again, these claims have not been borne out by a proper reading of the economic data of the last 12 months.

The Federal Government has consistently fudged its use of the ABS Average Weekly Earning data by including the earnings of part time workers in its analysis⁵⁹. The truth is that the earnings of part time workers tend to rise as they are given more hours of work and this feature masks changes in their actual hourly wage rate, wrongly giving the impression of an inflated overall level of earnings for employees.

A more appropriate measure of employee earnings is provided by an analysis of hourly rates and/or by an analysis of the earnings of non-managerial full time workers. It is this latter measure which the ACTU highlights in findings that the average earnings of full time workers has declined in real terms since the introduction of the new IR laws. For three quarters in a row, average full time adult earnings have failed to keep pace with inflation.

ABS data on Average Weekly Earnings released February 2007 show:

- Total earnings for full time workers dropped in real terms by -0.6% in the past year. (While earnings rose in nominal terms by 2.6% in the past year they failed to keep pace with inflation at 3.3%.)
- Workers in the private sector have been hit hard with a -1.1% drop in real average earnings.
- Women working full time in the private sector have suffered a -1.8% drop in real earnings.

This is an astounding result considering the strength of the economy and the impact of the resources boom in key sectors and localities. As one expert commentator has observed:

"The most notable thing about this reduction in real wages is that it has occurred in the tightest labour market in three decades. Normally tight labour markets are associated with strong growth in real wages. Even stagnation of real wages would be unusual in such circumstances⁶⁰."

The ACTU is concerned that these early trends show signs of a 'race to the bottom' on employee wages and conditions among employers, especially in the retail and hospitality industries.

While many employers are yet to exploit the full potential of the new laws in terms of lowering wages and conditions to the legal minimum, there is considerable concern that increasing numbers of companies are exploiting the deregulated environment, using their stronger bargaining position and confusion about the laws to cut the wages and conditions of their staff. Even the actions of a few unscrupulous employers can leave fair-minded employers little choice but to cut costs to keep their businesses competitive.

"...You've got the rogues who will get away with whatever they can. In some cases what WorkChoices does is allow them to do legally what they were doing illegally."

Professor Andrew Stewart, Dean of Law at Flinders University⁶¹

Some research has found small business owners were extremely worried that WorkChoices would force them to choose between fair wages and conditions for their workers and the future of their businesses⁶². This effect is referred to as the "race to the bottom" and has been highlighted in evidence to the NSW inquiry into the impact of the new laws:

"...no matter how saintly I may be as an employer, if I am running a restaurant and the restaurants in my suburb have taken away benefits from employees and reduced labour costs, if I want to stay in business I have to do the same. This is not an issue of good and bad, it really depends upon the labour market. When the laws do not set limits to the labour market ... labour market forces will take operation unchecked."

Professor Ron McCallum, Dean of Law at Sydney University⁶³

Profits and executive salaries are at all-time high

At the same time that average real wages for employees are falling under the new IR laws, executive salaries and company profits are booming.

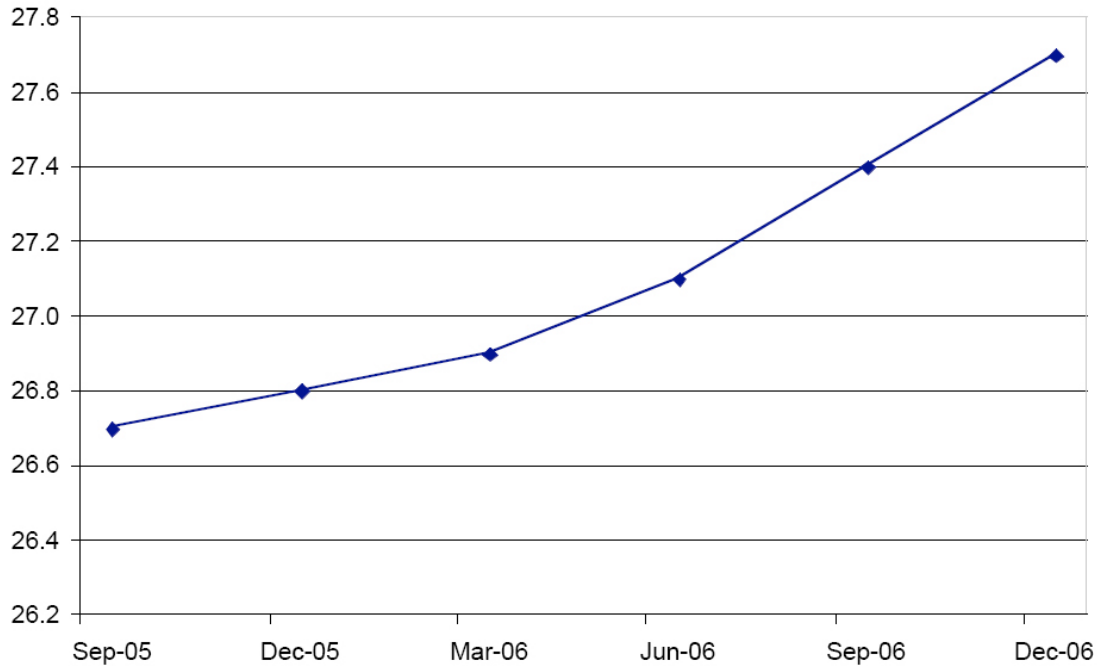
One analyst reports that the average salary for chief executives in the top Australian companies has risen to \$2.1 million and that senior executives have won increases of 12 per cent, 16 per cent and 29 per cent over the past three years⁶⁴. This surge in executive salaries is many times the increases in annual earnings for employees⁶⁵.

Profits are also at record levels in Australia.

The ABS data for the December quarter of 2006 shows the share of profit at 27.7%.

This is an all-time record — 0.8 points above the record achieved earlier in 2006 in the March quarter prior to the introduction of the new IR laws and, as Peetz identifies, over 6 points (that is, nearly 30 per cent) higher than the average profit share over the past 35 years.

Fig. 10. Profit share of total factor income (trend)⁶⁶



Myths of job creation and low inflation

All the evidence suggests that the recent good employment growth is being driven by underlying demand in the economy, particularly as a result of the resources boom rather than the introduction of the new IR laws. Despite the strong evidence that the growth of minerals sector, boosted by booming demand for resources from China, is the determining factor behind the continuing growth in jobs, the Government continues to attempt to wrongly try to take the credit with its IR changes.

However, a recent OECD report has made three key findings that run counter to the the Howard Government's claim that its IR laws are needed for job generation. The OECD found:

- Collective bargaining is strongly related to low unemployment — this runs counter to the strong preference given to individual contracts under the new laws.
- Employment protection legislation (unfair dismissal laws) does not cost jobs — a finding that is confirmed by the early trends discussed above.

- Minimum wages do not harm employment — another point consistently confirmed by wage cases before the Australian Industrial Relations Commission in recent years.

These findings were cited by the Queensland Industrial Relations Commission's inquiry into the new IR laws along with the following ascerbic comment:

'The key findings of the report discredit much of the economic argument advanced by the federal government;...this is particularly significant coming from the OECD which is a leading body in the field of economic and labour market policy...⁶⁷'

The evidence also shows that small business operators are uncertain about hiring more employees under the new IR laws with a survey showing only 5% 'strongly agree' the new laws will make them more likely to take on more staff⁶⁸.

Another claim made by the Federal Government that the new IR laws would help keep inflation and interest rates low has been proven erroneous. Inflation and interest rates have both risen since the introduction of the new laws.

Despite the Government's spurious claim that the IR laws would keep both down, ensuring that workers 'enjoy the benefits of ...low interest rates'⁶⁹:

- The annual rate of inflation rose from 3.0 per cent in the year to March quarter to 3.3 per cent in December quarter⁷⁰; and
- Interest rates were increased by 0.25 percentage points in each of May, August and November 2006⁷¹.

All the evidence to date suggests that the new system of 'individualised bargaining' that has been created by the IR laws will never produce the "miracle" promised by the Howard Government.

Case studies, inquiries and other reports

Since the Federal Government introduced its new industrial relations laws there have been many publicly documented case studies and examples of how the laws have negatively impacted in individuals and groups of workers.

Case studies have been widely reported in the media. In addition to this there have also been a number of public enquiries and reports that have detailed and published hundreds of examples of how individuals and groups of workers have been effected by the laws.

These reports include:

- The Impact of The Workplace Relations Amendment (WorkChoices) Bill 2005 on Australian Working Families, Associate Professor Barbara Pocock , Industrial Relations Victoria.
- Impact of the WorkChoices Legislation, Report by the NSW Parliamentary Standing Committee on Social Issues 2006.
- Early Signs: The Impact of WorkChoices on Work and Family 2006.
- Inquiry into the Impact of WorkChoices on Queensland Workplaces, Employees and Employers, Queensland Industrial relations Commission - Final Report, 2007 and Interim Report September 2006.
- Independent Report of the Victorian Industrial Relations Taskforce, Professor Ron MacCallum.
- WorkChoices and Workplace Rights in Victoria - Evidence from the Workplace Rights Information Line, Associate Professor Peter Gahan. Faculty of Business and Economics. Monash University 2006.
- WorkChoices: A Race to the Bottom - Report of the Federal Labor Parliamentary Taskforce on Industrial Relations, 2006.
- 100 Days of WorkChoices, Dianne Beamer, NSW Minister for Fair Trading, 2006.
- Brave New WorkChoices, What is the story so far?, David Peetz, Griffith University Business School, 12 February 2007.
- Assessing the Impact of 'WorkChoices' One Year On, Industrial Relations Victoria, 25 March 2007.

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- ¹ Source: OEA data March-Dec 2006. * - March 2007 data is estimate based on previous quarter.
- ² Impact of the WorkChoices Legislation: (NSW Parliamentary Inquiry, sect 5.9, Nov 2006)
- ³ OEA data supplied to Senate Estimates Committee May 2006.
- ⁴ Brave new WorkChoices, Peetz, 2007.
- ⁵ Source: Brave new WorkChoices, Peetz 2007 - (calculated from Department of Employment and Workplace Relations and Office of the Employment Advocate, 2004; McIlwain, 2006a; Office of the Employment Advocate, 2006a). na = not available.
- ⁶ Considine cited in Brave new WorkChoices, Peetz 2007.
- ⁷ As reported in Workplace Express 28 Feb 2007.
- ⁸ As reported in Workplace Express 28 Feb 2007.
- ⁹ The NSW Parliamentary Inquiry into the Impact of WorkChoices (Nov 2006) took evidence from a Spotlight employee, Ms Anna Szewc, during its public hearing in Wollongong.
- ¹⁰ Source: Full Time Adult - Female- Private sector - Total Earnings 2001 – 2006. ABS Cat Nos 6401.0 and 6302.0
- ¹¹ Workplace Express, Harper downplays impact of minimum wage rise, looks for jobs growth, 23.11.2006
- ¹² Ms Jo Jacobson, a childcare worker and spokesperson for Penrith Working Families told the NSW Parliamentary Inquiry into the Impact of WorkChoices
- ¹³ NSW Parliamentary Inquiry into the Impact of WorkChoices
- ¹⁴ Ms Mimi Zou, National Adviser on Women and Employment with the National Council of Women Australia, NSW Parliamentary Inquiry into the Impact of WorkChoices
- ¹⁵ Australian Bureau of Statistics, 6345.0
- ¹⁶ Inquiry into the Impact of WorkChoices on Queensland Workplaces, Employees and Employers, Queensland Industrial relations Commission - Final Report, 2007, Page 66
- ¹⁷ Inquiry into the Impact of WorkChoices on Queensland Workplaces, Employees and Employers, Queensland Industrial relations Commission - Final Report, 2007 Page 66
- ¹⁸ Source: ABS 6306.0 p.33, Table 20 – Methods of setting Pay
- ¹⁹ Dr Briggs, NSW Parliamentary Inquiry into the Impact of WorkChoices
- ²⁰ Dr Briggs, NSW Parliamentary Inquiry into the Impact of WorkChoices
- ²¹ NSW Parliamentary Inquiry into the Impact of WorkChoices sect.5.10
- ²² NSW Parliamentary Inquiry into the Impact of WorkChoices
- ²³ ABS 6306.0 May 2004
- ²⁴ ABS Small Business in Australia 1321.0, 2001
- ²⁵ Misha Schubert, The Age, 18 January 2007
- ²⁶ ABC, 2006, viewed online 24 March 2007, <http://origin.abc.net.au/news/items/200611/1788736.htm?wa>
- ²⁷ Reported in Workplace Express Jan 25 2007
- ²⁸ Note that some of these employees may have been able to pursue an unfair dismissal or unlawful termination claim under the new IR laws — our aim here is to highlight the fact that many employees have been emboldened by the new IR laws to treat staff unfairly.
- ²⁹ Talent2. (2006). Industrial relations reform - raw, *Data tables from survey, August*. Sydney cited in Brave new WorkChoices, Peetz 2007.
- ³⁰ Labor Parliamentary Taskforce on Industrial Relations, WorkChoices: a race to the bottom, 2006, P63.
- ³¹ “WorkChoices and Workplace Rights in Victoria: Evidence from the WRIL Data”, sect g, conclusions
- ³² “WorkChoices and Workplace Rights in Victoria: Evidence from the WRIL Data”, sect g, conclusions Sect F 57
- ³³ Hamzy v Tricon International Restaurants trading as KFC [2001] FCA 1589 (16 November 2001)
- ³⁴ Brave new WorkChoices, Peetz 2007
- ³⁵ Brave new WorkChoices, Peetz 2007
- ³⁶ Brave new WorkChoices, Peetz 2007 - Note: index, March = 100 Source: ABS Cat No 6202.0.
- ³⁷ ADAM Report, Workplace Research Centre, Sydney University, December 2006..
- ³⁸ ADAM Report, Workplace Research Centre, Sydney University, December 2006..
- ³⁹ ADAM Report, Workplace Research Centre, Sydney University, December 2006..

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- ⁴⁰ DEWR – Workplace Agreements Database Dec. quarter 2006
- ⁴¹ ADAM Report, Workplace Research Centre, Sydney University, December 2006..
- ⁴² Data from ADAM Report 51, Workplace Research Centre, Sydney University, December 2006.
- ⁴³ Workplace Express, 2006
- ⁴⁴ In evidence to the NSW Parliamentary Inquiry into the Impact of the WorkChoices legislation, Nov 2006
- ⁴⁵ NSW Parliamentary Inquiry into the Impact of the WorkChoices legislation, Nov 2006, 6.18 Baird
- ⁴⁶ Brave new WorkChoices, Peetz 2007
- ⁴⁷ Andrews, K. (2006). Answer to Question 2611, (*reply to question asked by Mr Murphy [Lowe], 9 November 2005*). Canberra: House of Representatives Hansard cited in Brave new WorkChoices, Peetz 2007
- ⁴⁸ ABS, 5204.0; Peetz, D. (2005). Hollow shells: The alleged link between individual contracting and productivity. *Journal of Australian Political Economy*, 56, 32-55. cited in Brave new WorkChoices, Peetz 2007
- ⁴⁹ ABS, 5204.0; Peetz, D. (2005). Hollow shells: The alleged link between individual contracting and productivity. *Journal of Australian Political Economy*, 56, 32-55. cited in Brave new WorkChoices, Peetz 2007
- ⁵⁰ Dalziel, 2002; Peetz, D. (2005). Hollow shells: The alleged link between individual contracting and productivity. *Journal of Australian Political Economy*, 56, 32-55. cited in Brave new WorkChoices, Peetz 2007
- ⁵¹ NSW Parliamentary Inquiry into the Impact of the WorkChoices legislation, Nov 2006, 6.18 Baird
- ⁵² NSW Parliamentary Inquiry into the Impact of the WorkChoices legislation, Nov 2006, Briggs 6.19
- ⁵³ NSW Parliamentary Inquiry into the Impact of the WorkChoices legislation, Nov 2006, Briggs 6.19
- ⁵⁴ MYOB Australian Small Business Survey - MR 1/8/2006
- ⁵⁵ MYOB Australian Small Business Survey - MR 1/8/2006
- ⁵⁶ MYOB Australian Small Business Survey - MR 1/8/2006
- ⁵⁷ NSW Parliamentary Standing Committee on Social Issues found (NSW Inquiry 6.63) John Buchanan – Sydney University
- ⁵⁸ Abetz 2006 cited in Brave New Work Choices, Peetz, 2007
- ⁵⁹ In a media statement titled 'Real Wages Up Under Workchoices' issued 7 March 2007, Minister Hockey stated: 'Since the commencement of WorkChoices, real wages have increased by 1.5 per cent.' — this figure overstates wage rises because it includes the earnings of part time workers.
- ⁶⁰ Brave New Work Choices, Peetz, 2007, Wages and Profits, sect.8
- ⁶¹ Labor Parliamentary Taskforce on Industrial Relations, evidence by Prof Andrew Stewart, 27 April 2006, p63
- ⁶² Labor Parliamentary Taskforce on Industrial Relations, Nov 2006
- ⁶³ NSW Parliamentary Inquiry into the Impact of the WorkChoices legislation, Nov 2006
- ⁶⁴ S. Washington, 'Corporate fat-cats keep getting richer', *Sydney Morning Herald*, 26 February 2007
- ⁶⁵ S. Washington, 'Corporate fat-cats keep getting richer', *Sydney Morning Herald*, 26 February 2007
- ⁶⁶ Brave New Work Choices, Peetz, 2007 – from ABS 5206.0
- ⁶⁷ Final Report – Inquiry into the Impact of Work Choices on Qld Workplaces, Employees and Employers
- ⁶⁸ MYOB Australian Small Business Survey - MR 1/8/2006
- ⁶⁹ Australian Government, 2005 cited in Brave New Work Choices, Peetz, 2007
- ⁷⁰ Australian Bureau of Statistics, 6401.0
- ⁷¹ Reserve Bank of Australia, 2006 cited in Brave New Work Choices, Peetz, 2007

