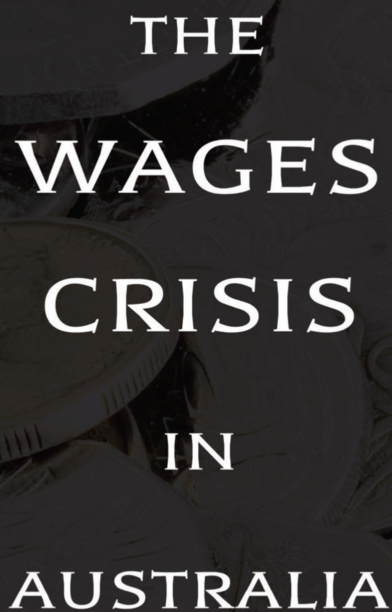

THE WAGES CRISIS IN AUSTRALIA

What it is and what to do about It

Edited by
Andrew Stewart
Jim Stanford
Tess Hardy

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The persistence of weak wages growth in Australia, at a time when the state of the economy might suggest much better outcomes for workers, has baffled policy-makers.

Andrew Stewart, Jim Stanford and Tess Hardy have drawn together expert analysts from business, universities, think-tanks, community organisations and trade unions to answer four pressing questions: What is the wages crisis? Why is it happening? Why does it matter? And what should we do about it?

Written in non-technical terms for a general audience, the essays in this book offer many insights into one of Australia's most pressing economic and social issues. They highlight the key point that wage stagnation is a problem with multiple causes and dimensions. It will not fix itself, but will need decisive policy action. In their conclusion, the editors set out their own views of what that might be.

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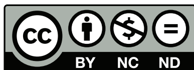

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Andrew Stewart
Jim Stanford
Tess Hardy
November 2018

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Part I

The problem

1

Australia, we have a problem

Jim Stanford, Tess Hardy and Andrew Stewart

Spiking the punch bowl

Central bankers are supposed to be a rather dour lot. They are charged, after all, with maintaining the monetary and financial integrity of the whole economy. They cultivate a public reputation as prudent, cautious guardians of price stability — an independent, reliable force, ready to pounce at the first signs of economic overheating and inflationary pressure. They are the ones who come in to take away the punch bowl, just when the economic party is getting started.

This deliberately joyless public image made it all the more surprising to see Australia's central banker — Dr Philip Lowe, Governor of the Reserve Bank of Australia (RBA) — take up the cause of higher wages for Australian workers. In several interventions in 2017 and 2018, in the wake of five years of unprecedented deceleration in Australian wage growth, Dr Lowe highlighted the macroeconomic dangers of the 'crisis… in real wage growth',[1] and explicitly advocated bigger wage increases. It's as if, instead of taking the punch bowl away, the central banker was now pouring in extra spirits.

'Some pick-up in wages growth would be a welcome development', Dr Lowe suggested — certainly an unusual sentiment to be expressed by a central banker.[2] The RBA acknowledged that its own wage forecasts (along with those published by other major agencies, like Commonwealth budget projections) have erred

repeatedly since 2011. They have consistently overestimated wage growth, and falsely predicted an always-imminent rebound in pay (rising back toward traditional annual increases of 4%), even as realised wage gains slid lower and lower.[3]

Wage growth bottomed out at under 2% per year for private sector workers after 2015, and slightly higher for public sector workers, as described in detail in Chapter 2 of this volume. There is no sign yet of any significant rebound. But with wages growing so slowly, it is very difficult to maintain the RBA's inflation target of 2.5% per year, Dr Lowe conceded. 'A lift in wage growth is likely to be necessary for inflation to average around the midpoint of the 2-3% medium-term inflation target.'[4] In fact, given normal productivity growth (of 1% or more per year), wage growth would have to reach 3.5% per year or more to be consistent with the inflation target.[5] Dr Lowe encouraged workers to be more aggressive with their wage demands. He hypothesised that they have been unduly deterred from demanding higher pay by fears about their job security from forces like globalisation and automation (fears which he himself believes are mostly unfounded).[6]

Lest any observers fear that Dr Lowe had suddenly taken on new responsibilities as a union organiser, he was quick to clarify that his interest in higher wages is mainly driven by his goal of meeting the RBA's inflation target. His admittedly 'controversial' observations were designed to lift expectations about future wage gains, preventing currently low wage expectations from becoming 'locked in' to future wage trends.[7] In that regard his comments are in fact consistent with the RBA's mandate. His overarching priority, after all, is to keep inflation at a stable, supposedly optimal level — and he can't do that if nominal wages and unit labour costs are growing too slowly. (Ironically, his advice was not heeded in the RBA's salary negotiations with its own workforce. They were granted annual salary increases averaging just 2% in a new three-year enterprise agreement signed in 2017.[8]) But even when seen through the lens of his monetary policy goals, the RBA Governor's blunt and surprising comments serve as a potent confirmation that the context for wage determination in Australia has been dramatically altered.

Dr Lowe has not been alone in highlighting the remarkable slowdown in Australian wage growth in the last several years. Other economic experts, including some from unexpected constituencies, have also noted the unusually slow pace of wages, and have warned of the significant economic and social consequences of wage stagnation. Even some business leaders, conceding that slow wage growth is holding back consumer demand, have supported higher wages. The then CEO of the Commonwealth Bank, for example, made a surprising call for new government policies to reignite wage growth.[9] The same bank's chief economist went so far as to propose a new 'accord' between government, business and labour to boost wages.[10]

Community, union and anti-poverty advocates have also voiced similar concerns about the impact of weak wage growth on family financial stability and inequality.[11] Even then Treasurer (and now Prime Minister) Scott Morrison acknowledged that record low wage growth was holding back household incomes, and jeopardising his own budget targets.[12] Mr Morrison's concern was shared by bond-rating agencies, which highlighted sub-par wage growth as a significant downside risk to the government's budget projections.[13]

For years, Australian economic discourse took it for granted that if wages were a problem, it was because they were too high. This mindset underpinned a long series of structural changes intended to reduce the 'wage overhang', including major changes in labour markets, social policy, industrial relations and competition policy. The Commonwealth Department of Industry recently reviewed the evolution of Australian economic policy making since the 1970s, and highlighted the influence of concerns over wage growth on the broad direction of policy from the 1980s forward:

> Australian wage growth ran ahead of GDP per capita growth throughout the 1950s and 1960s which was a major source of underlying inflation. The gap opened wider in the 1970s and 1980s. This further drove up domestic inflation … During the operation of the Prices and Incomes Accord, real wages and GDP per capita were gradually brought into alignment and alleviated inflationary pressures in the economy … As market based approaches became more widespread, wages growth aligned more closely with growth in changes in GDP per capita.[14]

In fact, wages growth has lagged far *behind* per capita GDP growth in recent decades, as described in Chapters 2 and 3 of this book. So this 'alignment' with broader macroeconomic trends has not actually been attained. However, the implicit assumption that wages are generally 'too high' leads to the conclusion that this slower wage growth has somehow been economically healthy.[15] That cognitive framework is hard to shake off, even as evidence accumulates that wages are unusually weak. For example, in early 2014 — with statistical evidence regarding the deceleration of wages already accumulating — then Commonwealth Employment Minister Eric Abetz warned sternly of the continuing risk of a 'wages break-out':

> We risk seeing something akin to the wages explosion of the pre-accord era when unsustainable wage growth simply pushed thousands of Australians out of work.[16]

The background concern of excess wages was then invoked to justify several measures taken by Mr Abetz's government to restrict wage growth — ranging from

strict limits on wage increases for Commonwealth employees (discussed further in Chapter 8 of this book) to policies aimed at reducing unions' wage-setting power in the private sector.

Suddenly, this traditional concern with reducing wage pressures has been replaced with a seeming consensus that wages are too low, not too high. While this concern cuts across many economic constituencies (including business, government, unions and community organisations), there is not yet an equivalent consensus regarding the causes of the wage slowdown, nor its most promising remedies.

Since 2013, nominal wages have been growing at around 2% per year — half the rate of the 2000s, and the slowest of any sustained period since World War II. During this time nominal wages have barely kept up with consumer prices. This implies stagnation in average real earnings — and for the many workers whose pay gains have lagged behind that 2% average, real earnings have declined. Real pay has thus become delinked from labour productivity growth (which has continued during this period at typical rates), and the share of national income going to workers has consequently reduced. All this undermines household financial stability, consumer spending, further productivity growth (if there is no payoff to workers from productivity gains, the impetus for further efficiency improvements is dissipated) and government revenues.

The slowdown in nominal wage growth is not a uniquely Australian problem. Many other industrial economies, including the United States and the United Kingdom, have also experienced a visible deceleration of wage growth in the years since the Global Financial Crisis (GFC) of 2008-09. But the wage slowdown has not been universal. Several countries (including Germany and Japan) have experienced faster wage growth in this period, not slower. And the deceleration of Australian wages has been among the more severe experienced in the OECD.[17] So Australia can certainly learn from the experience of slower wage growth in other countries over the past decade — and from the policy responses which have been proposed or implemented elsewhere. But there is clearly also a specific Australian dimension to this problem — given both the relatively severe manifestation of wage deceleration in Australia, and the unique historical and institutional context for the slowdown.

Waiting for supply and demand

Many observers have suggested that the dramatic deceleration in wage growth in recent years constitutes an economic 'mystery'. Australia's economy, after all, seemed relatively healthy even as wage growth was slowing down. To be sure, there

was a short economic downturn associated with the 2008-09 GFC, during which wage growth dipped temporarily. But Australia was the only OECD country to weather the GFC without an outright recession, thanks in part to a fast and effective stimulus programme implemented here. Overall economic activity and nominal wage growth then quickly recovered, reaching pre-GFC norms by 2011.

It was only after 2012 that a more sustained and puzzling dip in wage growth became visible. However, Australia's macroeconomy has recorded decent (if not stellar) performance throughout that period — including as measured by labour market aggregates other than wage growth. For example, the national unemployment rate hovered between 5 and 6% through most of this period. That is not much higher than the 5% threshold which is understood by many observers as equivalent to 'full employment'.[18] On the surface, it seems hard to reconcile the dramatic deceleration of nominal wage growth with relatively tight labour market conditions. Hence the wage slowdown does not seem attributable to normal supply and demand factors.

Conventional neoclassical economic theory holds that market-clearing pressures in labour markets are the primary force determining wages. Moreover, those competitive pressures should (in an ideal, non-distorted market setting) ensure that all participants are paid according to the marginal productivity of their output. For this school of thought, the coincidence of wage deceleration with decent labour market conditions may indeed seem puzzling. Two major responses to this seeming conundrum have been advanced:

1. The labour market is not actually as 'tight' as official unemployment statistics make it seem. In particular, historically high levels of part-time work and underemployment recorded in Australia in recent years attest to a larger pool of underutilised labour than suggested by the unemployment rate alone.[19] Competition between employed workers for more hours of work could be suppressing wage growth, even if the overall level of unemployment is relatively low. If and when labour market conditions tighten more robustly (absorbing underemployed workers, and other pools of 'hidden' unemployment), *then* wages will start to grow again.
2. Supply and demand forces will continue to determine wage growth in line with conventional economic theory, but that effect will only be felt with time. Australians must therefore be patient, waiting for labour market forces to perform this autonomous, efficient job.

The first of these hypotheses has some empirical support: underemployment and other forms of underutilisation are indeed relatively high.[20] Yet the extent of

that underutilisation still seems modest relative to the structural break in wage trajectories visible over the past five years. It is hard to believe, for example, that a cushion of underemployed workers (concentrated particularly among young workers in service sector jobs) could have such a large negative impact on wage determination across the entire economy — larger, even, than full-fledged recessions and sustained mass unemployment during previous macroeconomic downturns.

The second hypothesis is more far-fetched. The post-2012 'weakness' in labour markets that allegedly explains the deceleration of wage growth was hard to detect in the first place and is certainly not supported by current labour market data. Simply waiting for labour markets to naturally strengthen and restore conditions for robust wage growth is not an especially convincing response, when it is not at all clear that aggregate labour markets are 'weak' at all.

Importantly, adherents of both these 'supply and demand' hypotheses remain confident that market forces will eventually restore normal wage growth. Hence neither hypothesis sees a particular need for policy intervention, other than normal macroeconomic and related measures to keep the economy growing. In other words, there is nothing 'broken' in Australia's labour market, and hence nothing that needs to be fixed.

This is certainly the view of the current Commonwealth government. Wage growth is thought to have slowed in response to supply and demand imbalances, and will pick up again when the labour market regains a more appropriate equilibrium (guided, as needed, by monetary policy interventions). 'As the labour market tightens, that's obviously going to lead over time to a boost in wages', said Scott Morrison.[21] 'The laws of supply and demand … have not been abolished', he added in a separate comment.[22] Mr Morrison's predecessor, former Prime Minister Malcolm Turnbull, also predicted that market forces would inevitably restore wage growth: 'It's supply and demand'.[23] The Secretary to the Treasury, John Fraser, endorsed the government's continuing faith in market forces, so long as we give them adequate time to work their magic:

> Just as wages slowed in response to the period of slower growth and slack in the labour market in recent years, we expect that a period of stronger growth and falling unemployment will lift wages in the next few years. This process will take some time.[24]

The RBA's Dr Lowe has also counselled patience, expressing faith in the eventual impact of labour demand on wage growth:

> This, of course, does not mean that the normal forces of supply and demand have been abandoned. Tighter labour markets should still push up wages and prices, even if it takes a little longer than we are used to.[25]

Is this confidence in the inevitability and efficiency of market forces justified? There is no doubt that wage growth is at least somewhat sensitive to labour market supply and demand conditions. Both the exuberant pace of wage growth during the booming 2000s, and the sharp but temporary slump that occurred during the trough of the GFC, attest to the influence of macroeconomic conditions on wage deals. However, many labour economists also admit the relevance of other structural, institutional and even political factors in explaining wage patterns. It is necessary to consider the structural and institutional context for wage determination in order to explain frequent divergences between wages and their supposed underlying fundamental determinants — such as supply and demand conditions in labour markets, productivity growth (which bears only an intermittent relationship to real wage growth) or other causal factors. The absence of an obvious supply and demand explanation for the post-2012 wage slowdown, and the seeming structural break in wage determination that has occurred since then, suggest that a broader and more complete analysis is required — one that goes well beyond the traditional supply and demand frame.

Alternative theories:

We are not the first to notice that persistent low wage growth is a pressing problem in this country. In addition to those just mentioned, a number of academics, commentators and think tanks have made similar observations. A plethora of suggestions about the root causes of the wages slowdown, and potential solutions, have also been proposed. At the risk of being too selective, this section surveys some of the more interesting recent contributions.

One of the most consistent themes to emerge is the notion that the system of enterprise bargaining established under Australia's main labour statute, the *Fair Work Act 2009* ('the Fair Work Act'), is 'broken'.[26] Historically, Australia relied on a highly distinctive system of compulsory conciliation and arbitration to resolve industrial disputes and (through legally enforceable 'awards') to prescribe minimum conditions for most employees. But that approach gave way in the 1990s to a preference for setting wages through collective negotiations at the workplace level, rather than by a centralised tribunal. This was widely considered (including at the time by key trade union leaders) to be a better way of enhancing productivity and increasing wages.

Today, however, support for that approach has significantly weakened. Declining union membership and the exploitation of what are considered by some to be 'loopholes' in the Fair Work Act have contributed to a growing imbalance of power in favour of employers. Some commentators, such as labour economist

(and former tribunal member) Joe Isaac, believe that the changes to industrial laws over the course of the past two decades have precipitated this changing power dynamic. In his view, the way to restore the institutional mechanism for wage growth is to return to a system which mimics many of the features of the former system.[27] Amongst other proposals, Isaac advocates for what is now the Fair Work Commission to play a greater role, including to intervene in disputes, to conciliate, and ultimately to arbitrate. He also argues for an expansion in union rights and privileges, including enhanced rights of entry to workplaces for union officials and reinstatement of union preference clauses.

While such arguments are broadly in line with the position adopted by the Australian Council of Trade Unions (ACTU) as part of its Change the Rules campaign,[28] others have dismissed the role played by falling unionisation rates and reduced bargaining strength.[29] Previous research by Jeff Borland has suggested that industrial relations reforms have had little discernible impact on wages growth.[30] Bell and Keating have similarly argued that the workplace relations framework in Australia is 'not in need of major repair'.[31] Rather, in their view, to address productivity and inequality concerns, the focus should be on enhancing Australia's skill base and improving the quality of Australian management. A recent editorial in *The Age* argued that focusing on economy-wide solidarity is not only outmoded, but would potentially alienate great slabs of the non-unionised workforce. A more 'rational' basis for higher wages would be one founded on collaboration and mutual interest.[32] Or in the words of James Pearson, the CEO of the Australian Chamber of Commerce and Industry: 'We need conversations, not confrontations'.[33]

Apart from weaker collective voice and reduced worker power, a host of other forces are variously invoked to explain the current wages crisis. These include technological change, automation, the emergence of big data and increased competition arising from globalisation. At the same time, there has been a growing degree of financialisation and concentration on the demand side of the labour market.[34] These factors are manifested in the rise of so-called superstar firms.[35] This term has been used to describe the way that an elite set of companies are simultaneously embracing new technologies and benefiting from global economies of scope and scale to increase their share of product or labour markets.[36] The productivity and profitability advantages enjoyed by these firms, such as Amazon, have been substantial.

Many of these rewards have been passed onto consumers in the form of lower prices, reinvested in the company to expand market share or returned to shareholders by way of higher dividends. However, very little tends to land in the pockets of workers.[37] Further, the uneven take-up of new technology produces

productivity 'laggards': firms which struggle to maintain market share in the face of increasing competitive pressure, with little capacity to raise their own wages.[38] The adverse effects of industry concentration are magnified where unionisation rates are low.[39]

There may be several reasons for this emerging pattern of distribution. A number of commentators have observed that where a single company exercises monopsonistic power in a labour market, it is frequently in a position to keep wages below the level that would be set in a competitive market — a base assumption of most orthodox economic models. David Weil has further posited that businesses in concentrated markets have the power not just to hold down wages, but also to transform the structure of pay entirely through shedding direct employment responsibilities. The so-called fissuring of work has been one obvious response to intense pressure to enhance financial performance of the firm for the benefit of investors.[40] Fissured work has obvious consequences for enterprise bargaining and employment standards compliance. But it also has flow-on effects for wage setting, since it offers firms a legal mechanism to reduce labour costs by implementing wage discrimination. As Weil explains:

> By shifting employment to subordinate organisations external to the enterprise that operate in competitive markets, the lead firm creates a mechanism whereby workers will receive a wage close to the additional value that they create. At the same time, this avoids the problem of having workers with very different wages operating under the one roof.[41]

Many companies in the current environment see that containing wages and benefits, and thus maximising profits and shareholder value, is an essential feature of good corporate strategy.[42] This is especially true if private equity is involved.[43] In the US, Bower and Paine have recently argued that maximising shareholder value is a form of 'pernicious nonsense' which is 'flawed in its assumptions, confused as a matter of law and damaging in practice'.[44] This has been echoed by Michael Keating, who argues that 'higher profits will not drive higher wages'.[45] Any additional profits arising from a company tax cut will not trickle down to workers, but will largely flow directly to shareholders.[46]

Others have argued that low wage growth may be attributable to the low level of voluntary job turnover.[47] In other words, workers are staying put, rather than switching to better-paying jobs. Reductions in the flow of workers between jobs may reflect increased job insecurity and a reduction in bargaining strength.[48] In the UK, Anthony Haldane, the Chief Economist of the Bank of England, has observed that a growth in self-employment and precarious forms of work has reduced union density and contributed to a pattern of 'divisible' work. Haldane explains:

> There is power in numbers. A workforce that is more easily divided than in the past may find itself more easily conquered. In other words, a world of divisible work may reduce workers' wage-bargaining power.[49]

Whether this sentiment applies with equal force in Australia is debatable. A number of commentators, such as Bell and Keating, have pointed to evidence suggesting that job security has not deteriorated in recent years and have downplayed this factor in explaining increases in inequality in Australia. Instead, they argue that changes to the industrial and occupational structure of jobs — including the impacts of technological change — have hollowed out middle-income jobs, leading to greater income polarisation.[50] To address the adverse impacts associated with these shifts in job structure, and lift the wage premium, they suggest it is critical to improve workers' education and training.

An alternative explanation for underwhelming wage growth lies in changing patterns in business behaviour. For example, some businesses are using non-wage incentives to retain staff, including offers of shares, subsidised gym memberships or additional annual leave.[51] Other businesses have determined that rather than raise wages across the board, strong performers should be rewarded on a more individualised basis — that is, by handing out discretionary bonuses to key staff. Indeed, the average pay flowing to ASX100 CEOs has ballooned in the past year, rising by 9%. As the current Shadow Assistant Treasurer, Andrew Leigh, has observed, that is four times faster than average wage growth over this period. Moreover, the average pay for an ASX100 CEO is now 75 times the average pay of a full-time worker.[52] A glaring example of this trend was the 2018 pay packet of the CEO of Domino's Pizza, Don Meij, who took home A$37 million last financial year.[53] This staggering amount was paid out a mere 12 months after the Fair Work Ombudsman (FWO) identified multiple compliance failings in the franchise network Meij oversees.[54] The Australian Labor Party has put forward a proposal to enhance pay transparency, by requiring large listed companies to report the pay ratio between the CEO and the median employee. This policy position — which reflects similar moves in the US and the UK — purports to encourage companies 'to think about how they are serving all their workers, and society as a whole'.[55]

Keating and Bell have similarly argued that the fascination by employers with lowering the cost of wages (or at least those paid to non-executives) is inconsistent with both the needs of the economy and Australian cultural traditions in favour of egalitarianism and a fair go.[56]

Systemic underpayment and wholesale avoidance of employment laws through sham independent contracting is another potential contributor to wage stagnation.[57] James Pawluk of the McKell Institute has argued that many firms

are prospering at the expense of their own employees — either through deploying wage suppression strategies or via deliberate evasion of employment standards regulation. He points out that the adverse consequences of such practices go beyond the workers directly affected and serve to undermine the competitiveness of other firms paying higher wages.[58] Louise Thornthwaite has also highlighted that widespread wage underpayment is stripping workers of a 'living wage', and in doing so, undermining the very foundations of Australia's industrial relations system. To bridge the enforcement gap, Thornthwaite, amongst others, believes that the labour inspectorate at the Fair Work Ombudsman must be beefed up — through increased resourcing, stronger enforcement powers and more biting sanctions, including possible criminalisation of so-called wage theft. Further, and more ambitiously, Thornthwaite argues for greater community and policy dialogue on the development of a new wage safety net for workers that allows people to afford the basics of a dignified life.[59]

If nothing more, this summary shows that while there is limited consensus on the reasons behind the wages slowdown, there is even less agreement on what should be done to address it. A common view shared by most commentators, however, is that we cannot afford to rely on market forces alone to fix the problem of faltering wage growth.

Finding some answers

During 2017, like many others with a scholarly or professional interest in workplace relations, we found ourselves pondering the nature and causes of wage stagnation in this country. For the reasons already explained, we became convinced that something was going on that transcended the cyclical nature of the labour market or the broader economy. Australia was becoming locked into a pattern of static or even declining real wages for most of its workforce. We feared — and still do — that this would have serious social and economic consequences. But we were also convinced that there were many potential causes for what we were privately starting to call the wages crisis. Some of the suggestions canvassed above seemed to have merit. But none, we felt, were capable on their own of addressing what we saw as a problem with many different facets or dimensions.

Our response was to gather a group of expert researchers, commentators and stakeholders together to consider the issue. With the kind support of the institutions for which we each work, we convened an invitational workshop in Adelaide in February 2018. During the course of a very productive day, there was animated discussion about various aspects of the wages problem. The debates continued over dinner, at which we proposed the idea of having the contributors

prepare papers for an edited collection. This would both explore particular aspects of the wages crisis in more detail, and offer possible solutions — all in terms that would be accessible to a non-specialist audience.

And so this book was born. Most of the workshop participants were willing to write up their ideas, although a few (especially those from government agencies) were not able to take that step. In subsequent discussions, we identified other possible contributors, who kindly agreed to come on board despite not having been at the workshop.

The book is divided into five parts. **Part I** is broadly concerned with identifying the scope and causes of the problem. Besides this introduction, two of the chapters have their origins in a discussion paper originally distributed prior to the workshop. In Chapter 2, Jim Stanford provides statistical evidence for the slowdown in wages growth in Australia, while in Chapter 4, Tess Hardy and Andrew Stewart discuss a range of possible causes that have their roots in Australia's complex and highly distinctive system of labour regulation. (For the benefit of readers not already familiar with that system, an explanatory overview is provided in the Appendix.) Chapter 3, written by Stephen Kinsella and John Howe, provides a global context. It compares what has happened in Australia to the situation in other countries and discusses various hypotheses for the stagnation in wages growth.

Part II is concerned with wage-setting mechanisms and institutions. In Chapter 5, Tim Lyons critically reviews the history of centralised wage fixing in Australia, which was transformed in the 1990s by the Keating Government's shift towards enterprise-based bargaining. Since then, the minimum wage rates set by the Fair Work Commission and its predecessors have established a 'safety net' for low-paid employees that has fallen in value relative to average earnings. Among other things, Lyons highlights the need for attention to the pay gap between male and female earnings. This is the subject of a more detailed treatment in Chapter 6 by Sara Charlesworth and Meg Smith, who explain the dimensions and causes of the persistent lack of pay equity for Australian women. They highlight the failure of processes such as award modernisation or enterprise bargaining to benefit female workers, as well as the shortcomings that have been exposed in the 'equal remuneration' provisions in the Fair Work Act. Chapter 7 sees David Peetz explore the impact of declining worker power on wages growth, with a focus on the factors both directly and indirectly limiting the achievement of pay increases through collective bargaining.

In Chapter 8, Troy Henderson traces the effect of austerity policies on wage levels both within and beyond the public sector. Besides the caps that many governments have placed on pay increases for their own employees, he highlights

the impact of measures that involve the privatisation or marketisation of public services. That theme is taken up by Fiona Macdonald and Michael Pegg in Chapter 9. They explore the difficulties created for the social and community services sector by government contracting and funding models. These have stifled wage growth in the sector, at a time when it needs not just to retain good staff but to attract new workers. Chapter 10 concludes Part II with a discussion by Kym Sheehan of some of the practices in publicly listed companies that help explain why executive remuneration has followed an entirely different trajectory to the pay outcomes for most other workers. She also examines how the remuneration packages of many managers create incentives to hold down the pay of other workers within these companies.

Part III shifts the focus onto some of the business structures and employment practices that have created disadvantage and precarity for Australian workers, to the detriment of their prospects of improving their pay — or indeed sometimes of receiving what they are lawfully due. In Chapter 11 Josh Bornstein discusses various examples of the 'fissuring' strategies mentioned earlier in this introduction. These involve firms or other organisations cutting costs by finding ways *not* to employ the labour they need. Instead, they may engage workers as so-called independent contractors or freelancers rather than as employees. They may rely on intermediaries, such as labour hire agencies, or digital platforms operating in the 'gig economy', to supply the workers they need. Or they may use other business models, such as franchises or supply chains, that place a legal distance between their operations and the performance of the work needed to sustain their businesses. Even where these models involve the employment of workers, it is often by franchisees, subcontractors or agencies that are under pressure to compete or subsist by holding down wages. And that frequently means underpaying employees, in breach of the Fair Work Act. The prevalence of wage theft is taken up by Keelia Fitzpatrick in Chapter 12. She provides examples of how young workers, in particular, are vulnerable to exploitation, and charts the recent exposure of such practices, as well as potential responses to the public outcry that these revelations have provoked.

A separate but related form of vulnerability is explored in Chapters 13 and 14, which are concerned with the position of foreign workers on temporary visas. Iain Campbell returns to the theme of 'predatory' business models, explaining how they are used to exploit many of the million-plus temporary migrants in Australia at any one time, including students or working holiday makers. That exploitation often involves the underpayment of these workers, especially in industries such as food services, horticulture, construction, personal services and cleaning. For her part, Joanna Howe exposes what she calls an 'untold' wages crisis facing skilled

migrants brought to Australia on the Temporary Skill Shortage (TSS) visa, formerly called the 457 visa. This stems from the Commonwealth's decision since 2013 to freeze the Temporary Skilled Migration Income Threshold that is meant to set a salary floor for such workers.

Part IV of the book offers a range of stakeholder perspectives on possible causes, consequences and solutions in relation to wage stagnation in Australia. Economist Saul Eslake points out in Chapter 15 that while in the short term a larger share of national income has gone to corporate profits, 'the pie itself has been growing at a much slower rate'. With lower increases in wages has come weaker growth in household consumption spending, lower aggregate economic growth and in turn lower aggregate profits, with the prospect of worse to come. That, he notes, should be of concern to the business community — as should the contribution of lower wage growth to a 'fractious political climate' less amenable to reforms of the kind typically favoured by business. It is indeed a climate which has prompted a vocal campaign from the trade union movement for major reforms to our system of workplace relations. In Chapter 16, Damian Kyloh from the ACTU outlines the economic case — as documented by bodies such as the OECD — for more coordinated, industry-level bargaining. He also advocates a raft of other changes that would 'level the playing field' for workers and unions, and increase the wages set both through bargaining and (as a minimum standard) by the state.

The former chief executive of the St Vincent de Paul Society, John Falzon, draws in Chapter 17 on his long experience in the charity sector to discuss the social consequences of both wage stagnation and what he sees as the systematic dismantling of the welfare state. These twin pressures have forced low-paid and unemployed workers to rely on informal assistance, including from charities. He sees the revitalisation of wage growth, and a concomitant reconfiguration of social supports, as essential to the community sector's efforts to reduce poverty and human suffering. Chapter 18 likewise offers a broader take on the issue of low wages, seeing it as just one of many challenges that young people now face as they seek to transition into secure full-time work and build financial independence. The overall picture painted by Annette Cairnduff, Kelly Fawcett and Nina Roxburgh from the Foundation for Young Australians is a bleak one indeed for a generation who may be the first to be worse off in social and economic terms than their parents.

Chapter 19 returns to a business perspective, but more specifically that of investors. Craig Shepherd and Penny Heard of the advisory firm JCP Investment Partners highlight the potential impacts on listed companies of weak wages growth and revelations of wage theft. Informed by principles of responsible investment,

they explain the nuts and bolts of how decisions can be made to factor in the short-term risks associated with the current downturn. Over the longer term, they express confidence that wages growth will return and wage theft diminish, simply because the status quo is not politically sustainable.

In **Part V** we conclude by reiterating why we think wage stagnation is indeed a problem that requires a set of active policy responses, and what those might be. Chapter 20 collects and summarises some of the more notable prescriptions put forward by our contributors, before going on to outline our own suggested agenda for reform. We look not just at regulatory adjustments, but at what governments at all levels could do almost immediately to end policies of wage suppression that affect not only their own workers, but many others outside the public sector.

The debate continues

As evidenced by the diversity of perspectives included in this collection, the problem of wage stagnation in Australia is as complex as it is important. Some chapters in the book explore the causes and consequences of wage stagnation, by reference to macroeconomic, structural, regulatory and gender factors. Other contributions describe how wage stagnation is being experienced throughout Australian society, including within the youth, business, union and community constituencies. Despite the diversity of their analyses, our contributors all agree that the wages crisis poses a major threat to Australia's future economic and social wellbeing — and that simply waiting for market forces to fix the problem is unlikely to be successful.

Clearly there is no single 'magic bullet' for solving the wages crisis. Policy responses will need to be thoughtful, nuanced and evidence-based. But equally clearly, the complexity of the problem cannot become an excuse for inaction. In our judgment, the wellbeing of millions of Australian households, and the future of Australia's once-vaunted reputation as a fair and inclusive society, depend on ensuring that working Australians have meaningful prospects of sharing in ongoing economic progress. This requires supporting wage growth over time as an explicit goal of economic policy, and thus restoring a better distributional balance in society.

We hope this collection will make a useful contribution to a public and policy debate that should be at the top of Australia's national agenda. We thank all the participating authors for their contributions, and welcome feedback and further dialogue.

Endnotes

1. Greber 2017a; Bagshaw 2017.
2. Cited in Hutchens 2018b.
3. See Bishop and Cassidy 2017.
4. Cited in Hutchens 2018a.
5. Standing Committee on Economics 2018.
6. Greber 2017; Hutchens 2017.
7. Karp 2018.
8. RBA 2017: 103.
9. Yeates 2017.
10. Turner 2017.
11. See ACOSS 2018; McManus 2018.
12. Heath 2017.
13. For example, rating agencies S&P and Moody's both cautioned that slow wage growth and resulting weakness in consumer spending could undermine both demand conditions and government revenues. Moody's stated that 'sustained softness in the outlook for wages growth' was a key reason revenue growth would fall below government projections. See Greber 2017b; Uren 2017.
14. Office of the Chief Economist, Department of Industry 2018: 9.
15. Quiggin 2018 has noted the asymmetry of the Department of Industry's views on wages.
16. Quoted in Woodley 2014.
17. International comparisons of wage stagnation are discussed further in Chapters 2 and 3 of this volume.
18. Economists with government, the RBA and international organisations have estimated 5% as Australia's non-accelerating inflation rate of unemployment (NAIRU): see, e.g., Cusbert 2017. NAIRU theory suggests that if unemployment falls below the NAIRU level (which is determined by various long-run structural and institutional features of the labour market), inflation will accelerate continuously.
19. Underemployment refers to a situation in which an employee works fewer hours than they would prefer to work.
20. Stanford 2016 suggests that total underutilisation, including underemployment, discouraged participation and marginally attached workers, is closer to 15% of the adjusted labour force.
21. Quoted in Coorey 2017.

22. Quoted in Murphy 2018.
23. Quoted in *New Daily* 2017.
24. Fraser 2017.
25. Lowe 2017c: 9.
26. See, e.g., Bornstein 2018.
27. Isaacs 2018.
28. See, e.g., ACTU 2018c.
29. See, e.g., Weir 2018.
30. Borland 2012.
31. Bell and Keating 2018: 177.
32. *The Age* 2018.
33. Chalmers 2018.
34. Azar, Marinescu and Steinbaum 2017; Diez, Leigh and Tambunlertchai 2018.
35. Autor et al 2017. See also Marin-Guzman 2018.
36. Irvine 2018.
37. Irvine 2018.
38. Weir 2018.
39. Benmelech, Bergman and Kim 2018.
40. Weil 2018.
41. Weil 2018.
42. Denning 2018.
43. Schneiders 2018.
44. Bower and Paine 2017.
45. Keating 2018.
46. Clarke 2018.
47. Debelle 2018. This builds on a strand of literature in labour economics which considers how flows in and out of work affect wage demands. See, e.g., Moscarini and Postel-Vinay 2018.
48. Haldane 2018.
49. Haldane 2017.
50. Bell and Keating 2018.
51. Debelle 2018.
52. Leigh 2018; ACSI 2018.
53. Durkin 2018.
54. Ferguson 2017b.
55. Leigh 2018; and see further Schofield-Georgeson 2018.
56. Bell and Keating 2018: 158.

57. Thornthwaite 2017; Pawluk 2018.
58. Pawluk 2018: 22.
59. Thornthwaite 2017.

2

Charting wage stagnation in Australia

Jim Stanford

The slowdown in wages growth in Australia, to the slowest sustained growth rates in at least a generation, has sparked concern among policy makers and the public at large. This chapter will summarise recent statistical data describing the extent of the wages slowdown, and some of its potential causes.

Measuring 'wages' (and hence growth in wages) is not a straightforward issue. There are numerous options regarding variable selection and methodology to be confronted. Based on several different indicators, I focus on data since the turn of the century to provide a longer-term perspective on the recent slowdown. This period covers years of both rapid growth and near recession, several changes in government, and at least three different federal industrial relations regimes — the last years of the original *Workplace Relations Act 1996*, the period of the 2005-06 'Work Choices' amendments, and the *Fair Work Act 2009*. That changing macroeconomic and policy context makes analysing the recent slowdown in wages all the more complex.

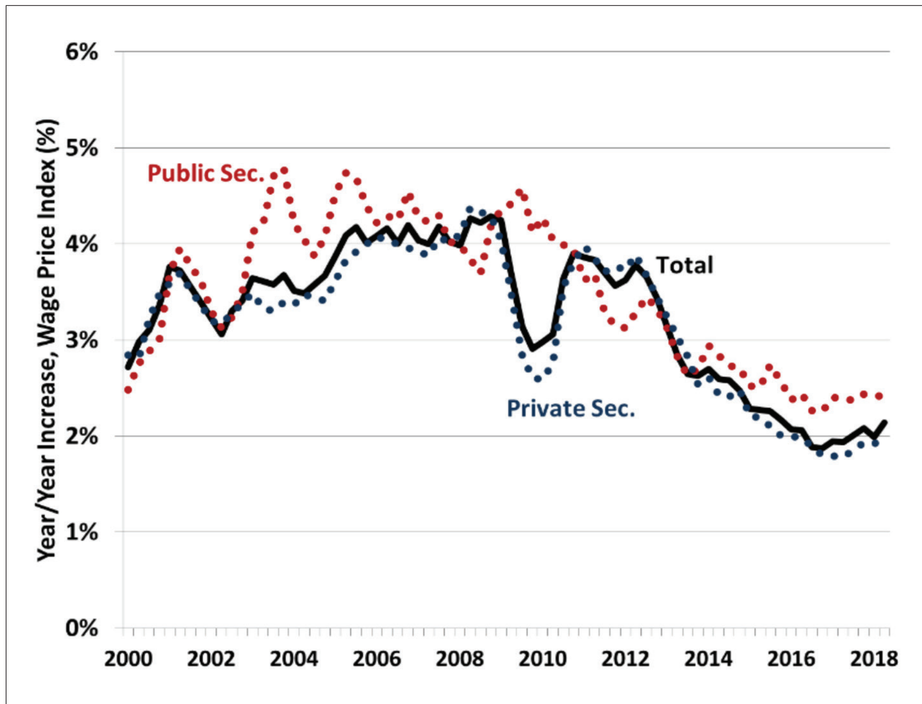

Figure 2.1: Year-over-year growth in the WPI, 2000-18

Source: Calculations based on ABS, Wage Price Index, Cat no 6345, table 1, seasonally adjusted data.

Measures of wages

The most common 'headline' source of data on hourly earnings is the quarterly Wage Price Index (WPI, catalogue no 6345.0) of the Australian Bureau of Statistics (ABS). This is an index of wage and salary incomes calculated from a representative sample of jobs. Importantly, the WPI controls for ongoing changes in the composition of employment, and therefore does not capture the effects (positive or negative) of shifts in the make-up of employment, including important trends such as the growth of part-time work, casual jobs and self-employment.[1] The rationale of this approach is to provide a more focused indicator of 'pure' wage pressure across a given sample of jobs, separating out that inflationary dimension from other factors (like composition of employment) that can also affect average earnings. But by excluding the impact of changes in the quality of jobs, the WPI is an imperfect measure of trends in actual realised incomes for Australian workers.

Data since 2000 on the growth of the WPI are illustrated in Figure 2.1, including separate series for public sector and private sector positions. Annual wage growth has generally been stronger in the public sector through most of this period. Annual wage growth fluctuated between 3 to 4% per year during the first decade of the century, accelerating gradually in the mid-2000s as Australia's labour market strengthened (led by strong expansion in the resource sector). Wage growth then decelerated sharply but temporarily during the Global Financial Crisis (GFC) of 2008-09, quickly regaining pre-crisis norms by 2011. After 2013, however, wage growth entered a more dramatic and sustained deceleration. Private sector WPI growth has been especially weak, languishing below 2% (on a year-over-year basis) since the beginning of 2016.

An alternative measure of labour incomes is also published by the ABS, albeit on a less frequent basis, in its semi-annual report on Average Weekly Earnings (AWE, catalogue no 6302.0). This measure reports weekly earnings received by non-agricultural wage and salary earners, on the basis of a survey of employers. Separate series are provided for full-time workers and all workers (including part-time and irregular workers); for men and women workers; and including and excluding overtime pay. The AWE data capture changes in the composition of employment, since those averages are calculated across the whole (evolving) sample of wage- and salary-earners. Importantly, the AWE figure for all workers will reflect the varying importance of part-time work (and changes in average weekly hours of work more generally), as well as other changes in average job quality. When average weekly hours of work are falling (for example because of a rise in the incidence of part-time work), AWE will increase more slowly than average hourly earnings (as reported, for example, in the WPI) — and vice versa.

As pictured in Figure 2.2, these data reveal a similar, but more dramatic, deceleration of earnings growth, also beginning around 2013. Annual growth in weekly earnings prior to the GFC was stronger than reported in the WPI data: averaging around 4-5% per year. That earnings growth was faster than the WPI because of the improving quality of work and longer average weekly hours (driven by strong labour demand conditions in that time). The slowdown in earnings growth since 2013, however, has been steeper than in the WPI series: average weekly earnings for all workers have grown by an average of just 1.5% per year since 2013. Figure 2.2 also indicates that since 2013, the growth of AWE has been notably slower for all workers, rather than for full-time workers only. This further attests to the impact of growing part-time work on labour incomes.

A significant (but declining) share of workers in Australia have their earnings determined in accordance with enterprise bargaining agreements (EBAs), and the

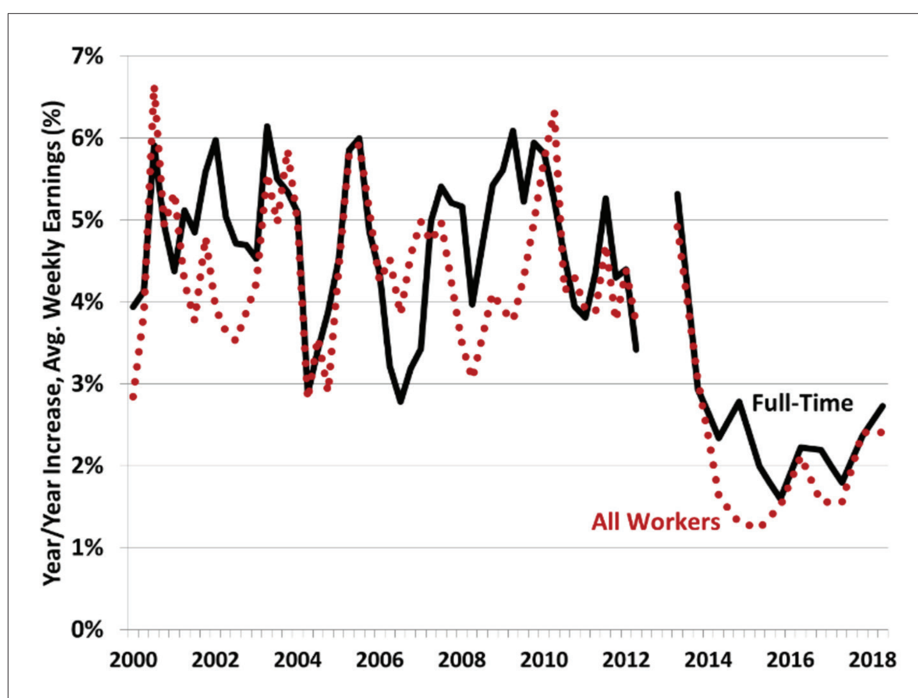

Figure 2.2: Year-over-year growth in AWE, 2000-18

Source: Calculations based on ABS, Average Weekly Earnings, Cat no 6302, table 2, seasonally adjusted data (full-time includes ordinary hours only, series break in 2012).

terms of those agreements provide another useful source of data regarding wage growth. The Commonwealth Department of Jobs and Small Business (formerly the Department of Employment) surveys all EBAs registered and approved under the federal industrial relations system, and reports aggregate data regarding average wage increases specified by those agreements.[2]

Figure 2.3 illustrates the estimated average annual wage increases embodied in the stock of registered EBAs monitored by the Department. Average EBA-specified wage increases remained steady within a relatively narrow band between 3.5 and 4.5% throughout the 2000-13 period, despite the effects of the GFC in 2008 and 2009. The constancy of EBA wage increments through the GFC attests to the stabilising influence of EBAs. This contrasts with the noted (but temporary) downturn in wage growth recorded in the economy-wide WPI measure discussed above. After 2013, however, a pronounced deceleration in EBA-determined wage increases has occurred. The average quantifiable wage increase has declined gradually since 2013, and is now between 2.5 and 3% per year. As with the WPI

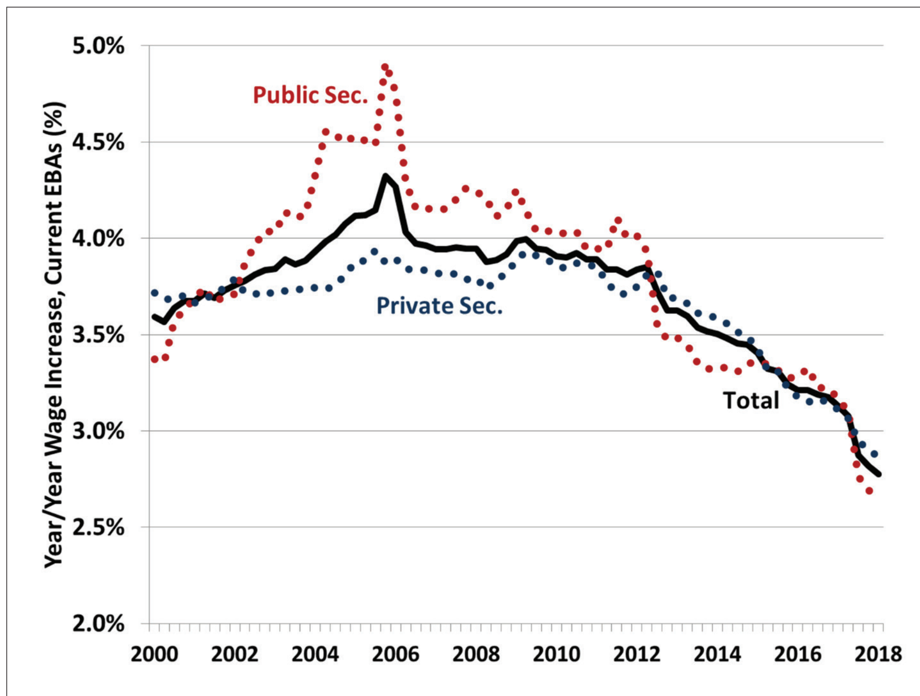

Figure 2.3: Average annual wage increases in federally registered EBAs, 2000-18

Source: Calculations based on Department of Jobs and Small Business, Trends in Federal Enterprise Bargaining.

measure, EBA-determined wage increases were somewhat stronger in public sector EBAs between 2002 and 2012. Since 2012, however, wage increases specified in public-sector EBAs have been lower than in the private sector, reflecting the impact of public-sector wage restraint measures imposed by several Australian federal and State governments.[3]

A timelier indicator of the future direction of wage growth can be gleaned by considering wage increases negotiated in *newly approved* EBAs. The terms of newly approved EBAs will more immediately reflect the impact of changing labour market indicators, macroeconomic conditions and expectations. In contrast, these same factors affect the average wage increases embodied in the overall *stock* of EBAs only gradually over time. Figure 2.4 illustrates average quantifiable wage increases in newly approved EBAs. These data show a more volatile but similar trend. New agreements prior to the GFC specified annual wage increases of around 4%. There was a very slight and temporary deceleration of wage growth in agreements approved during the GFC, but then the pace of negotiated wage increases quickly

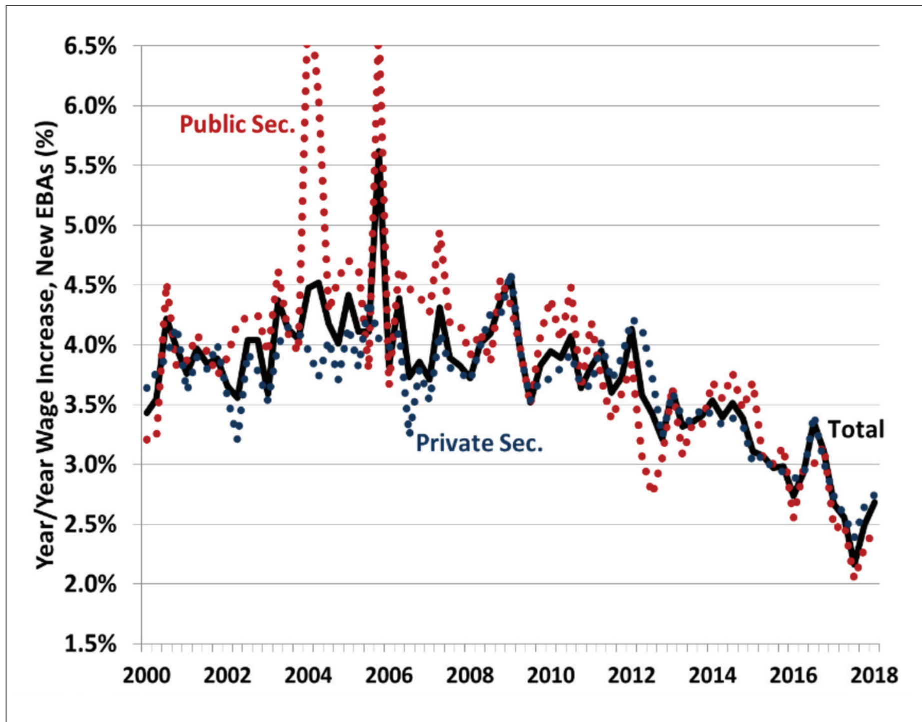

Figure 2.4: Average annual wage increases in newly approved federal EBAs, 2000-18

Source: Calculations based on Department of Jobs and Small Business, Trends in Federal Enterprise Bargaining.

rebounded. However, new wage deals show a more pronounced and sustained deceleration since 2013. They have fallen from the long-term average of about 4% per year, to around 2.5% in the most recent quarters. As falling wage expectations become concretised in multi-year collective agreements, wage stagnation may become a lasting and persistent feature of Australia's labour market.

Another indicator of the vitality of labour incomes is provided through Australia's national income accounts system. The ABS reports a quarterly accounting of labour income (including wages, salaries and employer superannuation contributions) as part of its regular GDP data. These aggregate labour income figures can be compared to quarterly employment data to estimate implicit levels and rates of growth of labour compensation (measured per employed worker or per hour worked). These data capture all of the forces affecting labour incomes

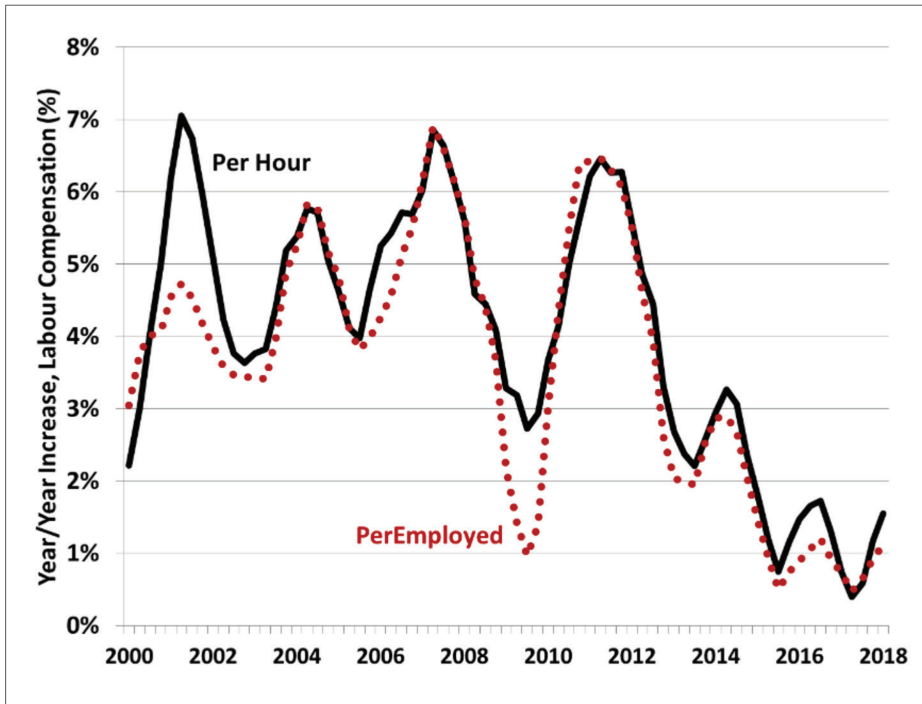

Figure 2.5: Year-over-year growth in average labour compensation from national accounts data, 2000-18

Source: Calculations based on four-quarter moving average of seasonally adjusted data reported in ABS, Australian National Accounts: National Income, Expenditure and Product, Cat no 5206, Table 7; ABS, Labour Force, Cat no 6202, table 21; ABS, Labour Force, Cat no 6291.0.55.003, Table 4.

(including changes in the composition of employment, job quality, average hours of work and others), and hence are relatively comprehensive. However, national accounts-based measures of labour incomes can be volatile from one quarter to the next.[4]

Figure 2.5 illustrates the year-over-year growth of labour compensation derived from national accounts labour compensation data. The figure separately portrays labour income per hour worked, and per employed person; the two series diverge when the number of average hours worked per person changes.[5] It indicates an even more pronounced deceleration of labour incomes: from average year-over-year growth rates of 5% or higher before the GFC (and just as fast after the post-GFC recovery, from 2011 through to 2013), to an average of under 2%

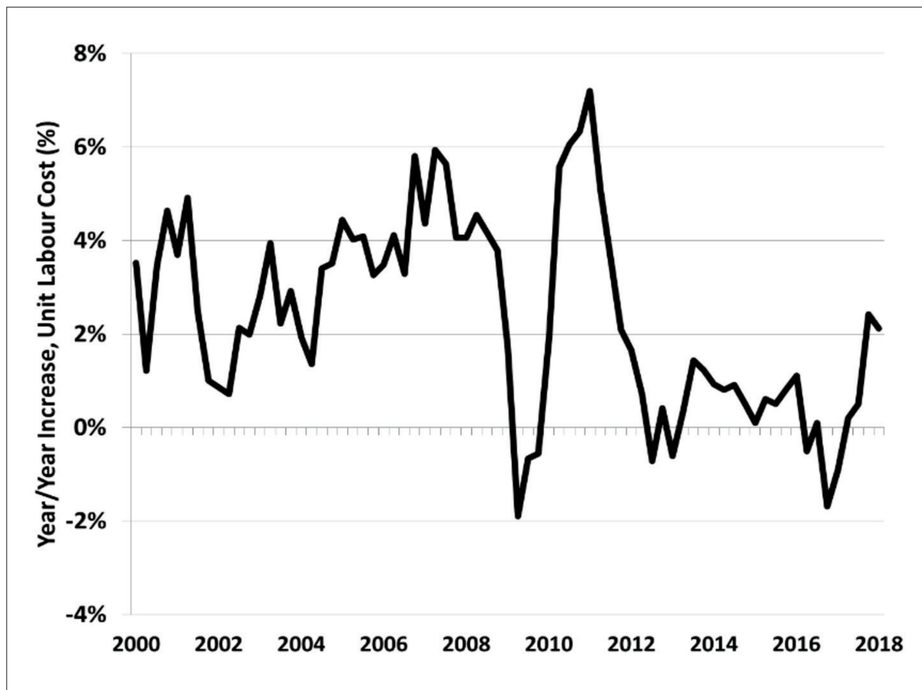

Figure 2.6: Year-over-year growth in nominal ULC, 2000-18

Source: Calculations based on ABS, Australian National Accounts: National Income, Expenditure and Product, Cat no 5206, table 42, seasonally adjusted data.

per year since 2013. Average compensation per worker has been especially weak in recent years, once again reflecting the impact of the growing incidence of part-time and short-hours work; in the last three years, average compensation per worker has grown at an average annual rate of just 1.25%.

The national accounts compensation data, therefore, provide an especially dramatic perspective on the myriad of factors contributing to the stagnation of labour incomes. Average earnings are not only being suppressed by slower growth in hourly pay for any particular job; changes in hours and average job quality are also exerting important dampening effects on labour incomes.

Finally, we consider one further indicator of labour cost pressures — also generated through the national income accounting system. Nominal unit labour cost (ULC) is an index of the growth in average nominal labour costs over time, relative to the growth of the real output of labour (measured by labour productivity per hour).[6] In theory, firms will face pressure to increase output prices if labour

costs per unit of their output are growing more quickly.[7] The rate of expected price inflation should equal the growth of hourly compensation, less the rate of real labour productivity growth.

The nominal ULC series portrays a slightly different historical trajectory from the previous data on wages and labour compensation. The growth of ULC accelerated after 2002: from around 3% per year towards 5-6% per year just prior to the GFC. This rise reflected somewhat stronger wage growth as the resources-led expansion gathered momentum (as indicated in the WPI and other series above), along with slower productivity growth — experienced as economic output neared capacity and several industries (especially in resources) experienced bottlenecks and supply constraints. Like the previous wage series, nominal ULC declined sharply but temporarily during the GFC. But as the post-GFC recovery took hold, ULC began growing even more quickly (as the mining construction boom reached its peak). Then, beginning around 2012 (slightly earlier than in the other series considered above), nominal ULC decelerated rapidly. The cumulative increase in the nominal ULC measure has been almost zero since mid-2015: in other words, very weak increases in *nominal* labour compensation have been almost fully offset by ongoing growth in *real* labour productivity.[8] In this context, there is virtually no labour-related reason for businesses to increase nominal output prices at all, which is an unprecedented experience in Australia's post-war history.[9]

Overall findings

In summary, we have surveyed five different indicators of wage growth in Australia's labour market:

- WPI
- AWE
- wage provisions in EBAs
- labour compensation derived from national accounts
- nominal ULC.

Despite great differences in scope, methodology and sample size, several clear and consistent conclusions arise from all of the indicators considered:

- In the decade before the GFC, labour incomes in Australia grew steadily and strongly, at annual rates of 4-5% or even higher.
- Wage growth slowed significantly but temporarily in 2009 and early 2010, with the onset of the GFC — but then quickly regained pre-GFC growth rates as the economy recovered.[10]

- A structural break in wage trends seems to have occurred around 2013, after which a large and lasting deceleration of wages and labour costs becomes visible. Both the timing of this deceleration and its scale are evident in all five of the considered measures.
- The WPI, which is the most commonly reported 'headline' measure of wages, likely understates the extent of the wage slowdown, in part because its estimates control for changes in the composition and hours of work. Other measures of wage growth take into account compositional changes (including changes in hours of work and job quality). They suggest that the deceleration of labour incomes since 2013 has been more severe than the WPI data indicate.

What is 'normal' wage growth?

Suggesting that wages are growing 'too slowly' in Australia requires an implicit judgement regarding a normal or healthy rate of wage growth. It is worth briefly considering possible benchmarks against which wage growth can be compared, to judge the degree to which Australia's recent wage stagnation is indeed unusual.

It is often held that wages must 'keep up with inflation', and hence any shortfall in wage growth below the pace of consumer price increases (corresponding to a decline in the real purchasing power of workers' incomes) is a sign of labour market dysfunction. According to the WPI data, at least, Australian wages have approximately kept up with inflation: recent wage growth of around 2% per year has broadly matched recent Consumer Price Index (CPI) growth. Some observers, therefore, might question whether there is even a 'problem'.[11]

While it is certainly true that falling real wages are an unusual and damaging outcome, it should not be concluded that stability in real wages is itself somehow a sign of normal equilibrium. Most economists agree that wages should be linked to labour productivity.[12] So long as productivity grows over time (as has been the case in Australia), wages should grow consistently faster than consumer price inflation — in order to generate rising real compensation that reflects the enhanced real output of each hour of labour.

A 'normal' benchmark for wage growth, therefore, might be determined by the sum of long-run consumer price inflation plus average productivity growth. The Reserve Bank of Australia (RBA) is charged with maintaining CPI inflation at around 2.5% per year. Together with long-run labour productivity growth (that has averaged between 1 and 1.5% per year over recent decades), that suggests that a 'normal' rate of nominal wage growth should be between 3.5 and 4% per year.

(Wage outcomes in specific industries and regions will deviate from broad averages in line with specific economic and labour market conditions.)

This approach has been recently reaffirmed by Dr Philip Lowe, Governor of the RBA. For example, he told the House of Representatives' Standing Committee on Economics in early 2018:

> If we're going to deliver average inflation of 2½ per cent we should probably have average wage increases over long periods of time at 3½ per cent, if we can get decent productivity growth. My concern was that we were getting used to — and we didn't like it — wage increases of two to 2½ per cent. I've spoken publicly about the benefits of a pick-up in wage growth, to try to lift wage expectations and to reduce the probability of us getting stuck at this very low equilibrium.[13]

Implicit in his analysis is an expectation of average annual productivity growth of 1%, which is lower than historical experience. Faster productivity growth would require even faster wage increases (closer to 4% per year), to remain compatible with the RBA's 2.5% inflation target.

Australian wage growth in the pre-GFC period generally accorded well with this benchmark of 'normal' labour market behaviour. Average annual wage growth according to the WPI was slightly under 4%; it was faster than 4% by other indicators. That pace of wage growth broadly coincided with the sum of nominal price inflation plus real labour productivity growth (which summed to 4.2% per year, on average, over the 2000-13 period). A sharp but temporary deceleration of wages occurred during the GFC, but this was quickly followed by a return to 'normal' patterns. Since 2013, however, wages have shifted to a significantly lower trajectory — one at odds with traditional assumptions regarding wage determination.

Table 2.1 compares the pre- and post-2013 experience of the five wage indicators surveyed above, along with the corresponding pattern of inflation and productivity growth over the same period. Table 2.1 also provides a measure of real wage increases, based on the difference between hourly wage growth (according to the WPI measure) and CPI inflation.[14] There has been a deceleration of consumer price inflation since 2013, with average annual inflation falling from 2.8% during the 2000-13 period, to just 2% since (and consistently falling below the RBA's 2.5% target). Whether this is a cause or a consequence of the slowdown in nominal wages can be debated. The price of labour is the most important and generalised price in the whole economy, and hence anything that suppresses nominal wages will also tend to pull down broader inflation.[15] At the same time, as expectations of slower inflation become ingrained, this can reinforce lower wage payouts — with

employers becoming more reluctant to pay higher wage increases, and workers more resigned to accepting smaller raises.

Table 2.1: Measures of wage deceleration

Source: Calculations based on ABS, Australian National Accounts: National Income, Expenditure and Product, Cat no 5206; ABS, Labour Force, Cat no 6202; ABS, Average Weekly Earnings, Cat no 6302; ABS, Wage Price Index, Cat no 6345; ABS, Consumer Price Index, Cat no 6401; Department of Jobs and Small Business, Trends in Federal Enterprise Bargaining. Rows may not add due to rounding.

	Average Annual Growth		
	2000-13 (%)	**2013-18 (%)**	**Change (%)**
Wage outcome measures			
WPI	3.7	2.2	-1.5
AWE (all workers)	4.5	1.5	-3.0
New EBAs	4.0	3.1	-0.9
Average hourly compensation (national accounts)	4.8	1.8	-3.0
ULC	2.9	0.6	-2.2
Average real wages (WPI/CPI)	0.9	0.3	-0.6
Potential wage determinants			
CPI[16]	2.8	2.0	-0.8
Real labour productivity	1.4	1.1	-0.3

Labour productivity has also slowed since 2013, but less significantly: average labour productivity growth decelerated from 1.4% per year over the 2000-13 period, to 1.1% per year since 2013. The slowdown in labour productivity growth can thus explain only a small portion of the overall decline in wage growth since 2013 (which, by some measures, has been 10 times as large).

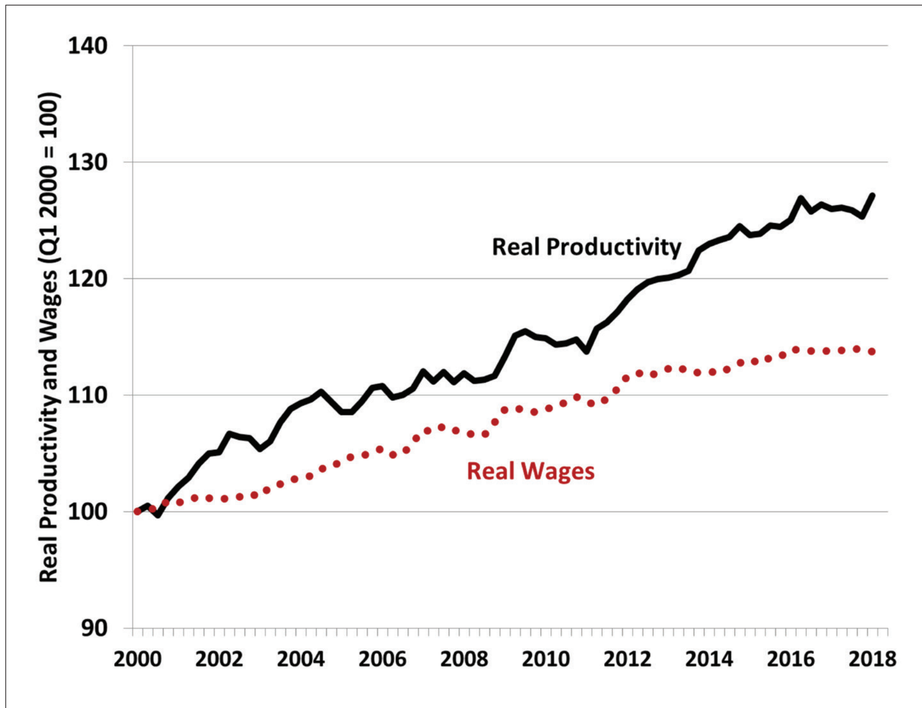

Figure 2.7: Real wages and real labour productivity, 2000-18

Source: Calculations based on ABS, Wage Price Index, Cat no 6345, table 1; ABS, Consumer Price Index, Cat no 6401, table 8; ABS, Australian National Accounts: National Income, Expenditure and Product, Cat no 5206, table 2.24.

It is important to note that even prior to the 2013 downshift in wage growth, real labour compensation in Australia was already growing more slowly than productivity. Arithmetically, this translates into an ongoing decline in real ULC, and a shrinking share of total output allocated to labour compensation. Figure 2.7 illustrates the long-run trend in real hourly wages (represented by the WPI deflated by CPI growth) and real hourly productivity (derived from the national income accounts). From 2000 through to 2013, real labour productivity growth was about half-again faster on average than real wage growth, with productivity rising 1.4% per year, versus 0.9% for real wages. Since 2013, however, the gap between productivity and wages has widened notably, with real productivity growing almost four times faster than real wages (which have hardly grown at all during this period).[17] The breakdown of the traditional relationship between real wages and

productivity growth poses major challenges to Australian macroeconomic, labour market and fiscal policies.

International comparisons

The deceleration of wage growth has been experienced in many industrial countries, although it has not been a universal outcome. Commonalities and differences in the wage trajectories of other major OECD countries will be considered in detail in the next chapter by Stephen Kinsella and John Howe. Their account includes a discussion of the impact of global policy trends (in macroeconomic, industrial relations and labour market policies) on wage outcomes. We will set the stage for that discussion by presenting summary indicators of wage deceleration in Australia compared to other industrialised economies.

The pace of recent wage growth in Australia has been worse than the average experienced in other OECD economies. The OECD compiles an internationally comparable dataset on nominal average annual wages for full-time full-year employees.[18] These data indicate that average annual growth of nominal wages in Australia from 2013 through to 2017 (1.1% per year by the OECD measure[19]) ranked 27th out of the 35 countries included. Australia's wage growth was less than half the (unweighted) average pace for all OECD countries covered (2.4%).

What is even more striking, however, has been the unusually severe *deceleration* of nominal wage growth in Australia. Wages in Australia were growing slightly faster than the average of other OECD countries prior to 2013,[20] but have been growing more slowly than the average since then. Comparing average annual nominal wage growth in the 2000-13 period with the 2013-16 period, the OECD data indicate a deceleration in Australian wage growth in excess of 2.5% points. As illustrated in Table 2.2, that ranks Australia as experiencing the most substantial deceleration of wages after 2013 of any major industrial country.[21]

This brief international comparison suggests, therefore, that in addition to well-known international factors that have affected wage growth in most industrial economies, there must be specific national factors that help to explain the unusually severe deceleration of nominal wage growth in Australia. The oft-made claim that the slowdown in wages is somehow a universal (and hence irresistible) phenomenon is consistent neither with the diversity of international experience,[22] nor with Australia's relatively weak wage performance among industrial economies.

Table 2.2: Average annual nominal wage growth, OECD countries

Source: OECD Employment and Labour Market Statistics, Average Annual Wages.

	Average annual growth, wages for full-time full-year workers			
Countries	**2000-13 (%)**	**2013-17 (%)**	**Change (%)**	**Rank**
Iceland	5.62	7.47	1.85	1
Japan	-0.73	0.56	1.29	2
Germany	1.71	2.54	0.82	3
Israel	1.59	2.19	0.60	4
Lithuania	5.38	5.50	0.12	5
Austria	2.45	2.30	-0.15	6
Luxembourg	2.60	2.31	-0.30	7
Czech Republic	4.64	4.26	-0.38	8
Mexico	4.60	4.21	-0.39	9
Poland	3.91	3.43	-0.48	10
Sweden	2.95	2.42	-0.53	11
United States	2.73	2.09	-0.64	12
Ireland	2.64	1.93	-0.71	13
United Kingdom	2.73	1.80	-0.93	14
Chile	5.40	4.46	-0.94	15
New Zealand	3.56	2.50	-1.06	16
France	2.51	1.36	-1.15	17
Canada	2.83	1.65	-1.17	18
Denmark	3.09	1.78	-1.31	19
Portugal	1.93	0.56	-1.37	20

Belgium	2.25	0.84	-1.41	21
Korea	4.15	2.73	-1.43	22
Italy	2.15	0.67	-1.48	23
Netherlands	2.52	0.90	-1.62	24
Switzerland	1.42	-0.27	-1.69	25
Latvia	9.31	7.53	-1.77	26
Finland	3.04	1.16	-1.88	27
Norway	4.25	2.34	-1.91	28
Spain	2.94	0.49	-2.45	29
Australia	3.67	1.12	-2.55	30
Slovenia	5.07	2.22	-2.85	31
Slovak Republic	5.96	3.03	-2.93	32
Estonia	8.45	5.27	-3.17	33
Greece	2.68	-0.94	-3.62	34
Hungary	6.87	3.01	-3.87	35

Conclusions

This review of empirical evidence regarding wage trends in the Australian labour market has highlighted a number of key findings:

- Nominal wage growth has decelerated in recent years to unusually low rates: the slowest of any sustained period in Australia's post-war history.[23]
- This wage deceleration is visible across a variety of empirical indicators, which use a range of different statistical sources and methodologies. Hence, the finding of profound and sustained wage stagnation is robust.
- The most common 'headline' measure of wage growth, the ABS's quarterly WPI, likely underestimates the extent of the wage slowdown because of the manner in which it controls for changes in job composition. If changes in the composition of work (including

particularly the growing incidence of part-time work and the expansion of other forms of insecure work in Australia's labour market) are taken into account, then the growth of realised labour incomes has been even weaker than suggested by the WPI.

- Nominal wage growth according to the WPI has barely matched CPI in recent years, implying stagnant real wages — despite ongoing improvements in real labour productivity. By other measures (including AWE and wage measures derived from the national income accounts), nominal wage growth has lagged behind consumer prices, and hence average real labour incomes have declined.
- The slowdown in wage growth does not appear to be a cyclical phenomenon. The labour market did experience a temporary deceleration in wage growth (visible in most but not all indicators) during the GFC of 2008-09, but wage growth quickly recovered along with the broader macroeconomy. The more dramatic deceleration in wage growth began in 2013 and has persisted since then — despite adequate (if not stellar) macroeconomic conditions. This suggests the impact of more lasting structural factors in explaining the sustained wage slowdown. It also suggests that the hope expressed by some policy makers, namely that wage growth will automatically recover once labour market supply-and-demand conditions strengthen, is misplaced.
- The traditional assumed relationship between wages and labour productivity is not visible in recent data. Labour productivity has continued to grow, albeit at a slightly slower rate than before the GFC. Real wages, in contrast, have been stagnant at best — and have declined by some measures. There is no evidence that productivity problems can explain the recent slowdown in wages.
- Many other industrial countries, but not all, have also experienced a deceleration in nominal wage growth in the years since the GFC. However, Australia's experience has been relatively bad among OECD countries. The pace of nominal wage growth since 2013 has been less than half the OECD average, and the extent of deceleration compared to the previous period has been the largest of any major industrial economy.

This empirical review confirms that Australia's labour market does indeed face a crisis in wage determination. It also indicates that the trajectory of wage growth in Australia experienced a structural change in 2013 or so — a structural shift that does not reflect traditional macroeconomic or cyclical conditions. In that case, hoping for stronger macroeconomic growth or labour market conditions

to restore traditional wage patterns seems an unconvincing response to the crisis. More active structural and policy measures will be necessary both to support wage growth, and to ensure that workers receive higher real incomes in line with their improving productivity.

Endnotes

1. The WPI is thus similar to the Consumer Price Index (CPI), which also measures average price changes across a bundle of consumer goods and services that is held constant from one period to the next. For recent evidence regarding the growth of insecure work in its various forms, see Carney and Stanford 2018.
2. These data exclude EBAs negotiated under State-based industrial relations systems, primarily those in State and local government services. Not all EBAs have wage provisions that can be quantified (such as those specifying wage increases dependent on performance, CPI growth or other unpredictable factors).
3. The impact of public sector wage restraint on overall wage and labour market trends is discussed further by Troy Henderson in Chapter 8.
4. For this reason, the data illustrated in Figure 2.5 have been presented as four-quarter moving averages.
5. As occurred, for example, during the GFC, when hours worked declined faster than employment (due to labour hoarding by employers, work-sharing and other factors), and hence compensation per employed person declined more dramatically than compensation per hour.
6. ULC can also be measured in real terms, by comparing changes in real hourly wages to changes in real labour productivity. Real ULCs have fallen in Australia in recent years, as discussed further below.
7. Note that labour costs are just one component of total production costs, which also depend on energy, materials, finance and other costs. Other non-cost factors (such as demand conditions and competition) will also influence firms' pricing decisions.
8. Nominal ULC fell during 2016 and has regained lost ground since then (mostly as a result of near-zero productivity growth recorded during 2017).
9. The absence of inflationary impetus arising from the labour market has been identified by monetary policy authorities as a key factor in Australia's below-target inflation performance in recent years, as discussed further below.

10. One of the indicators, wage provisions in the overall stock of current EBAs, shows no noticeable deceleration associated with the GFC.
11. By some of the measures considered above (namely AWE and average labour compensation in the national accounts), labour incomes have indeed lagged behind inflation, and hence real incomes have declined.
12. However, different schools of economics come to this conclusion for very different reasons. For a recent survey of different approaches, see Van Biesebroeck 2015. Curiously, the fact that real wage increases exceeded productivity growth for some years in the 1970s was identified as a major problem by many economists. The fact that they have since lagged behind productivity growth for many years is more often celebrated than lamented — an inconsistency highlighted by Quiggin 2018.
13. Philip Lowe, Governor of the Reserve Bank of Australia, evidence to House of Representatives Standing Committee on Economics, Parliament of Australia, Sydney, 16 February 2018: 14-15.
14. Real wages can also be calculated by deflating nominal wages by a measure of producer prices (at the aggregate level, equivalent to the average GDP price deflator). This provides a measure of the real wage from the employer's (rather than the worker's) perspective. However, in Australia's case, large and regular fluctuations in output prices (arising from volatility in the prices of Australia's resource exports) imparts great volatility to that measure.
15. In this context, the stagnation of wages is indeed a matter of concern for monetary policy makers, since it undermines their credibility in holding inflation at or near its target. The self-reinforcing two-way relationship between weak wage growth and under-target inflation is explored in the Australian context by Jacobs and Rush 2015.
16. Adjusted to exclude effects of the introduction of the GST in 2000.
17. A shortfall in real labour income relative to real productivity growth arithmetically translates into a decline in the labour share of total GDP. The dimensions, causes and consequences of this decline are considered in detail in Stanford 2018a, Peetz 2018, and McKenzie 2018.
18. This approach is methodologically comparable to the series on AWE for full-time workers presented in Figure 2.2 and hence suffers from the same drawbacks. In particular, when the incidence of part-time employment is growing (as has been the case in Australia in recent years), this measure will overstate the growth of realised labour incomes for all workers.
19. This is somewhat slower than the average annual growth in AWE for full-time workers reported by the ABS above, in part due to differences in methodology and sample period.

20. Australian wage growth was especially resilient relative to other OECD countries during the years of the GFC, which had less impact on Australia's economy (thanks in large part to effective counter-cyclical macroeconomic policy) than elsewhere.
21. Five small European countries (Estonia, Greece, Hungary, the Slovak Republic and Slovenia) experienced bigger decelerations of wage growth than Australia, with Hungary's experience (a deceleration of almost four percentage points) being the most extreme.
22. It is worth noting that there are five countries listed in Table 2.2 where nominal wage growth actually accelerated between the two periods (including Germany and Japan), and another five countries where the deceleration of wage growth in the second period was smaller than one-half of one percentage point.
23. The 1990s was also a period of slow wage growth, in part due to the impact of the Prices and Incomes Accords, combined with a recession in the first part of the decade. Nevertheless, AWE grew slightly faster in the 1990s (by an average of between 2.5 and 3% per year) than in the present period.
24. CPI deflator adjusted to exclude effect of the GST introduction in 2000.

3

Global perspectives on wage stagnation

Stephen Kinsella and John Howe

> The recent trend in income per capita — effectively the contents of people's wallets — is far below that in the decades that preceded it, and has fluctuated from year to year.[1]

The purpose of this chapter is to place the stagnation of Australian wages in the context of developments in other rich nations from the post-war period to today. We do this using internationally comparative data. We are interested in the relationships between wages, productivity, inequality and overall economic stability. By testing theories about the causes of wage stagnation based on the available data, it is possible to point to the policy levers most likely to reverse wage stagnation in Australia.

What explains wage stagnation?

Taking a global perspective on wage stagnation, we start by analysing the distribution of any country's annual total output, which can be measured in several different ways.[2] The value of the nation's output is distributed between labour and capital. Most of any country's population derives its annual income from labour-based sources like wages, superannuation and pensions, and remittances. Wage growth is therefore an essential component of the growth in overall living standards.

Capital incomes typically include rents, interest payments and capital gains from the sale of owned assets. Any household can have several sources of income at once. An individual household may have one person working full-time, another getting a pension, while another derives their income from renting a second property. Despite this complexity, it still makes sense to think of two distinct 'types' of household: one that earns income primarily from work (which we will call labour), and one that derives income primarily from capital-based sources (which we will call capital).

The evolution of the share of labour income is shown in Figure 3.1 for Australia and G7 countries. Data come from the Penn World Tables (v. 9.0) and include the labour income of employees as well as the labour income of the self-employed.[3] For some early years, the series data are shown as essentially constant, so we include them in our chart.[4] We can see there has been a secular shift in labour's share of output across a number of rich countries. Australian workers took home roughly 68% of total output in 1960. By 2017, that value was 52%. Both the numerator and the denominator of the ratio have risen rapidly, but the significance (in both relative and absolute terms) of the loss of value for workers is clear. Australia is not alone in this trend, but it constitutes an extreme example.

The USA began the period with a lower labour share than Australia (around 64%), and while the USA's labour share has fallen, the decline has been smaller: around 5% over a 70-year period. Denmark's labour share has remained roughly constant over this period, while Germany's has fallen rapidly. The average of all rich countries' labour share of output was 61% in 1960. By 2017, that value was 51%.

The collapse in Australia's labour share is remarkable, both for the trajectory it took, and the seemingly negligible effect it had on economic growth over a 60- to 70-year period (since, as we know, Australia has an unmatched record of sustained expansion).[5]

The problem can be stated quite simply. Real average weekly earnings are 22% higher than they were in 1981. Labour productivity is 70% higher than it was in 1981. With productivity growing so much faster than real wages, workers' share of total output must have fallen.

The key question is: what explains this fall in the value of economic product appropriated by workers, despite seemingly relentless economic growth? Three main answers are suggested by the literature, as summarised by Arsov and Evans, writing for the Reserve Bank of Australia (RBA):

> Structurally lower employee bargaining power may also be depressing wage growth. Bargaining power is difficult to measure and may, in part, be determined by the labour market conditions themselves. Common proxies

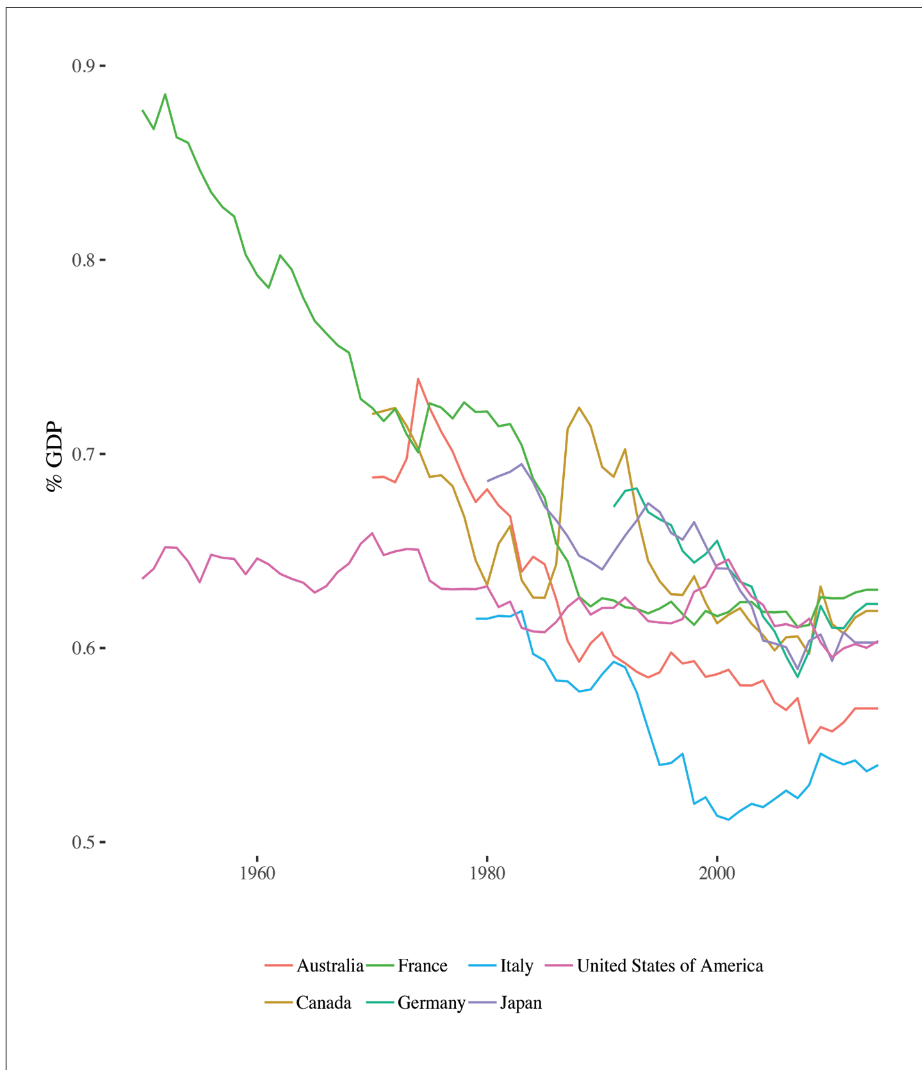

Figure 3.1: Share of labour income of nominal national output

Source: Penn World Tables (version 9.0), using the 'labsh' variable; denominator is % of GDP. Constant lines indicate little variation rather than no data, and are included for completeness.

suggest that bargaining power has shifted away from labour: unionisation rates have declined and labour markets have become more flexible across advanced economies. At the same time, automation, technological change, increasing global production integration and offshoring have affected some segments of the labour market.[6]

Answer 1: The existence of large, global firms and the influence of economic globalisation has caused a decline in the labour share everywhere. Autor and colleagues advance a theory of 'superstar' firms which outcompete other firms, increasing sectoral concentration. Using US data, they show that industries where concentration has risen most have seen the largest declines in the labour share.[7]

Global integration is typically measured by trends in final goods trade, participation in global value chains and foreign direct investment. Using a panel of countries from 1980 to 2017, Doan and Wan show that export growth tends to depress the wage share, while import growth increases it.[8] In other words, globalisation is bad for at least some kinds of lower-skilled domestic worker. Their findings echo Milanovic's thesis[9] that increasing global inequality is the result of large-scale changes in behaviour by the market as allocator of capital.

Technological change also forces the labour share lower. Essentially, information and communication technologies combine with robotics to remove jobs via automation. Autor and colleagues estimate that half of the decline in labour shares across the developed world resulted from a combination of rapid progress in information and telecommunication, and a high share of occupations that could be easily automated.[10] Technology, in this view, is the enemy of workers' progress.

Globalisation's contribution to the fall in the labour share is estimated at about half of that of the impact of technology. Young and Tackett examine the experience of 125 countries over a 40-year period.[11] The decline in labour shares in advanced OECD economies has been particularly steep for middle-skilled labour, and far less so for high-skilled labour. One of the main hypotheses is that recent technological change is biased towards replacing labour in routine tasks.[12] Routine-biased technology has taken over many of the tasks performed by these workers, contributing to job polarisation between high-skilled and low-skilled occupations. Adler and colleagues point to a global slowdown in productivity taking place since the end of the Global Financial Crisis (GFC) of 2007-09.[13] Australia, as a very open economy, is caught in this global trend. In this context, wage stagnation is understood less as a feature of the domestic policy environment, and more as a result of global progress toward a technological frontier (affecting many countries simultaneously).

Answer 2: The labour share of national income is falling because of the increasing importance of the financial sector, often called financialisation. Using a large panel dataset, Dünhaupt shows that financialisation affected the distribution between wages on the one hand, and profits, retained earnings, dividends and interest payments on the other.[14] Parham found that the finance and insurance sectors accounted for 44% of all multi-factor productivity growth over

the previous decade, while mining accounted for almost 40% of all input-increasing productivity.[15] Neither activity tends to be associated with broad increases in wages or labour productivity. Finance tends to demonstrate relatively low employment intensity. Mining is associated, if anything, with capital-deepening productivity growth, not labour-augmenting productivity increases.

For the Australian economy as a whole, with its large household borrowing and lending channel, and its highly advanced superannuation industry, the financialisation hypothesis is certainly worthy of further study. Westcott and Murray provide tentative evidence that financialisation is contributing to increases in inequality in Australia; Peetz also highlights financialisation as a crucial factor in the decline of the labour share of Australian output.[16]

Answer 3: Labour laws and the institutions of collective bargaining have changed in favour of employers in many industrial economies. Deakin and colleagues examined the link between labour laws and the labour share of national income. They found that worker-protective labour laws in general have no consistent relationship with unemployment — which is far more likely to be affected by changes in the business cycle. Stronger protective labour laws were positively correlated with labour's share of national income. Laws specifically relating to working time and employee representation had beneficial effects on both efficiency and distribution.[17]

More recently, Adams and colleagues generalised this finding to 113 countries, and found the pattern holds that weaker labour laws coincide with negative shifts in labour shares of national income.[18] The trend is particularly prevalent amongst middle-income workers in rich countries, and so would certainly apply to the Australian case. In the Australian context, and following an examination of wage and productivity trends, Isaac has suggested that weakening labour laws are at least partly to blame for Australia's wage stagnation:

> The institutions that have in the past driven wages to take up productivity advances, have lost much of their capacity to influence wages. The bargaining power of organised labour has been weakened in a large section of the labour market. This has resulted, in good part, from changes in industrial relations laws that have progressively contributed to the imbalance of power.[19]

Productivity and inequality

Economic theory suggests that more productive workers can bid up their wages in competitive markets to get paid more. We should therefore expect to see wage increases following productivity growth, and hence wage stagnation would be

associated with a decline in productivity. However, in the Australian context, the two series diverge — and by more than in other rich countries.

Indexed to the year 2000, Australian real wages increased by 13.7% over the 17-year period to 2017, while labour productivity rose by 26.2% over the same period.[20] What explains this divergence (or decoupling)? Using the UK and the US as exemplars of the more general trend, Pessoa and Van Reenen suggest two main factors behind this divergence:

1. the wedge between total compensation (which includes employer-provided benefits like superannuation and health insurance) and money wages received by workers, with the former growing faster than the latter. This wedge pushes better-paid workers' total compensation higher than less well paid workers
2. differences in producer-wages and consumption-wages.[21] From the perspective of workers' purchasing power, wages (deflated by consumer prices) may seem lower than from the perspective of employers (who evaluate wages relative to output or producer prices).

Figure 3.2 shows the evolution of incomes in terms of percentile ratios, grouped as deciles. We are looking for a measure of the changes in relative income inequality by income class. If a compensation wedge exists, we should expect to see increases in income inequality as better-off workers absorb greater increases in total compensation relative to less well-off workers. This is the simplest way to check Pessoa and Van Reenen's first hypothesis. One simple measure of inequality is the ratio of incomes between higher and lower deciles of the population. For example, the 90/10 ratio measures the income of an individual at the 90th percentile (that is, receiving more income than 90% of the population) with someone at the 10th percentile. The 90/50 ratio expresses the income of someone at the 90th percentile relative to the median (that is, someone at the 50th percentile), while the 50/10 ratio expresses the median household income as a multiple of the 10th percentile.

If Pessoa and Van Reenen's hypothesis is correct, we should expect to see large divergences by income group over time. Figure 3.2 shows the evolution of three inequality ratios (90/10, 90/50, and 50/10) for Australia.[22] The ratio between the gross incomes of households at the 90th percentile — among the highest-earning households in Australia — and the median household increased steadily from around 1.7 in 1975 to over 2 in 2017. The 90/10 ratio increased more dramatically over the same period, from 2.6 to 3.4 (a nearly one-third increase). Meanwhile, the ratio between the median household and the poorest households barely changed over a 45-year period. This suggests that most of the growth in inequality has been driven by growing incomes at the top of the distribution; those

Figure 3.2: Evolution of gross income inequality measures over time

Source: OECD stat, from LFS database (Dataset code=DEC_I).

are the same households that receive a disproportionate share of capital income. Hence inequality in income growth is clearly associated with the significant decline in the labour share of income.

The wedge between compensation and wages is likely to be especially significant for higher-income households, given their disproportionate access to more generous superannuation benefits, health insurance and other fringe benefits. In this context, the growing inequality between high-income households and the

rest of Australian society is likely associated with that wedge, though a deeper analysis would be required to fully assess that claim.

The second factor hypothesised by Pessoa and Van Reenan is the difference between the consumer real wage and the producer real wage. The consumer real wage is based on a deflation of wages by consumer prices; the producer real wage uses a weighted-average price of output (such as the GDP deflator) to adjust nominal wages. The two series will diverge to the extent that consumer and producer price indices differ over time.[23] However, a comparison of the two price indices over time does not reveal any sustained or consistent differences. At times, output prices rise much faster or slower than consumer prices, typically as a result of large swings in global prices for Australian-produced resource exports. But over the long run, the two series have followed a similar trajectory. It is unlikely, therefore, that the second hypothesis regarding producer versus consumer wages will explain Australia's wage trajectory. Something else is driving the divergence between wages and productivity.

Income inequality *is* driving at least some of the divergence, with higher-income households absorbing a growing share of total income. There are important compositional effects to consider as well. In 1975, low-paid workers — those workers who earn less than two-thirds of the median wage — made up about 11% of the workforce. By 2012, the low-paid were 19% of the workforce.[24] Before locating the source of rising inequality, the question then becomes: What is (or is not) driving productivity?

It is also important to place worker productivity levels in their international context. Figure 3.3 shows the evolution of labour productivity for Australia and selected rich countries. This measure of labour productivity is calculated using data on GDP in constant 2005 US dollars, corrected for purchasing power parity, derived from the World Development Indicators database of the World Bank. To compute labour productivity as GDP per worker, ILO estimates for total employment are used. Using the figures from this chart, we can see that Australian employers have enjoyed relatively strong productivity growth relative to other rich countries, with a 38% increase relative to the year 2000. The average of all high-income countries was a 22% increase in labour productivity.

Some of Australia's relatively strong productivity growth is attributable to the mining boom of the mid-2000s. Labour productivity has also grown strongly in the agriculture, forestry and fishing sectors. Still more is attributable to the fact that Australia weathered the GFC more successfully than comparator countries.[25] However, Australian wages have not kept pace even with average wage growth for other rich economies, let alone with the superior growth in productivity experienced here over the recent period.

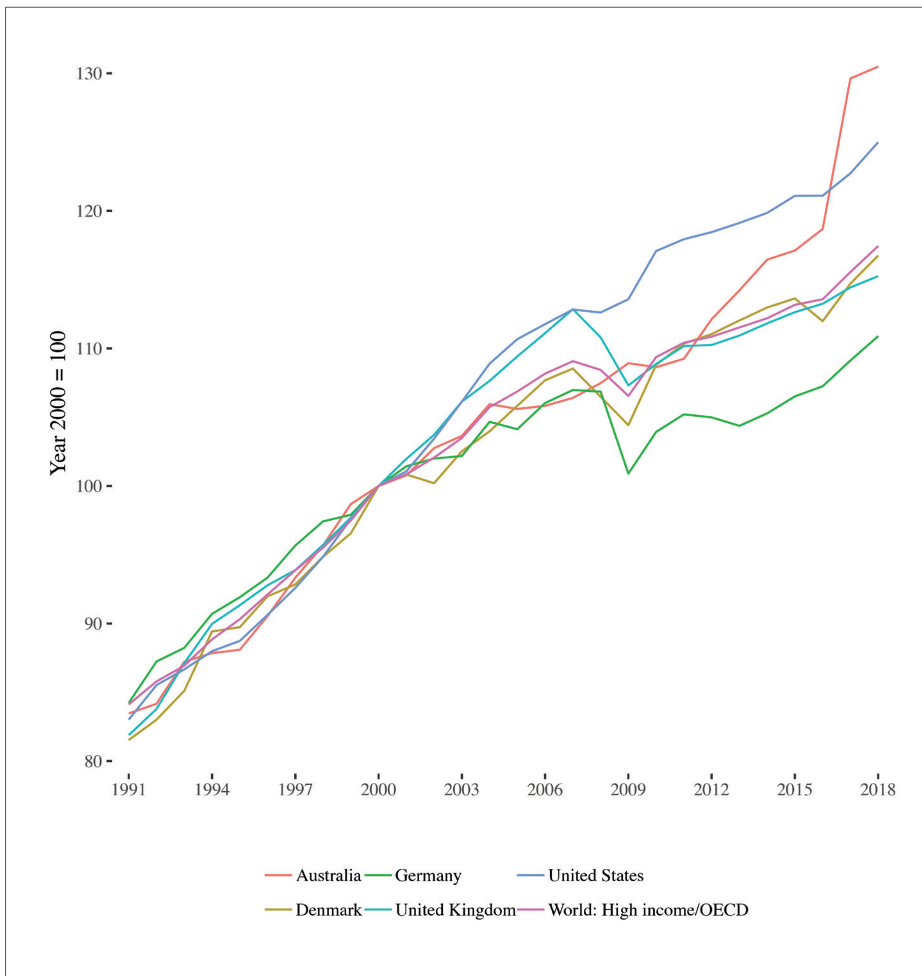

Figure 3.3: Labour productivity, indexed to the year 2000

Source: ILO stat. Labour productivity measured as output per worker in units of GDP in constant 2010 US dollars, indexed to the year 2000. Latest release data are used for May 2018..

One possible factor alluded to above is technological change. Perhaps technological change is causing workers to lose out relative to the owners of capital, especially when significant numbers of jobs can be automated away. Yet Dolman finds that Australia has been a laggard in technological change relative to other advanced economies.[26] Perhaps a closer examination of the dimensions and pace of innovation and productivity growth in the Australian context would shed additional light.

One common measure of technological change is total factor productivity, which is approximated by that portion of output not explained by the quantity of inputs used in production (such as labour and capital). The level of total factor productivity thus reflects how efficiently, and with what intensity, inputs like land, labour and capital are combined and utilised in the many production processes that make up an economy. It should be stressed that total factor productivity is only one indicator of efficiency. Bergeaud and colleagues have computed long-run measurements of total factor productivity from 1890 to 2012 for many countries, including Australia and the Euro-area.[27] They found that, in the post-war era, Australia has typically been at about 80% of US total factor productivity. The US is commonly assumed to be at, or near, the technological frontier in most sectors. Technical change, should it occur, most often occurs in the US first. In that case, workers should expect to see changes in US workforce before they see changes in the Australian workforce, and Dolman's hypothesis has at least some support.[28]

Bergeaud et al's computation of Australia's total factor productivity and labour productivity levels shows that Australia has traditionally been well below corresponding measures in Europe and the US, but that Australia caught up very rapidly in the post-war era. Productivity levels rose very rapidly during the post-war decades until the 1990s, when a policy-induced structural break occurred.[29] Trend productivity growth has been slower in the decades since then.

Moreover, a recent Productivity Commission inquiry suggested that virtually all of the labour productivity growth that was experienced in Australia between 2003/04 and 2015/16 came from capital deepening, and almost none from improved multifactor productivity. Capital deepening results from increased investment in capital goods (such as plant, equipment and automation), most likely associated with strong investment in mining and agriculture.[30] No acceleration of labour productivity growth was noted, despite the strong investment rates.

Labour productivity also depends on capacity utilisation. When production facilities are less than fully utilised, productivity levels are unlikely to be optimised. Capacity utilisation levels in Australia have certainly recovered from the nadir of the GFC, and labour productivity has improved commensurately, but wage growth remains subdued. We can therefore remove capacity utilisation issues as the source of the lack of wage growth.

Population and unionisation

Another assumption often made in relation to the presence of inequality of income and levels of unionisation is that 'size matters'. In other words, countries with smaller

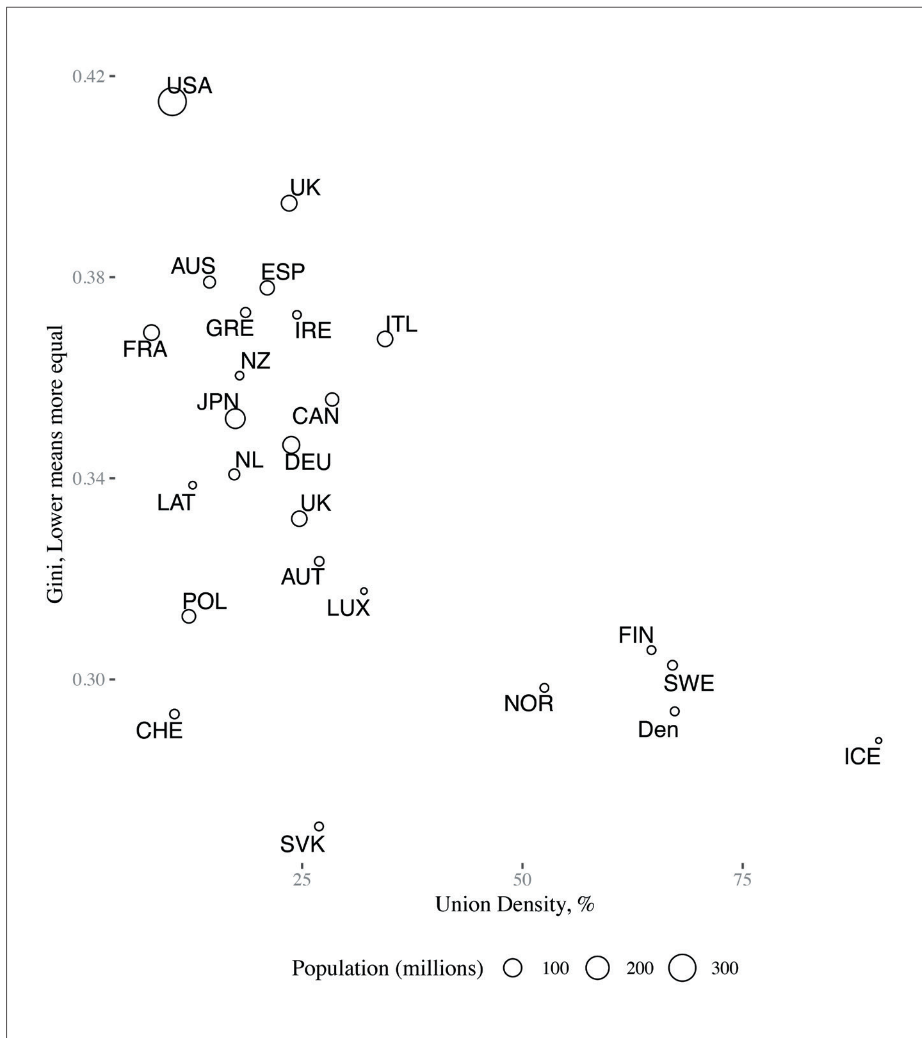

Figure 3.4: Gross Income inequality and union density, scaled by population

Source: OECD income distribution database (IDD), Population Database (POP), and Union membership database (TUD).

populations, such as Australia, can be expected to have lower rates of unionisation, and therefore greater wage inequality, than countries with larger populations.[31]

Australia's population is small relative to its landmass. Despite this, the population is exceptionally urbanised relative to OECD countries. It is also, as shown above, moderately unequal in both income and wealth distributions. The

wealth share held by the top 1% of households in Australia has been growing almost continuously over the past two decades. The wealth share held by the poorest 50% of Australians has been falling almost continuously over the same period. How much of this has to do with changes in population?

Figure 3.4 shows a scatter plot of the Gini coefficient — a measure of income inequality where a lower value indicates a more equal society — and union density. To take account of changes in income inequality caused by the great financial crisis, we average the coefficients over a 10-year period from 2004 to 2014. We do the same with union density. The size of each country bubble represents the population of the country, in millions of people.

We note three clear relationships from Figure 3.4. First, countries with higher income inequality tend to be associated with lower levels of union representation. Second, the lower quadrant is associated with social democratic, Nordic countries. Third, population size seems to have no bearing on union density and inequality.

It is possible for countries to have a low level of union membership, but relatively high levels of collective agreement coverage (this is the case, for example, in France). Figure 3.5 is a slopegraph which measures the level of collective wage determination by the proportion of workers covered by collective agreements. Figure 3.5 compares changes over a 50-year period in bargaining coverage for six selected countries. Australia is highlighted in red. The figure includes both union-negotiated collective agreements at the workplace or sectoral level, but also the coverage provided by statutory sector- or economy-wide agreements. The latter are especially important in Australia's history, because of the dominant role played by the award system in setting benchmarks for wages and other terms and conditions across most of the economy. Figure 3.5 confirms the striking decline of collective agreement coverage in Australia. From near-universal coverage in the early post-war period, Australia's collective agreement coverage fell gradually through the 1960s and 1970s, and then more precipitously in the 1990s — coinciding with the thorough restructuring of Australian labour law based on neoliberal principles, including the expanding scope for individual employment contracts. This is precisely the moment Bergeaud and colleagues identify as the structural break in Australian labour productivity and wage growth data.[32] The only other country to experience declines in collective agreement coverage of comparable magnitude is the UK, where it declined from 72% to roughly 30% over the same period. The influence of active policy choices is also apparent in the UK case, with the most dramatic decline beginning in the 1980s as the anti-union policies of the Thatcher government came into force.

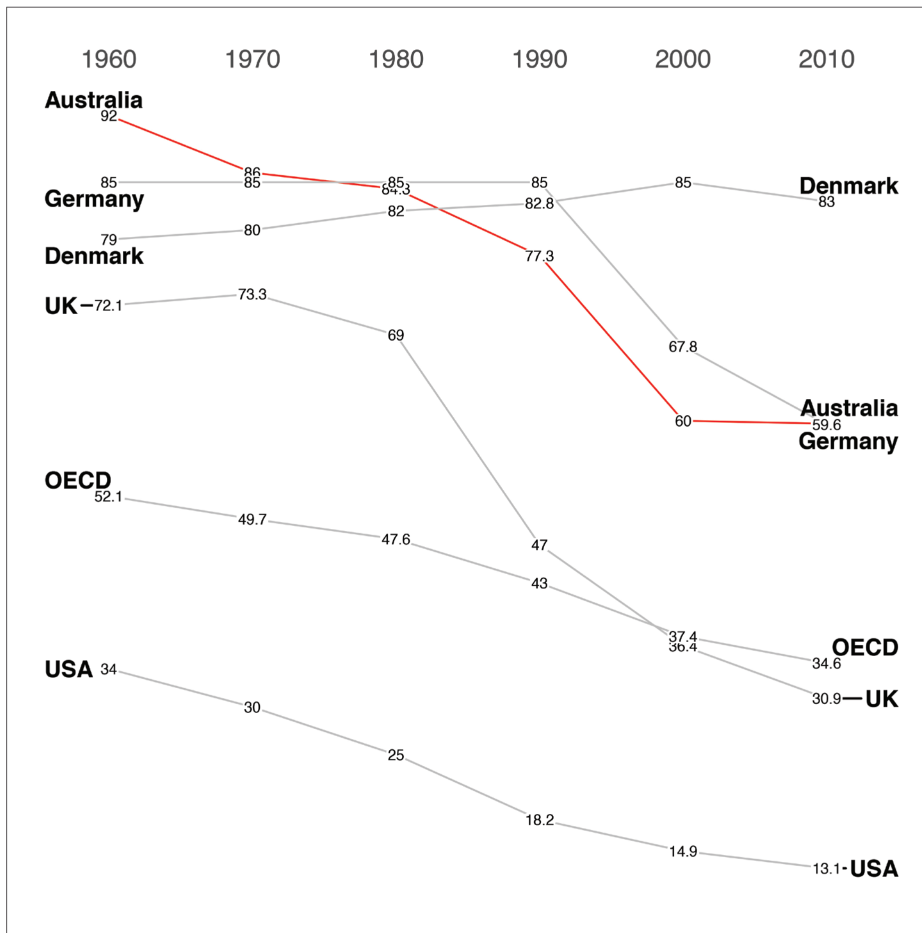

Figure 3.5: Slopegraph of bargaining coverage, percentage of workforce

Source: OECD Database on Union Coverage (TUD).

Conclusion

This chapter has considered three hypotheses for wage stagnation in Australia on the basis of internationally comparative data.

The first hypothesis centred on whether the decoupling of wage growth and labour productivity was related to the influence of globalisation or technological change. The evidence for this hypothesis is mixed; more study in an Australian context is required.

The second hypothesis considered whether financialisation was responsible for wage stagnation and hence increasing income inequality. There is some evidence for this viewpoint, given Australia's highly financialised economy, but again, more evidence is required.

The third hypothesis centred on the erosion of workers' collective bargaining rights. Here more conclusive evidence was found, both with respect to union density and bargaining coverage.

The decoupling of wage growth from labour productivity is almost certainly affected by globalisation and technological change, but these 'megatrends' are to some extent out of Australian policy makers' control. The influence of financialisation is within domestic policy makers' purview, but quite difficult to solve as a positive policy problem (given factors such as the concentrated influence of the major banks, the scale of the superannuation industry, and the high indebtedness of the household sector).

All this suggests that the erosion of workers' rights is the most consequential, and actionable, factor behind the stagnation of wages in Australia, and the corresponding growth of income inequality and decline in labour's share of national income. Our analysis indicates that this erosion seems closely related to policy choices made here (with a particular shift in policy evident in the 1990s); the relationship between the evolution of policy and the trajectory of Australian wages is explored further by other chapters in this volume. By implication, if the stagnation of wages, the decline in labour's share of GDP and the break between real wage growth and productivity growth all reflect the effects of past policy choices, then those variables should be amenable to alternative policy choices today. Therefore, if the erosion of workers' bargaining rights and other institutional supports for wages can be arrested and ameliorated (and this should be possible, and relatively quickly), the international experience suggests that this would likely have a positive impact on wage levels and growth rates.

Endnotes

1. Productivity Commission 2017a: 34.
2. Gross Domestic Product, Gross National Income, Net National Product and many other measures have been employed for decades to measure economies' output. All have their flaws. Stiglitz et al 2009 discuss these flaws and possible alternative measurement schema.
3. Feenstra et al 2015.

4. For example, the value of the 'labsh' variable from the Penn World Tables for Canada from 1951 to 1972 is shown as 0.7205036. We include this value and others like it for completeness.
5. Isaac 2018.
6. Arsov and Evans 2018: 134-5 (citations omitted).
7. Autor et al 2017.
8. Doan and Wan 2017.
9. Milanovic 2016.
10. Autor et al 2017.
11. Young and Tackett 2018.
12. Goos et al 2014.
13. Adler et al 2017.
14. Dünhaupt 2016.
15. Parham 2012: 6.
16. Westcott and Murray 2017; Peetz 2018.
17. Deakin et al 2014.
18. Adams et al, forthcoming.
19. Isaac 2018: 176-7.
20. Real wage growth computed from ABS series 6345.0 (Wage Price Index) and series 6401.0 (Consumer Price Index).
21. Pessoa and Van Reenen 2013.
22. 95% confidence intervals around these estimates are indicated in grey.
23. There are various reasons that this might be the case, including the different composition of consumption and output bundles (the latter, in Australia's case, include a large proportion of natural resource exports whose prices are especially volatile), different competitive conditions in domestic and foreign markets, the effect of taxes, and others.
24. Isaac 2018.
25. Dolman 2009.
26. Dolman 2009.
27. Bergeaud et al 2016; Bergeaud et al 2018.
28. Bergeaud et al 2016; Bergeaud et al 2018.
29. Bergeaud et al 2016.
30. See Productivity Commission 2017a: 33-9.
31. This argument is made by, among others, Lee and Roemer 2004.
32. Bergeaud et al 2016.

4

What's causing the wages slowdown?

Tess Hardy and Andrew Stewart

In this chapter we review some of the factors that seem likely to have contributed to the unusual weakness in Australian wage growth since 2013. Our focus is on the institutions and rules governing the labour market, which as Thomas Piketty notes are important in understanding the 'dynamics of wage inequality' in any society.[1] The discussion here should be seen as a preface to some of the more detailed treatments that appear in later chapters. (It also assumes a passing acquaintance with the current system of labour regulation in Australia. For those in need of a primer, that can be found in the Appendix.)

Some — perhaps many — of the factors we mention are not new. They have been around in one form or another for decades. It may be tempting therefore to ignore them and simply look for anything novel that might explain a sudden shift in 2013. But our instinct is that the real answers lie in the *cumulative* effect of these and other factors. We may simply have reached a tipping point where these various elements have driven Australia into a period of wage stagnation.

Collective bargaining

Over the past 35 years union density in Australia has fallen from around 50% to just 15% — and as low as 9% in the private sector.[2] According to the Australian

Bureau of Statistics (ABS), the proportion of workers being paid in accordance with collective agreements has not declined as quickly.[3] But its data regarding the method of pay determination for various groups of Australian workers do show a gradual drop in enterprise agreement coverage. Part of that can be explained by the decision to recategorise arbitrated settlements of public sector bargaining disputes as awards, an especially significant factor in New South Wales. Even so, there has been a decline since 2014 in federally registered agreements.

Table 4.1: Instrument providing rate of pay for all employees, 2010-16

Source: ABS, Employee Earnings and Hours, Cat no 6306, unpublished data, all employees.

Instrument providing rate of pay	2010 (%)	2012 (%)	2014 (%)	2016 (%)
Award	15.2	16.1	18.8	23.9
Collective agreement (federally registered)	31.5	32.0	32.6	30.0
Collective agreement (State registered)	11.9	9.8	8.6	6.2
Collective agreement (unregistered)	0.1	0.2	0.2	0.1
Individual agreement (registered and unregistered)	37.3	38.7	36.4	36.2
Owners/managers of incorporated enterprises	4.1	3.3	3.4	3.5

Figures released by the Department of Jobs and Small Business also indicate a dramatic drop in the coverage of current (non-expired) federal enterprise agreements, especially in the private sector. Coverage by enterprise agreements in the private sector has fallen by over one-third since 2013, and there has been a more gradual erosion of agreement coverage in the federal public sector.[4] At some point those coverage figures may bounce back as agreements are eventually renegotiated in some industries. Nevertheless, there is undoubtedly a trend towards fewer agreements being made, which goes back now over some years. Only 12.4% of private sector employees are covered by current federal agreements, compared to 18.9% in 2012.[5]

One explanation for union density falling so much further than the drop in the coverage of collective agreements is that, unlike (say) in the United States, Australian unions do not need majority coverage or even support to be able to

bargain at a workplace. But Australia is also unusual in allowing what are formally treated as collective agreements to be made without any union involvement — or indeed anything that could recognisably be called collective bargaining.[6] It is hard to be sure how many employees are covered by such agreements, though it appears to be at least 4-5% of the workforce. And there may be a much larger number covered by agreements in which unions have acted as bargaining representatives for a handful of workers, but have had no meaningful influence on the resulting terms.

Hence even if the fall in collective agreement coverage may not be as serious as the official data might suggest, there is still reason to be concerned about a decline in union influence over wage bargaining and an attendant fall in employee bargaining power. Indeed, studies have shown that while the *Fair Work Act 2009* ('Fair Work Act') may have affected bargaining tactics and been used to bring a few recalcitrant employers to the bargaining table,[7] there is no sign that it has increased the incidence of collective bargaining or promoted greater workplace cooperation.[8]

Another factor to consider, regrettably, is the role played by some union-negotiated agreements, which may have suppressed wages rather than increased them. There has been much critical scrutiny of agreements struck by the shopworkers' union, the Shop, Distributive and Allied Employees' Association (SDA), with large retailers and fast food employers.[9] Many of these have cut wages for evening and weekend work below award levels, while granting wage increases to weekday workers. Such deals have had a negative impact on a large number of low-paid employees. The exposure and ultimate rejection by the Fair Work Commission of some such deals have also contributed to the current slowdown in enterprise bargaining, as affected employers work out whether, and how, to make agreements that will now be more carefully examined by the Commission.[10] Some employers, such as Domino's Pizza, have decided to revert to award conditions for their workers.

Then there are a number of tactics that employers are currently using under the Fair Work Act either to avoid collective bargaining altogether or to bolster their bargaining power.[11] For example, some labour hire agencies, contractors, service companies or expanding businesses have adopted the practice of hiring a handful of non-unionised employees, making an agreement with them, and then applying that agreement to a much larger workforce.[12] Even if that workforce has union members, no collective bargaining is then possible for a number of years. The tactic is not foolproof. A number of such agreements have been successfully challenged as not having been 'genuinely' made.[13] But many have been approved. Employers may also apply to the Commission to terminate an expired agreement rather than live with it until a replacement is negotiated. Recent decisions have made this

much easier to do.[14] That in turn means that employers can, by *threatening* to apply for termination, secure bargaining concessions and drive minimum conditions down to award levels.

There is also the inescapable point that Australia's laws on strikes and other forms of industrial action are some of the most repressive in the free world. Industrial action is only lawful when taken in support of a new enterprise-level agreement, by workers to be directly covered, and then only over a limited range of matters that are permissible inclusions in such an agreement. International labour standards permit action in a much wider range of situations, including over both industry and national-level agreements, in support of other workers, and indeed over social as well as 'industrial' issues.[15] But both Coalition and Labor governments have consistently ignored criticisms from the International Labour Organization about this aspect of our labour laws.

Finally, there are other structural impediments to collective bargaining to consider. These include the growth of precarious work, migrant labour and 'indirect' employment, which is discussed later in the chapter. Not only may workers in insecure jobs be under individual pressure to accept low wages, but they are also less likely to join a union or take collective action.

Statutory wage fixing

Wage regulation has played a central role in Australia's approach to industrial regulation, right back to the dawn of the arbitration system. In his famous *Harvester* judgment in 1907, Justice Higgins spoke of the need for a 'fair and reasonable' wage that would sustain an 'average employee, regarded as a human being living in a civilized community' in a 'condition of frugal comfort estimated by current human standards'.[16] Wages today are regulated in a number of ways, including the national minimum wage, the base rates specified in awards, and the various penalty rates and premiums also set by awards for long or unsocial hours of work. A significant proportion of employees (around 25% in recent years) have wages set directly through these instruments. Others indirectly benefit, to the extent that some enterprise agreements, and many individual contracts, are determined explicitly or implicitly by reference to award rates.[17] The evolution of wage regulation therefore exerts considerable influence on the overall pattern of wage growth. Many public sector workers now also have their wages set directly by government decree, as discussed further below.

Wage regulation became relatively more restrained over the 1990-2007 period, with changes in minimum wages lagging well behind the growth of overall wages in the labour market. The 'bite' of the lowest adult minimum wage,

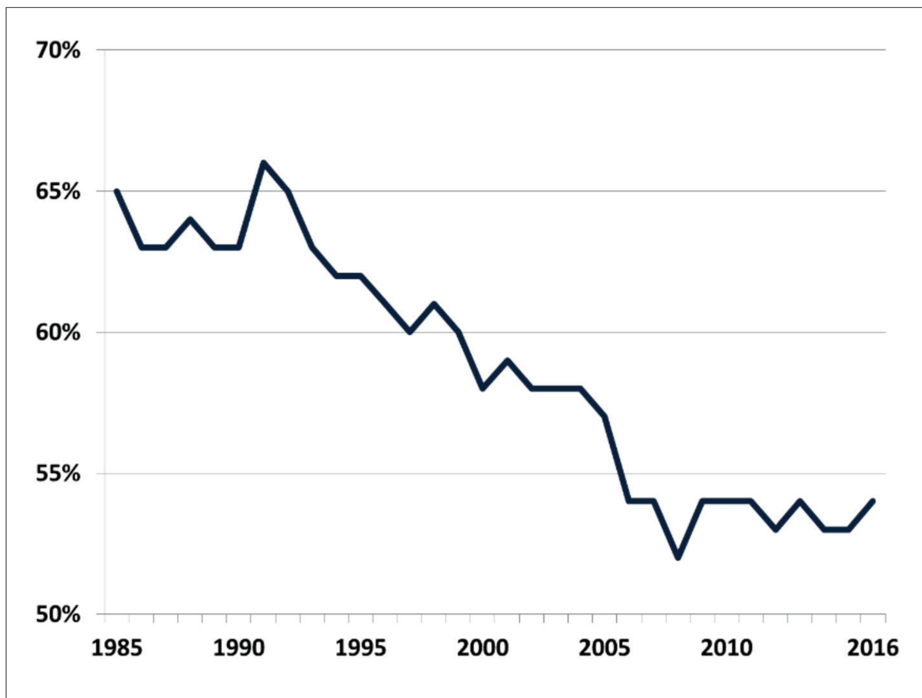

Figure 4.1: National minimum wage as a percentage of median wage, 1985-2016
Source: OECD Employment and Labour Market Statistics.[18]

commonly measured as a share of median wages, diminished from around 65% to under 55%, where it has remained since. The post-1993 recasting of awards as a minimum 'safety net' has also reduced the extent to which wage regulation acts as a leading force in wage growth.

In February 2017, as part of a required review of modern awards, the Fair Work Commission decided to reduce award-specified penalty rates for Sunday and holiday work for many workers in the retail and hospitality industries.[19] The Commission accepted employer evidence that the previous penalty rates were deterring trading or the scheduling of work on Sundays and public holidays. It also expressed tentative agreement with the Productivity Commission's view that there were likely to be *some* positive employment effects from the reduction. The cuts to Sunday rates, equal to either 25 or 50% of the base wage, are especially significant for lower-paid workers. They are being phased in over two to four years. An initial reduction of 5% from July 2017 was offset by an increase of 3.3% to base rates, under that year's annual wage review. But the real impact of the cuts will

be felt in 2018 and beyond. Significantly, there has been no indication to date of any uplift in employment or hours worked in the affected industries.[20]

Gender pay inequity

With the female participation rate continuing to climb, the entrenched problem of pay (in)equity seems likely to become an even greater issue. There are different ways of measuring the 'gender pay gap'. But in terms of base salaries for full-time adults, the latest factsheet prepared by the Workplace Gender Equality Agency shows female workers in Australia averaging 17% less than their male counterparts. The figure rises to 22% if total remuneration (including bonuses) is counted.[21] When we compare average earnings for all employees (including part-time workers, who are much more likely to be women), the pay gap is much higher.

The systematic underpayment of women workers, and the inability of many women to make their full potential contribution to the labour force (as a result of systemic discrimination and an absence of adequate supports for work-life balance, such as accessible child care), clearly drags down overall compensation outcomes in the labour market as a whole.

The Fair Work Act envisages 'equal remuneration orders' being made to address pay equity issues. But restrictive interpretations by the Fair Work Commission have effectively prevented these from having much effect. It is not clear, in any event, that they are an effective way of addressing the entrenched problem of feminised work being undervalued.[22]

Government wage policies and competitive tendering

The slowdown in economic growth in 2008-09 resulted in significant fiscal deficits for the Commonwealth and most State governments. A predictable response was to restrain wage growth in the public sector. Many governments find it much easier to rein in labour costs than to take 'hard' decisions about either raising taxes or cutting other types of spending. Wage restraint policies have ranged from long delays in renewing enterprise agreements, to the explicit imposition of nominal wage caps, such as the New South Wales government's 2.5% ceiling on wage increases in the State's public sector. This last has been in place since 2011 and remains in effect despite the emergence of large budget surpluses there. In a number of jurisdictions, industrial tribunals have been instructed either to follow government wages policies or accord them importance in arbitrating wage disputes.[23]

Active restraint of public sector wages by government has several consequences for wage trends across the broader economy. Public sector jobs constitute around

15% of total employment, so anything that reduces wage growth in the public sector will automatically have a compositional impact on economy-wide averages. More powerfully, the imposition of wage caps by governments (who are the largest single employers in the whole economy) sends a strong signal to participants in the broader labour market. Companies that sell goods and services to governments will naturally feel pressure to restrain their own wages in line with these new targets. And private employers more generally will feel increasingly empowered to demand similar wage restraint on the part of their own employees. It is no coincidence, therefore, that the imposition of wage restraint by governments has been accompanied by a parallel deceleration of wage growth in the private sector.

As an extension of the last point, what is often not appreciated is just how large the wages 'footprint' of governments in Australia really is — or how actively those governments have worked to suppress wages in the private and (especially) not-for-profit sectors. While waves of privatisation have reduced the nominal size of the public sector, many outsourced services are supplied under tendering arrangements that induce firms or associations to cut labour costs in order to win and maintain government contracts. Funding agreements often explicitly or implicitly prohibit suppliers from rewarding their staff with above-award rises or paying higher wages to attract new workers. This is a particular problem in the aged and disability care sectors, where (unlike some other sectors) employment is projected to grow.[24]

Regulatory evasion

The origins of industrial arbitration in Australia can be linked, at least in part, with a desire to take wages out of competition. Imposing minimum employment standards — initially through awards, and later by legislation — represents an important step towards this goal. Ultimately, however, exploitation has persisted. Even assuming that adequate standards are prescribed, it is clear that securing and maintaining compliance with these standards presents a formidable task.

Regulatory evasion by employers takes a variety of forms. Some of these techniques are legitimate, some borderline, others blatantly unlawful. On the most extreme end of this spectrum is so-called wage theft.

Ensuring employer compliance with minimum wage obligations is now viewed as one of the most challenging workplace relations issues. The notorious case of 7-Eleven, and the many other underpayment scandals exposed by the persistent efforts of advocates, investigative journalists and the Fair Work Ombudsman, have served to highlight the serious and systemic nature of these issues. The extent, depth and complexity of these problems have been confirmed in subsequent

government inquiries and empirical research. These suggest that many workers — but especially those labouring in low-wage sectors, including many international students and other migrant workers — are routinely being paid less than half of their legal entitlements.[25]

Many of the structural factors that have stymied collective bargaining, including the decline of unions and the growth in precarious employment, have also perpetuated employer non-compliance and made it harder to enforce the law on behalf of affected workers. The Fair Work Ombudsman has been focused on stamping out employer non-compliance with employment standards for some time. But while the agency has made significant progress in the last decade, ultimately the problem is vast, and its resources are limited.

In 2017, the then Turnbull Government strengthened the statutory framework for compliance. As its title suggests, the *Fair Work Amendment (Protecting Vulnerable Workers) Act 2017* ('Fair Work Amendment') was consciously designed to curb systematic and deliberate exploitation of workers. It sought to achieve this objective in a variety of ways. They included boosting the Ombudsman's evidence-gathering powers, elevating the maximum penalties available for so-called serious contraventions and reversing the burden of proof where employment records are absent or inaccurate. There have also been important initiatives at State level, including the introduction of labour hire licensing schemes in Queensland, South Australia and Victoria.[26] There has even been talk in some States of criminalising wage theft.[27] However, the extent to which legislative changes alone can protect vulnerable workers from 'ruinous competition' remains questionable.

The systematic underpayment of wages is not just concerning for the workers directly affected. It raises critical questions for consumers, for business and for the state. Unscrupulous employers gain an unfair competitive edge over compliant employers, placing downward pressure on wages at other businesses. In the longer term, the effects of underpayment may be magnified, due to lost superannuation entitlements. Indeed, where superannuation is not paid in full, the government is short-changed on two fronts. It collects less from the taxes levied on superannuation contributions and investment income, and it must ultimately pay out more by way of the Age Pension.[28]

Migrant workers

There has long been a practice of encouraging skilled workers to migrate to Australia to fill unmet needs in the local labour market. But questions have been raised in recent years about the number of temporary visas being granted, especially under subclass 457 visas (or Temporary Skill Shortage visas, as they are now called). It

has been widely claimed that employers have been obtaining cheap foreign labour at the expense of Australian workers. Visas are said to have been granted without sufficient checks being made as to whether the jobs in question can be filled locally. There has also been concern about the number of lower-skilled jobs now being performed by international students, or by backpackers or other visitors who have come to Australia under 'working holiday' visas. Both Labor and Coalition governments have struggled to strike a balance between the pressure from the business community for faster and more efficient access to foreign workers to meet labour needs, and public disquiet over these arrangements. Those concerns have been enhanced by the inclusion of 'special' arrangements over the importation of workers in trade agreements, such as that with China.[29]

There are at least two interrelated concerns here. One — verified by a string of reports and inquiries — is that migrant workers may be especially vulnerable to wage theft and other forms of exploitation, including forced labour.[30] The other is that, even if paid at or above Australian minimum wage levels, a workforce composed of temporary entrants is far less likely to be organised and to engage in collective bargaining.

Fragmented business structures and organisational networks

In Australia, labour is commonly sourced through a wide range of organisational formats, other than direct paid employment. These include subcontracting, franchising, labour hire and outsourcing. Many of these business structures are used for legitimate, rather than pernicious, reasons. But regardless of the motivation, all these forms of 'fissured employment' allow the lead firm to distance itself from the person whose work helps produce its products and services.[31] This can have at least four significant implications for wages and working conditions.

First, it allows the lead firm to avoid many legal responsibilities associated with direct employment, without necessarily relinquishing control over the activities of these subsidiary bodies or the person performing the work. A second and related consequence is that by shedding direct employment, unions face greater challenges trying to organise and represent workers located in separate and dispersed organisations. The splintering of organisations not only makes bargaining more difficult and resource-intensive, but may also effectively limit the scope, application and effect of any agreement that is ultimately struck. The declining influence of unions and collective bargaining means that market forces are more likely to determine labour outcomes.

Third, by shifting employer responsibilities to a tier of subordinate organisations, the lead firm is able to create a specific market for services which

intensifies competition amongst suppliers and providers. That further brings down the overall costs of production and drives down wages. Concerns over ensuring internal equity and fairness — which previously served to lift the wages of workers within integrated firms — are less acute in such an environment. Rather than sharing part of the gains with the workforce, firms may be under more pressure to deliver lower prices for consumers and provide greater returns to investors. In this respect, it seems that '[s]hifting work outward allows redistribution of gains upward'.[32]

Fourth, the fragmentation of large corporate structures into networks of smaller, dispersed businesses blurs lines of accountability and poses challenges for enforcement, which has traditionally tended to focus on preventing wrongdoing by the direct employer. Moreover, the tight margins of subordinate businesses may themselves be a significant driver of non-compliance with minimum wage laws, as has become evident with many franchises.

Under the Fair Work Amendment, franchisors and holding companies can now be held liable for underpayment violations committed by franchisees and subsidiaries respectively. But arguably this measure does no more than scratch the surface of the problems caused by fragmented business structures.

Sham self-employment and freelancing

Most labour regulation is premised on the existence of a binary contractual relationship between employer and employee. But digital platforms such as Uber or Airtasker complicate this conventional analysis, because there are at least three parties involved: the worker, the end-user of the labour and the intermediary which has connected them. In many ways, the recent emergence of platform technology has magnified pre-existing problems with the regulation of work. While the use of technology and mode of delivery may be novel, many of the central features of 'gig work' are not especially new at all. Indeed, there are clear parallels with more traditional forms of labour hire and certain types of franchise. In all these instances, more attention needs to be paid to how we might go about defining the 'employer' or the beneficiary of the work — and what obligations and responsibilities they should bear.[33]

It is hard to say how many Australians currently find more than occasional or hobby work through digital platforms. Most assessments put the number at less than 1% of the workforce. But the proportion is projected to grow. And what is clear is that most of the major platforms operating in this space insist — in some cases plausibly, in others less so — that the 'partners' or 'taskers' they help find work are

independent contractors or freelancers, and hence not entitled to minimum wages or other employment-related entitlements. Legal battles have already been fought over this, with more undoubtedly to come.[34] In early 2018, a number of cases were brought against the food delivery service, Foodora, to challenge its practice of engaging riders or drivers as contractors. However, soon after these proceedings commenced, Foodora abruptly decided to exit the Australian market.[35] In the wake of this development, the Fair Work Ombudsman dropped proceedings it had instituted against the business, although an unfair dismissal claim supported by the Transport Workers Union was ahead.[36] Although Foodora was found in that case to be an employer, this may have little impact on other platforms. It remains to be seen, then, how easy or otherwise it will be to use existing laws to disrupt the digital disrupters.[37]

The potential difficulty with classifying gig workers highlights enduring problems with the common law test for distinguishing between employees and independent contractors. These uncertainties have created a 'grey zone' which has allowed a range of work arrangements to flourish. Indeed, the misclassification of workers as independent contractors rather than employees is a tried and trusted strategy for externalising costs and shifting risks and burdens from the business onto the worker.[38]

The proportion of the workforce engaged as independent contractors in their main job has stayed relatively constant since the turn of the century, at around 8-10% of the workforce.[39] It is possible that what might otherwise have been a trend to greater use of independent contracting has been deterred by three factors. One is that some judges, particularly in the federal court system, are more inclined now to look at the substance rather than the form of work arrangements and classify workers as employees if there is no objective indication of them running a business of their own.[40] A second is the willingness of the Fair Work Ombudsman to investigate and take action against some of the more egregious forms of sham contracting.[41] And the third is the rules on 'personal services income' introduced by the Howard Government in 2000. For taxation purposes, these treat many contractors as employees when supplying services predominantly to the same client — although there are serious doubts as to how effectively the laws are understood and enforced.[42]

Nevertheless, there can be no doubting that in some industries sham contracting remains rife. In the building industry, for example, research in 2012 revealed that 13% of contractors appeared to be 'misclassified'.[43] It seems unlikely that the position has since changed for the better.

Other forms of precarious work

As a recent study from the Centre for Future Work reveals, Australia has come to have 'a labour market dominated by insecure and unreliable employment patterns, in which the ability of working people to find and keep reliable work is increasingly in question'.[44] Where many jobs used to involve permanent full-time employment, the 'standard employment relationship' is now the exception rather than the rule.

Mention has already been made of the precarious position of temporary migrants and misclassified contractors. Part-time employment has become more common, often with hours that are irregular or fewer than the employee would prefer, or both.[45] Around a quarter of all employees (and many part-timers) also work as casuals, with reduced leave and severance entitlements that are notionally compensated by a 25% loading (assuming it is actually paid). The lax definition of casual employment in awards and many enterprise agreements means that it is often used not just for temporary or irregular work, but for ongoing positions.[46] A recent decision by the Fair Work Commission has broadened the right of regular casuals to request a shift to permanent jobs.[47] But few seem likely to take up this option, given the immediate pay cut it would generally entail.

Another type of precarious work, though not often identified as such, is the unpaid internship or job placement. Most young people now undertake some form of unpaid work experience in order to improve their chances of finding a paid job. When involving 'real' work, and not done as part of an authorised education or training programme, this can potentially be unlawful.[48]

Even where workers do find a permanent full-time job, their employment may still be insecure if it falls into the category of the 'indirect' kinds already mentioned. Someone who works for a labour hire agency or a contractor may always worry that the lead or host business for whom they are ultimately working could decide to look somewhere else to fill its labour needs.

It is not hard to conclude then that, combined with high levels of underemployment, the prevalence of precarious work arrangements in Australia is contributing to the wage stagnation problem. As noted in Chapter 1 of this volume, the Reserve Bank Governor, Philip Lowe, has urged Australians to demand higher wages.[49] But given that many workers in the modern economy have good reason to doubt the security of their jobs and income, it is not surprising that many are opting to keep their head below the parapet. To ask their employer for a wage increase not only may be futile, but may also put their job on the line.

If the wages crisis is to be effectively addressed, it would seem to require more than just individual workers being more assertive. This is a point to which we return in the final chapter in this volume.

Endnotes

1. Piketty 2014: 308.
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3. ABS 2017b.
4. See https://docs.jobs.gov.au/documents/historical-table-current (accessed 6 November 2018).
5. Carney and Stanford 2018.
6. Bray and Stewart 2013.
7. Pekarek et al 2017.
8. Bray and Macneil 2016; McCrystal, Creighton and Forsyth 2018.
9. See, e.g., Schneiders, Toscano and Millar 2016.
10. See especially *Hart v Coles Supermarkets Australia Pty Ltd* [2016] FWCFB 2887.
11. See, e.g., Senate Education and Employment References Committee 2017.
12. See, e.g., *CFMEU v John Holland Pty Ltd* [2015] FCAFC 16; *ALDI Foods Pty Limited v SDA* [2017] HCA 53.
13. See, e.g., *One Key Workforce Pty Ltd v CFMEU* [2018] FCAFC 77; *Broadspectrum Pty Ltd v United Voice* [2018] FCAFC 139.
14. See, e.g., *AMWU v Griffin Coal Mining Co Pty Ltd* [2016] FWCFB 4620; *Re Murdoch University* [2017] FWCA 4472; McCrystal 2018.
15. McCrystal 2010.
16. *Ex parte HV McKay* (1907) 2 CAR 1 at 3-4.
17. Wright and Buchanan 2013.
18. See www.oecd-ilibrary.org/employment/data/oecd-employment-and-labour-market-statistics_lfs-data-en (accessed 3 August 2018).
19. See *4 Yearly Review of Modern Awards — Penalty Rates* [2017] FWCFB 1001. Compare the more recent decision in *4 Yearly Review of Modern Awards — General Retail Industry Award 2010* [2018] FWCFB 5897 to lift certain penalty rates for casual retail workers.
20. Stanford and Henderson 2018a.
21. WGEA 2018.
22. Macdonald and Charlesworth 2013; Smith and Stewart 2017.
23. See, e.g., *Industrial Relations Act 1996* (NSW) s 146C; *Industrial Relations Act 1979* (WA) s 26(2A)-(2E).
24. See, e.g., Charlesworth 2012; Macdonald and Charlesworth 2016.
25. Berg and Farbenblum 2017.
26. See *Labour Hire Licensing Act 2017* (Qld); *Labour Hire Licensing Act 2017* (SA); *Labour Hire Licensing Act 2018* (Vic). In South Australia, however,

the Marshall Liberal Government has proposed to repeal the new legislation there.

27. See, e.g., the Victorian proposal outlined in Andrews 2018.
28. Stanford 2017.
29. See generally Howe 2016.
30. See, e.g., Senate Education and Employment References Committee 2016.
31. See, e.g., Hardy 2016.
32. Weil 2017: 224.
33. Stewart and Stanford 2017.
34. See, e.g., *Kaseris v Rasier Pacific VOF* [2017] FWC 6610.
35. See Patty 2018.
36. See 'FWO drops Foodora test case', *Workplace Express*, 3 September 2018; *Klooger v Foodora Australia Pty Ltd* [2018] FWC 6836.
37. Compare the proposals for legislative action advanced in Senate Select Committee on the Future of Work and Workers 2018.
38. See, e.g., Roles and Stewart 2012.
39. Productivity Commission 2015: 800-1.
40. See, e.g., *ACE Insurance Ltd v Trifunovski* [2013] FCAFC 3; *Fair Work Ombudsman v Quest South Perth Holdings Pty Ltd* [2015] FCAFC 37.
41. See, e.g., *Fair Work Ombudsman v Quest South Perth Holdings Pty Ltd* [2015] HCA 45; *Fair Work Ombudsman v Grandcity (GW) Travel & Tour Pty Ltd* [2015] FCCA 1759.
42. Auditor-General 2013.
43. TNS Social Research 2012.
44. Carney and Stanford 2018: 19. See also ACTU 2018a.
45. Carney and Stanford 2018: 7-9.
46. Stewart et al 2016: 245-52. But see *Workpac Pty Ltd v Skene* [2018] FCAFC 131, holding that some workers in this category may be entitled to annual leave, even if they have been receiving a casual loading.
47. *4 Yearly Review of Modern Awards — Casual Employment and Part-Time Employment* [2017] FWCFB 3541.
48. Stewart and Owens 2013; Stewart et al 2018; and see, e.g., *Fair Work Ombudsman v AIMG BQ Pty Ltd* [2016] FCCA 1024.
49. Lowe 2017a.

Part II

Wage setting mechanisms and institutions

5

Minimum wages

Tim Lyons

> [W]ages ought not to be insufficient to support a frugal and well-behaved wage-earner.[1]

Australia was one of the early laboratories of modern labour law and worker organisation, dating at least from 1856. That year, Melbourne building workers used the leverage they had over employers in the tight labour market of a gold rush boomtown to win the world's first eight-hour day.

Similarly, we adopted a minimum wage at a time when such moves were rare. Australia adopted a form of minimum wage in November 1907. In the landmark *Harvester* decision, Justice Higgins of the Commonwealth Court of Conciliation and Arbitration, applying a statute that said wages had to be 'fair and reasonable', held that workers were entitled to a living wage. He defined this by reference to 'the normal needs of the average employee … living in a civilized community'.[2] Higgins deliberately echoed the Papal Encyclical on the working class quoted above, saying that wages 'must be enough to support the wage earner in reasonable and frugal comfort'.[3]

Harvester established a male basic wage. The intention was to support a minimum standard of living for a male breadwinner and his family. But equal pay was not on the agenda. A case in 1919 determined that women were entitled to 54% of men's wages, a standard that persisted until World War II, when the

standard rose to 75%.[4] It was not until key tribunal decisions in 1969 and 1972 that the principles of equal pay for equal work and (to more practical effect) equal pay for work of equal value were adopted, ensuring that the minimum wage system did not exacerbate the gender pay gap.[5] Shamefully, the last race-based differential in our system of minimum wages (in relation to Indigenous stockmen in the cattle industry) was not removed until 1966.[6]

The original 1907 basic wage was very frugal indeed. But under various sets of indexation principles it rose in real terms over time. In inflation-adjusted terms, it reached its all-time peak in the early 1980s. Accounting for changes in working hours and the introduction of compulsory superannuation, the real value of the minimum wage is more than three times the level of 1907.[7]

As a result, Australia has historically been something of an outlier on minimum wages, even when measured against the rest of the developed world. The relatively high minimum wage and our essentially unique system of awards arbitrated by workplace tribunals were key reasons our country has had relatively low inequality in earnings.

The institutional arrangements adopted at both a State and federal level ensured that our labour market exhibited a degree of egalitarianism. The award system effectively ranked all jobs against each other in respect of factors like skills, qualifications, physicality and responsibilities. This was described as 'comparative wage justice'. The entire wages system (known as centralised wage fixing) then tended to move in sync, and from as early as the mid-1930s, wage scales were coming to orbit around the metal industry. In an important sense, the entire wages system set almost everyone's pay in relation to the award rate for a qualified metal tradesperson.[8]

This system of setting wages at the national level, supplemented by State industrial tribunals, did evolve but was, in structural terms, largely unchanged for more than 80 years. Until we threw it out almost completely.

The 'reform' era

> I was the guy who had to get the ACTU in a headlock and pull its teeth out with a pair of pliers … This is comparative wage justice which couldn't last.[9]

The story, in the modern era, of minimum wage fixation in Australia is also a key part of the story about enterprise bargaining. It is a story about how the union movement unilaterally disarmed, and about how we moved away from the conspicuously egalitarian purpose of our system.

Commencing in the early 1990s, the federal Labor government, with the active cooperation of the Australian Council of Trade Unions (ACTU), comprehensively dismantled centralised wage fixing. From that point, the system was predicated on most workers getting access to wage increases via bargaining at the firm level. Award rates of pay (including the minimum rate in an award), which had functioned as paid or at least generally prevailing rates in many industries, were now designated as a mere 'safety net'. Awards used to set the wages of most Australian workers. Now the federal minimum wage and award rates of pay reflect the paid wages of only around 22% of the workforce.[10]

Through various twists and turns under both Labor and Liberal/National governments, this is still essentially the system we have today. Each year the Fair Work Commission is required to determine the level of the federal minimum wage and any adjustment to the other classifications in awards via an annual wage review. The Commission is required to consider a range of factors in making its determination, including the needs of low-paid workers and their living standards relative to the rest of the community, as well as the performance of the economy and business competitiveness.[11] Again, with some variation, that is largely a matter of degree or emphasis; such considerations have been part of the process for fixing minimum wages since the changes of the early 1990s.

And since those changes, bit by bit, the traditional egalitarian character of Australia's labour market has been eroded and the relative living standards of Australia's lowest-paid workers have declined. I have written elsewhere about the impact this change had on unions.[12] I focus here on the effect on our lowest paid.

Until 2005, the Australian minimum wage bite (the relationship of the minimum wage either to average full-time wages or to median full-time earnings) was the highest in the OECD. But that headline in some ways hid a broader shift. Over the last two decades, this has changed. In that period, our minimum wage bite has fallen sharply, earnings inequality has grown and the incidence of low pay has risen.

While Australia has not experienced a recession since the early 1990s, the minimum wage bite has declined during both economic booms and times of slower growth. It has declined under each of the three federal institutions — the Australian Industrial Relations Commission, the Australian Fair Pay Commission and the Fair Work Commission — that have had responsibility for adjusting minimum wages over that time. While the real value of minimum wages has grown modestly since the late 1990s, the bite has still continued to fall, until a comparatively minor rise in very recent years. Australia has been rapidly converging with other OECD

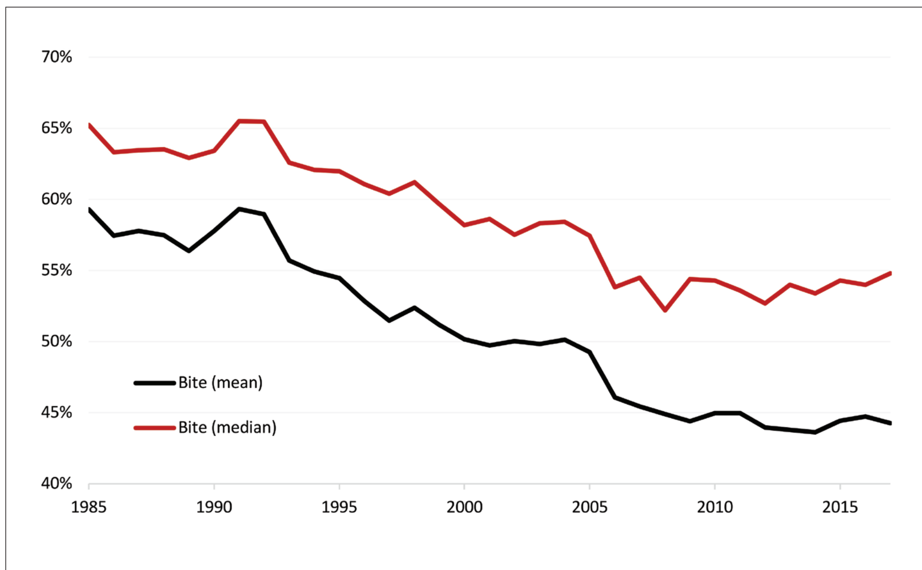

Figure 5.1: Australian minimum wage bite

Source: OECD data.[13]

countries. If the trend of a declining minimum wage bite resumes, Australia's distinctive minimum wage system will have been lost. Our wage floor may, in a few short years, be akin to the wage floors in Canada or the UK.

All this has changed our country, and not for the better.

Opposition to the minimum wage

Every year it is Australia's unions, through the ACTU, that make the case for an increase to the minimum wage, supported by the welfare sector via the Australian Council of Social Service. Allies are scarce, and opponents are legion.

Opposition to increases in the minimum wage, and to its very existence from conservative politicians and employer groups, is widespread. Right-wing economists criticise it (and the broader system of modern award wage scales). The Abbott government's 2013 Commission of Audit called for a cut in the level of the federal minimum wage by A$3.60 per hour, and also proposed stripping the Fair Work Commission of its role in setting it, in favour of government administrative action.[14] This raised the frankly horrifying prospect of a Minister setting the minimum wage based on their own discretion. It was a proposal that would have

seen Australia have one of the lowest minimum wages in the OECD. Think tanks, like the Institute of Public Affairs (IPA), have repeatedly called for the abolition of the minimum wage, along with the rest of labour law for good measure. A 2006 IPA publication listed the *Harvester* decision as number two in a list of 'Australia's 13 biggest mistakes'.[15]

Employer association submissions to the annual wage review routinely call for low or even zero increases (and occasionally for cuts). This was true again this year (that is, 2018): key employer groups argued for no increase to the minimum wage, and the highest increase proposed was 1.9%. Not coincidentally, this was the annualised inflation rate at the time submissions were made. The figure of 1.9% was also below the annualised increase in wages in the economy generally. In other words, most of Australia's employer groups argued for a cut in the real (after inflation) value of the minimum wage, and all of them asked for a cut in the value of the minimum wage relative to wages generally.

The submissions from Coalition governments, while generally reluctant to nominate a specific figure, always stress the need for the Fair Work Commission to take a very cautious approach, presenting economic data in a way that (they say) mitigates against a substantial increase.

Labor governments have not been much better, generally refusing to strongly support significant increases, or to specify a number, on the grounds that the Fair Work Commission is 'independent'. This argument is flimsy indeed: it is difficult to imagine the Solicitor-General appearing before a court and declining to say what the Commonwealth thought that court should do on grounds of independence. This year the federal Labor Opposition, in an unusual step, made a submission to the Fair Work Commission that did propose a real increase — but still failed to nominate a percentage or dollar value and qualified the submission with a call for any increase to be 'fair and economically responsible'.[16] More encouragingly, in 2018 the Queensland and Victorian Labor governments intervened in the annual wage review to urge the panel to increase the minimum wage by 3.9%.[17]

The result of the annual wage review in 2018 was an increase of 3.5% to A$18.93 per hour, or A$719.20 for a 38-hour week.[18]

More generally, the case against increasing the minimum wage, and indeed the more fringe position against having one at all, are based on claims that it will cause job losses, prevent low-skilled workers from getting jobs, hurt the unemployed trying to enter the labour market and be unaffordable for businesses. There are strong arguments that all of these claims are false.

Perversity, futility, jeopardy

Before turning to the case *for* minimum wages, it is important to understand what the arguments above are: standard conservative or reactionary rhetoric levelled at progressive or left policy proposals.

In his book *Rhetoric of Reaction*, political theorist Albert O Hirschman identified three approaches that conservatives use to oppose social change. In his analysis, they argue perversity (this will actually make the problem worse), futility (it will not really make a difference, as the problem is so big), and/or jeopardy (it will cause some other good thing to be damaged).[19] Readers familiar with the Australian debates around climate change and marriage equality will confirm the common use of these rhetorical devices by political conservatives.

This is also true of minimum wages. The arguments that the minimum wage will not alleviate poverty because it will cost jobs or harm business fit the pattern nicely. So, too, do the claims that it will not really help wage growth or address inequality as too few people are paid the actual minimum wage, or that it represents a reregulation of the labour market undoing the precious reforms of the 1980s and 1990s.

Such arguments are often made on the basis that they are pro-worker positions, as if the proponents do support low-wage workers, but that this is not the way to do so. This is done in bad faith. The same people who oppose minimum wages also vigorously oppose other meaningful measures that would give low-wage workers pay increases — including stronger unions, stronger collective bargaining laws (including sectoral or industry bargaining and the right to strike) or a low-income tax credit (essentially a negative income tax rate for the low waged). They are also content with inaction on wage theft. As Euripides had Agamemnon say in *Hecuba*:

> You will find me eager to help you, but slow to take any step.

What do minimum wages (actually) do?

Effect on employment

At the annual wage review, employer groups routinely suggest that even modest increases in the minimum wage will cause enormous job losses. The Australian data do not support these assertions. Two of the industries that complain the loudest (hospitality and retail) have continued to see employment growth even with increases to the minimum wage. In a comment that it has now been repeating almost annually over a significant period, the Commission itself said in 2018 that

'moderate and regular increases to the NMW and to modern award minimum wages do not cause significant job losses or reductions in hours worked'.[20]

The claims about the negative effects of minimum wages (and high minimum wages in particular) are based mainly on the neoclassical model of the labour market — a perfect competition model full of somewhat hilarious assumptions, and one that fails to line up with observable evidence. The model says that the equilibrium point at which wages must be set is where labour supply (workers being willing to work) meets the labour demand of firms. To set the wage higher will cause unemployment. A firm that pays A$1 less than this equilibrium rate instantly loses its workers.

The model assumes, among other things, that all firms are identical, that all vacancies are instantly filled, that all workers are identical and want the same things, that there are no costs to a worker in changing jobs and that the workers all have perfect information about job vacancies. A cursory glance at the labour market indicates that the model is useless in the real world. Amongst the things it cannot explain are the gender pay gap, firm-level differences in pay between bigger and smaller firms, job vacancies or variations in the rate of labour turnover.

Also inherent in the model is the conservative fairytale that the imbalance of power between a single unorganised worker and an employer or potential employer is either non-existent or, if it does exist, irrelevant.

More recent scholarship has developed a better model of the labour market that is consistent with what we observe in the real world.[21] Known as 'dynamic monopsony', it takes account of both the power of a firm to set wages as a buyer faced with multiple sellers in the form of workers, and the 'frictions' that workers face when considering changing jobs. Such frictions include factors like where the job is located, personal preference, the costs of changing jobs to the worker and the fact that workers may simply not know about the other job. All of which sounds very much like the labour markets we face when trying to get a job or considering a change in job. A firm with monopsony power is able to pay lower wages than it would be able to under the model of perfect competition.

Under this model, a minimum wage can increase both earnings and employment. A leading scholar in the field expresses one of the benefits this way:

> [B]y reducing frictional wage inequality, an increased minimum wage reduces job-to-job transitions. Put simply, if McDonald's pays a better wage, fewer of its workers will leave to take better paying jobs — say at the higher wage chain In-and-Out Burgers. A higher statutory minimum reduces vacancies at McDonald's, and makes it more likely that the vacancy at the In-and-Out Burgers is filled from the ranks of the unemployed.[22]

By using advances in statistical tools and improved data, and by understanding these frictions in the labour market, scholars have been able to better understand the elasticity of employment (the extent to which the number of jobs goes up or down) given changes to minimum wages. A US meta-analysis of more than 1400 estimates of employment elasticity indicated that the effect was very close to zero. When the sample was adjusted to remove a publication bias in studies that found a negative effect, the result was zero. The authors concluded that, if there were indeed an effect on employment, it 'must be of a small and policy-irrelevant magnitude'.[23] The authors of a similar study found that the effect 'is both vanishingly small and not statistically significant'.[24]

Studies from other countries confirm this view. The UK's Low Pay Commission found no negative effect on employment from a minimum wage, and a small positive effect on productivity.[25] Germany, which first introduced a minimum wage in this decade, has seen an employment effect, but a good one: minimum-wage jobs declined as employers invested in technology, but a greater number of better-paid jobs were created.[26]

The minimum wage as a social policy

The level at which a minimum wage is set reflects a series of choices that a country (or region) has made. A high minimum wage reduces inequity and improves the relative living standards of the low-paid. Both the criteria used to set the minimum wage and its absolute level reflect the society's tolerance for both in-work poverty and inequality. Setting it involves normative questions about fairness, redistribution and economic justice.

Like all key elements of labour law, minimum wages have both a protective function (to remedy and prevent ill-treatment of workers) and a redistributive function (to ameliorate the effects of the power imbalance between workers and employers).

In my view, Australia's current 'safety net' approach to minimum wages is failing the workers who rely on it, and the society as a whole. The long-term fall in the relative value of the minimum wage is an important part of the story of record low-wage growth in the economy generally presented in Chapter 2 of this volume.

Just as we reset the role of minimum wages and the mechanics of setting it in the early 1990s, we need to do so again. What follows are some policy suggestions. They are all aimed explicitly at increasing both the absolute and relative value of the minimum wage in Australia.

Where to now?

More aggressive action by government

The easiest thing for a federal government to do in relation to the minimum wage is to shed the conservative approach to the annual wage review exhibited under both sides of politics. A government should make very strong submissions to the Fair Work Commission advocating for significant increases in the minimum wage. It should end the practice that governments say to the Commission, in effect, 'Here is the economic data. You determine what it means and we won't express a strong view'.

A foundation, not a safety net

A more fundamental change would be to recast the federal minimum wage (and indeed the modern award wage rates) from being a 'safety net', with all its implications of catching people who are falling. The minimum rates should be explicitly defined as 'the foundation' of our wages system. The Fair Work Commission should also be given the power to amend modern award rates to reflect the prevailing rates for occupations and in industries, to stop competition on the basis of low wages and to promote it, instead, in relation to innovation, service, quality and productivity.

Changed criteria

The considerations that the Fair Work Commission is required to consider when setting the minimum wage should be amended to place much greater emphasis on the needs of the low-paid, their relative living standards and the objective of reducing the incidence of low-paid work. Given that there is little or no evidence of macroeconomic (or even significant firm-level) effects from adjusting the minimum wage, those matters should be significantly diluted or even removed entirely from the *Fair Work Act 2009* ('Fair Work Act').

A medium-term target

In the UK, the Low Pay Commission sets the National Living Wage. It has determined that it has a 'target' for the wage bite of 60% of median wage, up from 55%, by 2020. (The figure of 60% is the OECD's threshold for 'low pay'.)[27] Australia should adopt both approaches: a target of 60% and a multi-year timeframe for setting the minimum wage. An attempt by United Voice to have the Fair Work

Commission adopt such an approach in the annual wage review (in which the author was involved) failed,[28] so this proposal would require legislative action.

Stronger equal pay rules

The incidence of low-paid work (not just at the minimum wage) is significantly gender-biased, particularly in certain industries. Australia continues to have a significant gender pay gap, and the current equal remuneration provisions of the Fair Work Act have proven ineffective in dealing with the issue. Emblematic of this have been the recent difficulties faced by an equal remuneration case in early childhood education and care, despite a workforce made up of 97% women who are highly trained and glaringly underpaid.[29] Stronger equal pay provisions could play an important role in reducing low-paid work.

Allow States (or even localities) to fix a higher minimum wage

In the US, Congress sets the federal minimum wage. But a refusal by Republicans to lift it has seen it stuck at US$7.25 an hour (or US$2.13 for tipped workers) since 2009. Thirty States, almost all reliably Democratic ones, have minimum wages that must be no less than the default federal standard. Currently, the highest is US$11.50 in the State of Washington and the lowest US$7.85 per hour in Missouri.

In some States, a city or county has the power to issue a local minimum wage ordinance. Starting with Baltimore in 1994, a range of the most important US cities have done so, including Los Angeles, Seattle, Chicago, Minneapolis, Milwaukee, San Francisco and New York. A range of these jurisdictions are on track to reach a minimum wage of around US$15 over the next few years via staged increases.

Presently, the Fair Work Act would prevent States from legislating around a State minimum wage mechanism.[30] This should be amended to allow a State to create a mechanism to set a minimum wage (which could not be lower than the federal minimum wage). This rate would simply override modern award rates below its level. States could establish their own versions of the Low Pay Commission to determine the rate.

An even more radical option would be for the States to then allow local government authorities to fix a higher rate. Differently designed state or regional minimum wage models would be an interesting experiment and could also inform future developments at a national level.[31]

Either proposal would assist in dealing with Australia's protracted low wage growth period by putting some upward pressure on market incomes, even if only at a local level.

Endnotes

1. Pope Leo XIII 1891.
2. *Ex parte HV McKay* (1907) 2 CAR 1 at 1.
3. *Ex parte HV McKay* (1907) 2 CAR 1 at 3-4.
4. Whitehouse 2004: 221.
5. *Equal Pay Case* (1969) 127 CAR 1142; *Equal Pay Case* (1972) 147 CAR 172.
6. *Re Cattle Station Industry (NT) Award* (1966) 113 CAR 651.
7. Hancock and Richardson 2004: 142, and author's calculations.
8. Hamilton 2004.
9. Australian Broadcasting Corporation, *Lateline 2007* (interview with Paul Keating).
10. *Annual Wage Review 2017-18* [2018] FWCFB 3500 at [3].
11. *Fair Work Act 2009* (Cth) ss 284-5.
12. Lyons 2014; Lyons 2016.
13. https://data.oecd.org/ (accessed 6 November 2018).
14. National Commission of Audit 2014: 146-9.
15. Berg and Allsop 2006.
16. Federal Opposition 2018: 3.
17. *Annual Wage Review 2017-18* [2018] FWCFB 3500 at [52].
18. *Annual Wage Review 2017-18* [2018] FWCFB 3500 at [101].
19. Hirschman 1991.
20. *Annual Wage Review 2017-18* [2018] FWCFB 3500 at [244].
21. See summary of scholarship in ACTU 2014.
22. Dube 2013: 15.
23. Doucouliagos 2009: 423.
24. Belman and Wolfson 2014: 170.
25. Low Pay Commission 2016.
26. Janssen 2015.
27. See https://data.oecd.org/earnwage/wage-levels.htm (accessed 6 November 2018).
28. *Annual Wage Review 2016-17* [2017] FWCFB 1931.

29. See *Application by United Voice, Australian Education Union and Independent Education Union of Australia for an Equal Remuneration Order* [2018] FWCFB 177.
30. See *Fair Work Act 2009* (Cth) s 26.
31. Dube 2014.

6

Gender pay equity

Sara Charlesworth and Meg Smith

Introduction: What is happening?

The persistent gender pay gap is an important driver of the current wages crisis in Australia. The gender pay gap is the difference between women's and men's earnings, expressed as a percentage of men's earnings. Figure 6.1 shows the gender pay gap between women's and men's average weekly full-time ordinary time earnings (AWOTE) over the last 37 years. In 2018, the gender pay gap sat at 14.6%, only slightly improved from the early 2000s.

Gender pay gap data based on AWOTE are the most commonly used metrics in Australia to measure progress towards gender pay equity, which is when women and men receive equal pay for work of equal or comparable value. However, this measure of the pay gap compares the *ordinary time* weekly earnings of men and women in *full-time* jobs only. It hides the gendered access to wage and benefit top-ups on ordinary time weekly earnings reflected in total full-time earnings. In 2018, Figure 6.1 shows that the *total* gender pay gap in women's and men's total full-time average weekly earnings (FTAWE) was 18.0%. The full-time data also shed little light on the gender pay gap for almost half of Australia's working women, who work part-time and are not included in this metric. When we include average weekly earnings (AWE) for all workers, both full-time and part-time, the gender pay gap in 2017 rises to 32.4%. This high figure underscores women's significantly

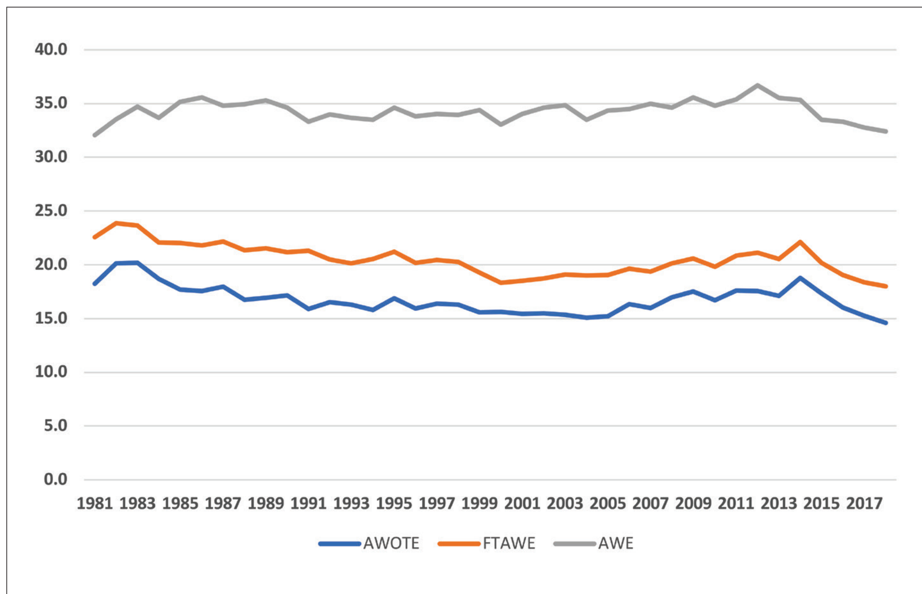

Figure 6.1: Gender pay gap, weekly earnings, 1981-2018 (%)

Source: Calculations based on data from ABS, Average Weekly Earnings, Australia, Catalogue no 6302.0.[1]

lower earnings relative to men's in Australia, which have ramifications for lifetime earnings, superannuation earnings and security in retirement.

Hourly (as opposed to weekly) earnings data take into account the earnings of *both* full-time and part-time employees. Available data, however, exclude managerial earnings. This means hourly earnings data are likely to underestimate the size of the hourly earnings gender pay gap, given that men are much more likely than women to be in managerial jobs. The latest available data in Figure 6.2 show the gender pay gap between women's and men's average non-managerial hourly total earnings for the 20-year period 1996-2016. As with weekly earnings data, there is limited change evident over this period, with the gap standing at 11.6% in 1996 and 12.4% in 2016.

The persistence of the gender pay gap places some focus on the regulation designed to address it. Half a century ago, Australia led the world in action to reduce the gender pay gap. Equal pay decisions by the Commonwealth Conciliation and Arbitration Commission led to the introduction of equal pay for equal work in 1969, and to the broader principle of equal pay for work of equal value in 1972. These decisions led to a distinct improvement in the gender wage gap. As an example, the gap in private sector full-time non-managerial employee earnings

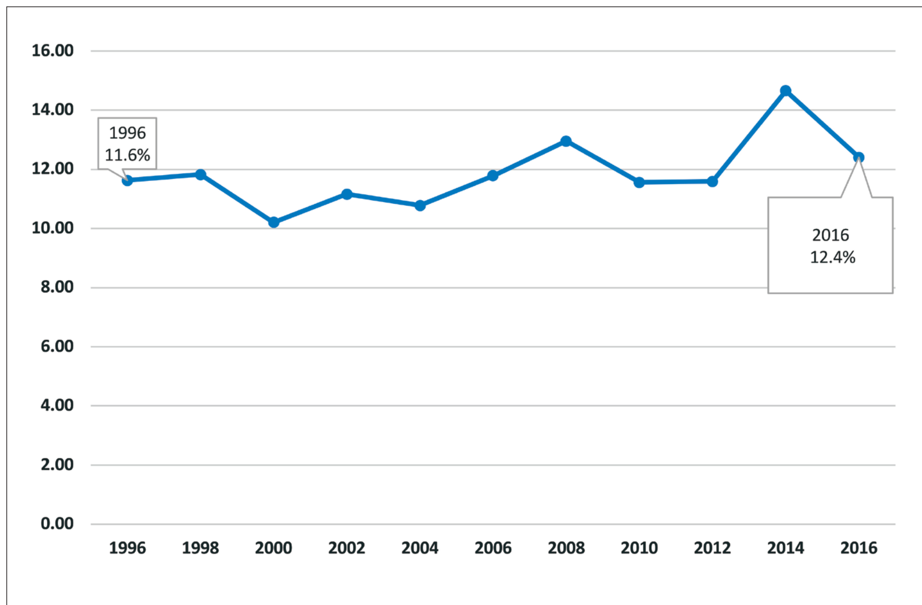

Figure 6.2: Gender pay gap, hourly total earnings, non-managerial employees, 1996-2016 (%)

Source: Calculations based on data from ABS 2017b.

decreased from 36% in 1967 to 19.7% in 1975.[2] The principles established in these two decisions made it unlawful for employers to pay women and men differently for doing the same or similar jobs. Yet there has been less progress in addressing the proper valuation of *feminised* areas of work, especially where there is no obvious comparison with male jobs.

Causes of the gender pay gap

Australian women today are more likely than men to have completed year 12 and above, and to have achieved a bachelor degree or above.[3] Yet the gender pay gap continues despite women's increased entry into higher education.[4]

There are many causes of the gender pay gap, including discrimination and bias in hiring and pay decisions, and women's disproportionate share of unpaid care and domestic work.[5] One of the most important factors in Australia is gender segregation. This is where women and men work in very different industries and jobs or occupations, with female-dominated industries and jobs attracting lower wages. Lower wages reflect the continued undervaluation of feminised work and skills and the historical mechanisms for setting pay in feminised industries.

At an industry level, gender segregation has intensified over the last 20 years, particularly in health care and social assistance, and in education and training. The same is true in the kinds of jobs workers do, with clerical and administrative work and community and personal service work the most female-dominated Australian occupations.[6]

These sectors of work tend to be lower-paid than mixed or male-dominated sectors. One of the key areas of growth in female jobs has been in the relatively low-hours jobs in care work — childcare, aged care and disability care — along with retail work. Over the past five years, employment in the broader health care and social assistance industry has increased by 24%, with a particularly rapid rise in care work jobs.[7] In disability support in particular, there has been a downward trend in the average weekly hours worked, to a low of around 20 hours per week in 2017.[8] People employed part-time may get fewer hours than they want to work and women are more likely than men to be *underemployed*. In 2017, 11% of women were underemployed, compared to 7% of men. The underemployment rate for women in community and personal service jobs is 18% (although with male underemployment almost as high, at 17%). Underemployment in the retail industry is even higher, at 21% for women and 16% for men.[9]

Jobs in such industries are also in the main low-wage jobs. The wage rates set out in modern awards, the instruments that set sector-specific minimum wages and conditions in Australia, tend to be very close to the national minimum wage. For many workers in feminised sectors, awards provide not only 'a floor' or safety net. They also provide a ceiling for those without access to enterprise bargaining, the mechanism that is supposed to lead to improved wages and conditions. Workers may also have their terms and conditions determined by an individual arrangement such as an individual agreement or over-award payments. Women are less likely to have their terms and conditions set by individual arrangement than men (31.3% compared to 42.4%, see Table 6.1). Although enterprise agreements and individual arrangements typically provide for higher average wages than awards, organisations that are not award-reliant still refer to the structures and rates of pay in awards, even where they pay wages that are above the award rate.[10]

Women are increasingly dependent on awards to set their wages and conditions and are more reliant on such instruments than men (28.9% compared to 19.6%). As Table 6.1 indicates, data from 2016 show that 24.5% of all workers have their pay set by awards, rather than collective agreements (38.9%) or individual arrangements (36.6%). Permanent part-time and casual workers, both female and male, are more likely to be dependent on an award, rather than a collective agreement or individual arrangement, compared to permanent full-time workers.

A breakdown of award reliance by sex and type of employment is not available prior to 2016. However, tracking award reliance by industry over time shows both growing and higher levels of award reliance in female-dominated industries than in male-dominated ones. In health care and social assistance, for example, award reliance has increased since 2008 from 17.2% to 28.8% in 2016.[11] 2016 data also show that women in feminised occupations are more likely to be award-reliant. Of community and personal services employees, 39.2% are award-reliant.

Table 6.1: Method of setting pay, non-managerial employees, by type of employee (%)

Source: ABS 2017b.

Employment type	Awards only	Collective agreement	Individual arrangement	All methods
Males				
Permanent full-time	13.6	37.8	48.6	67.8
Permanent part-time	20.3	56.2	23.5	10.0
Casual	37.9	30.0	32.1	22.2
Total (%)	19.6	37.9	42.4	100.0
Total ('000)	869.8	1678.3	1878.3	4426.5
Females				
Permanent full-time	20.2	37.2	42.7	42.7
Permanent part-time	22.8	53.3	23.9	30.5
Casual	49.9	28.7	21.4	26.8
Total (%)	28.9	39.8	31.3	100.0
Total ('000)	1406.3	1937.2	1320.1	4863.6
Persons				
Permanent full-time	16.3	37.5	46.2	54.7
Permanent part-time	22.2	54.0	23.8	20.7
Casual	44.8	29.3	26.0	24.6
Total (%)	24.5	38.9	36.6	100.0
Total ('000)	2278.1	3615.5	3398.5	9290.1

Award reliance also has consequences for the take-home pay of different types of employees. In several awards in feminised industries, casual employees are not entitled to any additional pay for working unsocial hours. Part-time workers are likewise not entitled to overtime pay where they work over their guaranteed minimum hours up to full-time hours. By contrast, part-time employees in male-dominated awards such as manufacturing are entitled to overtime as soon as they work above their minimum hours.[12]

Why is gender pay inequity persisting?

Addressing the gender pay gap requires reform in a number of areas. A key contribution to the persistence of gender pay inequity is the failure of existing labour law provisions, including those designed to support gender pay equity. Reform is failing women and increasingly so. The purchasing power of the minimum wages provided by awards is falling. Wages have not kept pace with average weekly earnings and women remain underrepresented in enterprise bargaining and other higher-wage arrangements. Under the *Fair Work Act 2009* (the 'Fair Work Act'), the Fair Work Commission is required to take account of the principle of equal remuneration for work of equal or comparable value in setting and adjusting minimum wage rates.[13] However, this objective has not featured significantly in the Commission's minimum wage rulings, other than the Commission noting the complexity of addressing equal remuneration by way of the minimum wage review. This has included various assessments of the impact of increasing minimum wages on the gender pay gap and concluding also that there were more direct measures in the Fair Work Act to address equal remuneration.[14]

Labour law provisions designed to modernise awards have not been used to take up the opportunity to revalue feminised work and address those working time standards that disadvantage part-time and casual workers. The provisions in Part 2-7 of the Fair Work Act that enable the Commission to make equal remuneration orders have been successfully used on only one occasion. This lack of success has exercised a chilling effect on likely applications. The Commission has enforced a standard where women are required to prove their claims by comparing their pay to male benchmarks, significantly reducing the opportunities for women to make equal pay claims. Further, the poorer access women have to enterprise bargaining, as well as inadequate oversight mechanisms of proposed enterprise agreements, have limited any progress towards equal pay. The gendered outcomes of enterprise bargaining, together with the failure of award modernisation and the federal equal remuneration provisions to deliver fairer pay outcomes for women, are taken up below.

Award modernisation

The reliance of women on awards makes the outcomes of award modernisation particularly crucial for women. Award modernisation came out of the move to a national industrial relations system and has comprised three main stages. The first stage, effectively completed by December 2009, was the processes that resulted in the creation of 122 modern awards operating on an industry or occupational basis — a reduction from 1500 prior federal and State awards of this type. This stage also dealt with the issue of transitional provisions in modern awards, a process of phasing out and reconciling differences in wages and conditions between former federal and State instruments. The second stage came out of a legislative requirement to review whether modern awards were operating effectively and took place in 2012-13 (the interim review). The third phase is a four-yearly review of modern awards. The first of these reviews commenced in 2014 and is still ongoing. It has included proceedings to deal with common issues across awards, including penalty rates, casual employment, part-time employment, family and domestic violence, and family-friendly work provisions.

Award modernisation has had a limited capacity to revitalise awards, or to address the valuation of feminised work and the gendered architecture in working time standards that favour permanent full-time employment.[15] The process has been characterised by multiple agendas. It has been conducted in an environment where there has been significant negative focus on awards as an impediment to business, including through the Productivity Commission's 2015 inquiry into the workplace relations system. While the award system was recognised by the Productivity Commission as providing an industry safety net, the Commission also criticised the awards then in force, viewing them as inflexible, ambiguous relics of a previous era.[16]

From the outset, the process of award modernisation has been consumed by the sheer technical scale of the project. It has included complex matters of demarcating award boundaries along industry and occupational lines, and deploying transitional provisions to phase in and align provisions.[17] There was limited scope for award variations and these mainly only addressed technical and drafting issues. Even so, the task of aligning federal and State awards worked to undermine key advances in addressing gender pay inequity by State jurisdictions.[18] Because of the huge task involved in reducing a large number of State- and federal-based awards to just 122 awards, key points of principle and inconsistencies with the National Employment Standards (NES) were deferred to the four-yearly review.[19]

A further constraint on the capacity of award modernisation to address the gender pay gap, particularly through the 2012 interim review and the current four-yearly review, has been the contest over the retention of key award conditions critical to award-reliant workers. Award modernisation proceedings have been used by employer organisations to seek reductions in penalty rates, minimum hours of engagement, and part-time workers' access to overtime. Several of the employer claims were ultimately unsuccessful and, following applications by the ACTU and relevant unions, some protections for certain groups of casual and part-time employees were improved. Nevertheless, the Fair Work Commission also varied key hospitality awards to allow the employer greater flexibility in rostering the hours of part-time employees.[20] Further, in relation to awards covering the feminised aged care and disability services sector, the Commission flagged its preparedness to revisit employer claims for more 'flexible' part-time provisions once major sector reforms had been fully implemented.[21]

As noted above, several unions claims have been successful in achieving some improvements in working conditions. However, with the strong push by employer groups to weaken existing award minima, many unions have had to focus on the defence of these minima, whatever their inadequacies. This means that there has been limited opportunity to reassess more broadly the operation of award mechanisms that are critical to conditions of employment for women, including working time provisions. In focusing on specific common claims or on proposed changes to individual awards, little attention has been paid to whether, and how, award working time standards might work to the general disadvantage of part-time and casual employees, the majority of whom are women. Further, in awards in feminised industries, such as in social care and retail, there has been no attempt to address the profound undervaluation of the required skills in the wage classification structures so as to assess whether work is adequately described, classified and valued.

The conduct of the award modernisation process has worked against improving gender pay equity through the erosion of some working time conditions, such as for part-time employees in the hospitality sector, and the difficulty of building on or improving award conditions. In the long-drawn-out review that started in 2014 there has been no attempt by any of the parties to address the consequence of gendered undervaluation of work and the classifications and wages that reflect this — despite the obligations in the Fair Work Act that the Fair Work Commission consider the equal remuneration objective in doing so.

Failure of enterprise bargaining for women

In 1991, the introduction of enterprise bargaining was a dramatic shift to the federal regulatory framework governing industry and workplace conditions. While informal industry bargaining — particularly in respect of over-award payments — had been a characteristic of the previous Australian system, formal enterprise-specific agreements were intended to become the main vehicle to determine working conditions and rates of pay, leaving awards as a safety net only.[22]

From the time enterprise bargaining was first introduced, there were significant concerns about how women and low-paid workers would fare.[23] Evidence from the mid-1990s and early 2000s showed generally poorer outcomes from enterprise bargaining for women when compared to men. This was particularly the case for low-paid workers who were employed in workplaces with low trade union membership and who were employed on a part-time or casual basis, precisely the characteristics of many female-dominated occupations and industries. One of the main early concerns was the negative impact that moving to a more decentralised system of wage fixing would have on gender pay equity.[24] Analysis undertaken as part of a 2009 federal parliamentary inquiry into pay equity suggested that there were far larger gender pay gaps among employees covered by enterprise agreements than for award-reliant employees.[25]

At the same time, there were ongoing concerns about the *exclusion* of women from enterprise bargaining. A 2009 study showed that the employees least likely to be involved in enterprise bargaining were low-paid and low-skilled, as well as part-time and casual employees. While women were over-represented among these groups, it was also the case that, regardless of their labour market position, women were less likely to be involved in enterprise bargaining.[26]

Where enterprise agreements have been reached in female-dominated industries, it is notable that many provide for low wage increases over the award, with trade-offs that offset any wage increases, such as in aged care. Such situations suggest that there are inadequate mechanisms to ensure that parties demonstrate that a proposed enterprise agreement provides for equal remuneration. There is also no mechanism to require parties to provide wage-related information for the employees who are or will be covered by the agreement. In contrast, legislative changes introduced in Queensland in 2016 provided that parties seeking the certification of an enterprise agreement should provide data on the distribution of employees covered by the agreement, the gender pay gap and the projected effect of the agreement on the gender pay gap.[27]

The Fair Work Act introduced an innovative low-paid bargaining stream that was designed to facilitate collective bargaining through *multi-employer* bargaining for low-paid employees who had not benefited from enterprise bargaining, such as low-paid workers in feminised industries. However, after almost a decade of this stream's operation and a narrow interpretation of its potential application by the Fair Work Commission no such agreements have yet resulted.[28]

The coverage of Australian employees by federal enterprise agreements over the period from 2014 to 2018 has been marked by a slow but steady decline.[29] Nevertheless, one of the most significant and lasting impacts of enterprise bargaining and the precedence given to it over awards in the setting of wages and conditions in Australia is that the minimum wage has declined substantially as a proportion of the median wage.[30] Award wage rates have stagnated, with employees on award rates having declining incomes compared with other employees. The greater award reliance of women workers compared to men, as previously shown in Table 6.1, has a direct impact on the gender pay gap.

Failure of the equal remuneration provisions in the Fair Work Act

A key question concerns the failure of that regulation specifically directed to equal remuneration to comprehensively address the gender wage gap. Given that there has been a commitment to equal pay in federal labour law since 1969, why is it that such laws have achieved limited success? As we noted above, while differential wages for women and men doing the same work have been removed, labour laws have been far less effective in addressing the ongoing undervaluation of feminised work and skills. This includes the historical and persistent undervaluation of the skills, competencies and responsibilities associated with 'female' jobs.[31]

The commitment to better equal pay laws has been inconsistent, and regulation has proceeded in a series of fits and starts.[32] In 1969 Australia's federal industrial tribunal adopted the principle of equal pay for equal work, followed in 1972 by the principle of equal pay for work of equal value.[33] These principles were effective in addressing differences in pay where men and women were undertaking similar or identical work, but were less effective where women and men worked in different areas of the labour market. In 1986, the tribunal rejected the concept of comparable worth as a means of applying the 1972 principle.[34] Given the stalled progress in narrowing the gender pay gap, Australia amended its federal industrial relations statute in 1993 to provide for the making of special orders concerning equal remuneration for work of equal value.[35] Equal remuneration was defined to mean a rate of remuneration established without discrimination based

on sex. Despite this legislative focus, no successful cases were concluded under these provisions.[36]

These frailties in federal equal remuneration regulation led to a renewed focus on action at the State level. Following pay equity inquiries in New South Wales and Queensland, the concept of gender-based undervaluation underpinned newly introduced equal remuneration principles under those States' industrial relations laws.[37] In cases brought under these principles, involving child care workers, librarians, dental assistants, and social and community sector workers, tribunals determined new rates of pay on the basis that existing rates did not reflect the value of the work.[38] All applicants had to demonstrate was that gender had contributed to inadequate or incomplete work valuation. They did not have to use male comparators or to demonstrate sex-based discrimination. However, the potential for State-based equal remuneration principles to underpin further cases was limited by the Work Choices and Fair Work reforms. These widened the scope of the federal industrial system and resulted in the transfer of many workers previously covered by State labour laws to the federal system.

The introduction of the Fair Work Act was meant to bring a renewed focus on pay equity, now defined in terms of equal remuneration for work of equal or comparable value. Under Part 2-7 of the Act, the Fair Work Commission is able to issue equal remuneration orders. In the first case taken under these provisions, involving the social and community services sector, the Commission utilised the concept of gender-based undervaluation to assess that the object of equal remuneration was not met. Significant wage increases were awarded.[39] Important to this outcome was the commitment of A$3 billion by the Gillard Government to help pay for those increases.[40]

Despite this outcome, the success of gender-based undervaluation as a regulatory concept has been short-lived. In a preliminary ruling on case involving the early childhood education and care sector, the Fair Work Commission rejected gender-based undervaluation as a means of women claiming equal pay under the equal remuneration provisions of the Fair Work Act.[41] For a claim by a group of women workers to be successful, the Commission decided that applicants must identify a group of male employees, doing work of equal or comparable value, who were receiving higher wages. It is not enough for applicants to show that the work was undervalued, or that the wages did not reflect the true value of the work.[42] The applicants in the early childhood and care case subsequently sought to pursue their application using a male comparator. They requested that the Commission provide a ruling on whether metal trades and related classifications from a manufacturing award would be a suitable comparator group. The Commission subsequently

found that this work was not comparable and the applications were dismissed.[43] Following this dismissal, one of the applicants has sought a determination to vary award rates of pay, on the basis that those rates do not reflect the value of the work. This application will be heard under the 'work value' provisions of the Fair Work Act.[44]

The preliminary decision in the early childhood education and care case, and specifically the insistence that equal pay claims must use a male comparator, have reinforced an inflexible and binary test: women can only claim equal remuneration on the basis of reference to male benchmarks. The requirement also ignores key dynamics in the labour market — that due to occupational segregation, women and men frequently work in different occupations. The Commission did state that claims on gender-based undervaluation could be heard as work value claims, an option that (as just noted) has been taken up by one of the applicants. However, it is important to note that to date gender-based undervaluation has not been typically or routinely addressed in work value cases.

What should we do about it?

Improved access to equal remuneration

Reform to address the persistent gender pay gap is required. In terms of labour law this should include making gender pay equity an explicit object of the Fair Work Act. The provisions in Part 2-7 of the Act need to broaden the grounds for women to claim equal remuneration. An equal remuneration principle should be clearly based on the concept of gender-based undervaluation. It should enable the assessment of feminised areas of work, including in child care and aged care, without depending on a male comparator to do so. Such an approach would enable a direct focus on the historical absence of work value assessments and on the fact that in the past this kind of work has been poorly described or lacked adequate or detailed classification.[45]

Vibrant awards and inclusive National Employment Standards

Australian labour law also requires a more general reset. Currently, awards and the NES are viewed as minimum safety net standards. These assume that workers will be able to negotiate and access higher wages and improved conditions through enterprise bargaining. Enterprise bargaining is favoured in Australian labour law as the primary means of wage fixation. Yet not all workers have equal access to such bargaining. This is particularly problematic for workers in feminised industries with low bargaining power, who are not often covered by enterprise

agreements. Those who are may have lost key working time conditions as part of the bargaining process.

At the same time, the strength and vibrancy of awards, including the purchasing power of minimum wages, have been diminished. The safety net for workers who are award-reliant is, in practice, an inadequate one with too many holes in it.

Modern awards and the NES should not be simply thought of as a bargain basement safety net with the presumption that workers can secure higher wages through bargaining. A cohesive and inclusive framework is required. This would comprise a broad set of improved terms and conditions. While the NES and modern awards cover all national system employees, some provisions in the NES are only accessible for particular types of employment, or are dependent on length of service. Providing fairer skill and classification structures, improved working time conditions, as well as income security and predictability for workers, is vital if we are to address the gender pay gap.

The NES should be revitalised to provide access to paid annual and personal/carer's leave to casual employees. The right to request flexible working arrangements provisions should be strengthened to reduce the length of service required to exercise this right to request (currently 12 months) and to provide a robust appeals mechanism where a request is refused. The NES should also include minimum hours of engagement both for casual and permanent workers and should provide for automatic deeming of employment as ongoing after a period of time in casual work.

Modern awards need to 'unpack' skill classifications, fully describing the skills required by workers in a specific job at a series of skill levels. In many awards covering feminised sectors, skills classifications are rudimentary, lacking both meaningful progression in terms of pay rates and relevant description and specification of what is required in jobs, including at different skill levels. This is crucial in feminised jobs to ensure that the work undertaken is properly recognised and paid for. Increasing the number of steps in skill classifications, with detailed specifications of the skills required at each level and substantive pay increases reflecting additional skill levels, is crucial. Such unpacking would also allow for career progression as workers acquire additional skills through experience or as the work they undertake becomes more complex.

Modern awards should provide the same employment protections for permanent part-time workers as for full-time workers, in terms of the predictability and security of working time arrangements. For example, they should ensure the same rights to overtime for all part-time workers when they work over their

agreed hours, as noted earlier. Fair compensation for working unsocial hours also needs review, complete with an analysis about the impact of the loss of earnings, including through the reduction in penalty rates,[46] on low-paid workers.[47] Finally, clear mechanisms need to be put into place so that the Fair Work Commission's obligations to take equal remuneration into account in its review of awards are actually met.[48]

Collaborative action

While there is some awareness of the gender pay gap in Australia, there is a widespread view that its main cause is individual and 'unconscious' bias in the hiring and promoting of women by employers, which can be remedied by organisational leadership.[49] In contrast, in this chapter we have focused on the *structural* causes of the gender pay gap and on regulation designed to address it.

However, it is also important to highlight the importance of *community and industry action* in both raising awareness of the gender pay gap and achieving practical outcomes in addressing it. One very relevant example is the recent collaborative action undertaken in New Zealand. An inquiry into aged care by the New Zealand Human Rights Commission raised significant community concern about the low wages and poor conditions of aged care workers.[50] A loose coalition was formed of aged care employers, unions, the Human Rights Commission, aged care service users and advocates, the relevant training body, and the government to discuss the issues raised in the Commission's report and to propose action.

The New Zealand government first agreed to ensure that travel time between clients was paid time,[51] and provided significant funding to enable aged care providers to cover these costs. As a result of this funding there was then a move to 'regularise' the hours that aged care workers work. This regularisation has now been put into effect. It will ensure that the majority of workers are employed on guaranteed hours, support training for career progression, and ensure that workers are paid for their required skills, with the introduction of caseloads to ensure safe and fair staffing levels.[52] Finally, an equal pay case initially involving just one aged care worker led to a sector-wide settlement that covers over 55 000 workers.[53] This settlement, underpinned by NZ$2 billion in government funding, provides significant wage increases for aged care workers of between 15 and 50%.

The New Zealand collaborative approach to improving pay in aged care has now flowed to other low-paid and feminised sectors. Given that Australia and New Zealand have very different equal pay 'architecture', what lessons can we draw in Australia from this approach? New Zealand's relatively rudimentary employment standards and individualised equal pay laws have meant that collaborative action

is effectively the only avenue through which to address the gender pay gap in feminised and low-paid sectors. Nevertheless, such action has proved very effective in achieving substantial equal pay outcomes. Importantly, it has also generated a national movement around equal pay, raising community and stakeholder awareness of key structural barriers to equal pay.

Improved equal remuneration provisions in the Fair Work Act and more vibrant awards and inclusive National Employment Standards are key elements of a reformed Australian equal pay legislative regime. The practical realisation of the potential of such reforms in specific sectors, however, will depend on broader engagement and collaboration between the traditional industrial parties (unions and employer associations), as well as human rights commissions, advocacy groups and State and federal governments. As in New Zealand, in Australia agencies such as human rights commissions may be best placed to initiate collaborative action to gain widespread community support to achieve and sustain improvements in gender pay equity in the industrial sphere.

Endnotes

1. 1981-2017 series based on November data. 2018 data based on May 2018 data.
2. See CBCS 1967-1972; ABS 1975. 1981-2017 series based on November data. 2018 data based on May 2018 data.
3. ABS 2017e.
4. See Smith 2015.
5. WGEA 2018: 2.
6. ABS 2016.
7. The rise in care jobs is now well documented. See http://lmip.gov.au/default.aspx?LMIP/GainInsights/IndustryInformation/HealthCareandSocialAssistance (accessed 6 November 2081).
8. NDS 2018: 25.
9. ABS 2017d.
10. Wright and Buchanan 2013: 118.
11. See FWC 2018: 35 (Table 7.1).
12. For example, in the Manufacturing and Associated Industries and Occupations Award 2010 and the Meat Industry Award 2010, part-time employees who are required to work above their agreed hours must be paid overtime (clauses 13.8 and 13.6 respectively). This contrasts with the

Children's Services Award 2010, where part-time workers who agree to work over their agreed hours are paid at ordinary time for up to eight hours, provided the additional time is during the ordinary hours of operation (clause 10.4(f)). Part-time provisions in the male-dominated awards above also contrast with those in the Social Community Home Care and Disability Services Industry Award 2010, where part-time employees, like casual employees, have to work in excess of 38 hours per week or 76 hours per fortnight to be entitled to overtime (clause 28.1(b)).

13. *Fair Work Act 2009* s 284(1)(d).
14. *Annual Wage Review* [2015] FWCFB 3500 at [492]; *Annual Wage Review* [2016] FWCFB 3500 at [545]-[579].
15. Charlesworth and Heron 2012: 178.
16. See Productivity Commission 2015: 11-23.
17. See Stewart 2012: 15-16.
18. See Connolly, Rooney and Whitehouse 2012.
19. See Stewart, McCrystal and Howe 2015: 10.
20. See *4 Yearly Review of Modern Awards — Casual Employment and Part-Time Employment* [2017] FWCFB 3541.
21. *4 Yearly Review of Modern Awards — Casual Employment and Part-Time Employment* [2017] FWCFB 3541at [643].
22. Charlesworth 1997: 101.
23. Charlesworth 1997.
24. Bennett 1994b.
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30. Productivity Commission 2015: 15.
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35. See *Industrial Relations Act 1988* (Cth) (as amended) s 170BB(1).
36. See Smith and Stewart 2017: 124.

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38. See Smith and Stewart 2017: 126-7.
39. *Equal Remuneration Case* [2011] FWAFB 2700; [2012] FWAFB 1000.
40. See Smith and Stewart 2017: 129.
41. *Equal Remuneration Decision 2015* [2015] FWCFB 8200.
42. See Smith and Stewart 2017: 131.
43. *Re Application by United Voice, Australian Education Union and Independent Education Union of Australia for an Equal Remuneration Order* [2018] FWCFB 177.
44. *Re Application by Independent Education Union of Australia for an Equal Remuneration Order* [2018] FWCFB 4433.
45. See Charlesworth and Macdonald 2015.
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47. Work + Family Policy Roundtable 2016: 8-9.
48. As *Fair Work Act 2009* s 134(1)(e) requires.
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50. NZHRC 2012.
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7

Collective bargaining and power

David Peetz

Workers obtain wage increases by having labour market power. This labour market power can be achieved through one of several means. One is what economists like to call the 'laws of supply and demand'. There may be a shortage of particular types of labour (such as workers with specific skills), or of labour generally within the economy (during a prolonged economic upturn).

A second is what is often called 'collective bargaining'. Workers band together to collectively negotiate a wage increase, as together they have more bargaining power than individually. Most commonly they do this through the mechanism of a trade union. There is nothing unusual about this. Owners of capital do exactly the same thing — they increase their income by joining together to form a 'corporation'. Like a corporation, a trade union has a special status in law, though its status is not the same. A corporation has 'limited liability', meaning that individual capital owners cannot be sued for the full value of a corporation's debt. Trade unions and their members are usually exempt from being sued for any loss they cause when taking lawful collective action, though often there are limits to the availability of this immunity.

The existence of the wages crisis has been demonstrated elsewhere in this book. This chapter looks at how declining worker power explains the crisis, giving

special attention to the role of collective bargaining. It considers both the factors directly limiting the achievement of wage increases through collective bargaining, and those indirectly limiting it.

A cylical phenomenon?

First, though, we must consider the 'supply and demand' explanation. Is low wages growth a phenomenon of the business cycle? Unfortunately, this idea that the decline in wages growth is cyclical, rather than structural, does not fit with what we know about the business cycle. Over 2017 and at least the first half of 2018 (when this chapter was written) there had been some fairly steady employment growth, inconsistent with any idea that Australia was in an economic downturn. The unemployment rate declined for some time. In the four years after then Employment Minister Eric Abetz gave an apocalyptic speech warning of a 'wages explosion' in 2014,[1] unemployment fell from 5.8% to 5.5% and the employment to population ratio rose from 60.1% to 61.3%. Yet growth in the wage price index fell from 2.6% to 2.1%, and growth in wages in current enterprise agreements fell from 3.5% to 2.8%.[2] The labour market, if anything, had tightened, yet wages growth continued to decline.

There was once a moderately consistent inverse relationship between unemployment and wages growth (sometimes called the 'Phillips curve'). The unemployment rate indicated the amount of labour market 'slack'. However, the unemployment rate no longer adequately indicates that amount of 'slack'. This is because of the growth of 'underemployment' — people in part-time employment working fewer hours than they wanted to, and sometimes wanting full-time jobs. Underemployment enables employers to obtain more work from existing workers (or those doing part-time work in other firms) without offering higher wages. The long-term growth of underemployment has been documented by the ABS. However, the growth of underemployment is a structural, not a cyclical, phenomenon, so this provides no support for the idea that low wages are a cyclical phenomenon.

Moreover, GDP estimates do not suggest any current or recent recession. Economic growth has generally been around 2-3% per annum in recent years. The global financial crisis, which saw an increase in Australian unemployment, was a decade before this chapter was written. The last time Australia experienced two quarters of negative growth (a common, albeit limited, definition of 'recession') was in the early 1990s. Moreover, low wages growth is a global phenomenon, yet the global economy has been improving for several years (notwithstanding the

imposition of 'austerity' in much of Europe). US unemployment, for example, is at a 10-year low.

Collective bargaining

It is clear that there is something structural going on — and it is not because of a sudden decrease in the skill levels of the workforce, as education and skill levels of the workforce have been consistently increasing over several decades. The focus must turn to workers' ability to obtain wage increases through collectively negotiating.

The declining coverage and impact of collective bargaining

The coverage of collective bargaining has been declining for several years, though for some of that time the decline has been somewhat illusory. The small decline in collective agreement coverage between 2010 and 2014 appears mostly or entirely due to declines in non-union agreement coverage, which was perhaps returning to more historically 'normal' levels after the unusual levels reached during and immediately after the Work Choices era. However, since 2014, there has been a decline in union agreement coverage while non-union agreement coverage appears to have stabilised.[3] Non-union agreement making is an 'illusory' form of collective bargaining because non-union agreements (which are almost unique to Australia) do not represent 'collective bargaining' in the normal sense. While workers may have the opportunity to 'vote' on the content of an agreement, its terms are usually drawn up by management and often without meaningful input from employee representatives.[4]

The coverage drop between 2014 and 2016 (from 41% to 36% of employees in ABS data) was sharper than in previous periods and was most likely related to the longer-term decline in union density that has occurred, seeing that the vast majority of employees on collective agreements are on union-based agreements. (As discussed in Chapter 4 of this volume, there was also a change in the ABS definition of the treatment of New South Wales public sector workers. But that only accounted for one-fifth of the decline in the number of agreement-covered employees and an even smaller part of the decline in their share of total employment.)

Developments in particular industries, including retail and public administration, also had some influence on declining bargaining coverage. Structural change in the labour market only had a small impact on coverage estimates, with the main negative factor being the shift away from public sector employment, while, overall, changes in the industry composition of employment worked in the opposite direction.[5]

The drop in collective bargaining coverage was really a delayed manifestation of the decline in union density that had been occurring, to varying degrees, since the 1990s. Before 2014, the greater decline in union density than collective bargaining coverage suggested an increase in 'free riding' (people obtaining the benefits of a collective agreement without paying the cost of union membership). But it is doubtful that such a thing occurred as a result of employee initiatives. Attitudes to unions and industrial relations are quite stable over time and there is no evidence of a burgeoning of 'free rider' attitudes. More likely, it suited employers better to negotiate with weaker unions when an enterprise bargaining agreement (EBA) came up for renegotiation than to start afresh with a new non-union EBA. This could entail both higher transaction costs and new risks (including that a union, facing the threat of exclusion from an EBA, would run a more effective organising and recruitment campaign than it would if it were still included). Moving from union to non-union 'bargaining' is costly, and so a large benefit is needed to justify it. Employer behaviour in this context will also be influenced by industry norms, such as pressure from other employers or employer organisations. It is often easier just to stick with union bargaining for 'insiders', and outsource the rest. Eventually, though, the risks become so low they no longer matter, or the transaction costs disappear because the employer can go back to the award (especially if the award is more 'flexible' or its pay rates have caught up to those being paid). Alternatively, a new norm or new opportunities emerge to encourage anti-unionism. In the end, the problem of declining collective bargaining coverage is one of declining union density.

The effect of declining union power is not just declining agreement coverage, however. It is also declining wage increases under collective bargaining. Wage increases in current agreements in 2011-12 averaged 3.8%, only slightly below the average over the preceding two decades. After that, however, they fell in successive years so that by 2016-17, the average was just 3.1% (the lowest recorded) and in the first nine months of 2017-18 it was 2.8%.[6] Thus collective bargaining, where it occurs, is having less of an impact on wages. The gap between wage increases in current union and non-union agreements appears relatively stable (around 0.3 percentage points per annum), suggesting that the 'threat' effect of unionism on wages is also declining — that is, employers in non-union firms are offering lower wage increases to their workers as the likelihood that they will leave to go to union firms, or become unionised, declines.

Declining union density is an imperfect indicator of union power. There are other indicators of decline in union bargaining power, however. Most prominent

is the major fall in working days lost per thousand employees through industrial conflict, far below what would be expected simply through the fall in union member numbers (as, in practice, only union members go on strike).[7] The overall pattern of decline in industrial action masks the fact that the decline has been greater in non-enterprise bargaining disputes, where industrial action is necessarily unlawful, than where bargaining is involved. This has been especially true since the *Fair Work Act 2009* ('the Fair Work Act') took effect, even though the distinction between lawful and unlawful action dates back to the Keating Government's *Industrial Relations Reform Act 1993*.[8] Unions have learnt to stick with what the system permits, because that is all they can afford. Employers have increasingly pushed back against illegal action. As they have done so, they have found unions not as strong as they used to be.

The decline in strike action shows a decline in union willingness to demonstrate power both to employers and to their members. Strikes (and more recently ballots) have been used as a show of intent and capability. Historically, most strikes never directly led to a resolution; they were simply a show of strength. Likewise, most ballots today never lead to industrial action, as employers know what will happen and concede enough at an early stage to prevent the ballot proposals being implemented.[9] The decline in unions' ability and willingness to show intent is a symptom of weakness: it is not just anti-union laws that have led to this, but also weak union power.

Declining union density and power have been found to explain stagnating wages in the UK,[10] and widening inequality across a number of countries, at least up until the mid-1990s.[11]

According to prominent labour economist and former Deputy President of the Australian Industrial Relations Commission, Joe Isaac:

> [T]he decline in union power has created a new balance of industrial power in the labour market, with employers able to determine no wage increase or an increase less than their profits would warrant, with less resistance from workers and unions. Furthermore … in many cases employers are able to squeeze pay and conditions below award prescriptions. Given the weakness of institutional/organised pressure to raise wages or to resist downward pressure on wages, given also the inadequate policing of the observance of legal entitlements, it is not surprising that wages growth has been low. It is doubtful that the prevailing imperfect labour market would on its own enable wages to grow in line with productivity as was generally the case in earlier years — except perhaps under conditions of excess demand for labour.[12]

Institutional and legal influences on worker bargaining power

It seems odd that union power could have declined so much under the Fair Work Act, as it was legislation enacted by a Labor government. Two factors here are important. When the Act was introduced it was flawed but misunderstood; and interpretations of the key provisions have given a different meaning to the Act and promoted employer strategies that previously were avoided.

When the Fair Work Act was introduced, it largely replicated, with only minor variation, the extraordinarily detailed provisions on collective bargaining and industrial action that had existed under the legislation it replaced, the *Workplace Relations Act 1996* ('the Workplace Relations Act'). Thus, the Fair Work Act contains extraordinarily detailed provisions on what a union must do in order to undertake lawful industrial action. These include 22 pages, containing 35 sections, outlining the steps to be followed in undertaking secret ballots on industrial action. Australia is not alone in having secret ballots for this purpose. They were introduced into UK law by the Thatcher Government, and can be found in various forms in Brazil, Fiji, Greece, Iceland, New Zealand and most Canadian provinces. However, the Australian provisions are noteworthy for their length and specificity, and the opportunities they provide for employers to intervene. While not quite as extensive as those imposed under the Work Choices amendments to the Workplace Relations Act, the current provisions take up far more space than in the comparable UK statute. The provisions on collective agreements take up another 75 pages (90 sections) of the Fair Work Act, and those on industrial action (which can only lawfully be taken in negotiation of a collective agreement) occupy another 46 pages, including those on secret ballots but not counting those relating to remedies and enforcement.

To be fair, the inadequacies of the Fair Work Act were less obvious to the parties at the time it was introduced. While some unions criticised it as being 'Work Choices lite', employers claimed that it gave too many concessions to unions. Overall, it seemed more balanced than it has turned out to be, partly because each side got what it most wanted. Unions won on the issues that they had focused on in the 'Your Rights at Work' campaign preceding the 2017 election. Those were individual contracts (Australian Workplace Agreements were abolished) and unfair dismissal (employers lost their short-lived ability to dismiss workers for any cause in a small or medium enterprise with 100 or fewer employees, or for 'operational' reasons in a firm of any size). Employers won on many of the procedural and penalty issues associated with industrial action and collective bargaining. Whether the unions' focus was misplaced is a moot point, but unions continued to have to jump through many procedural hoops to undertake legal industrial action.

For example, there remained numerous opportunities for employer intervention through the Fair Work Commission; collective bargaining remained confined to matters defined as being within the employment relationship (contrary to a Labor promise before the 2007 election); and sympathy action remained virtually impossible.

Moreover, one of the largest inconsistencies between Australian and international practice remained. Australian law effectively prohibits industrial action in support of a multi-employer agreement. The extent to which, in practice, bargaining takes place at the enterprise, industry or national level or in some hybrid form is something that varies between countries. Within countries, it also varies over time. It is rare, however, for the state to legislatively proscribe industrial action at a particular level. In Australia, it was part of the momentous shift from awards to enterprise bargaining as the main system of pay determination in the early 1990s. This was portrayed, amongst other things, as the way to boost Australian productivity growth, though there is no evidence that it had this impact in any sustained way,[13] nor that workers have been able to share in any subsequent improvements in productivity levels.[14] The current arrangements conflate two issues arising from that time: moving wage determination from tribunals to the parties; and moving it from multiple levels to a prescribed single level, the enterprise (or a unit thereof). The first was consistent with international norms; the second was not.

Prohibiting multi-employer bargaining limits employee choices and reduces employee power. This is especially so in recent times, when many large organisations have sought to outsource or otherwise divest themselves of accountability for functions previously undertaken within the organisation. When employees are required to negotiate with their direct employer, they can deal only with the 'monkey', not the 'organ grinder'. Often, the employees concerned are in precarious jobs and in no position to bargain, anyway.

Employees' bargaining power is virtually eliminated (they are prevented from lawfully striking) if an agreement can be said to exist that covers those employees. This is true even if it has been made by other employees or if its content is irrelevant to the matters in dispute. Thus, some employers have extended a low-wage arrangement, originally 'agreed' to by a handful of workers, to an entire workplace, sometimes distinct from the original locale of the agreement.[15] Whether they have succeeded in the attempt has depended on the circumstances of the case and the views of the Fair Work Commission at the time. Other employees have been unable to respond to redundancies or reorganisations because an agreement that makes no mention of them is still 'in force'. By contrast, many countries imposing a 'peace

obligation' after an agreement has been signed do not extend that obligation to matters not covered by the agreement.

Several other deficiencies in the legislation have only become obvious with tribunal or court interpretations since the Fair Work Act was passed. Two stand out as significant. The first is the ease with which an agreement can be terminated, and the consequences of termination. Since a case in 2015,[16] employers have been able, without effective impediments, to terminate an agreement after its 'expiry' on application to the Fair Work Commission, if a replacement one has not been negotiated. After the agreement is terminated, the legally binding terms and conditions can revert to the award. This is in contrast to the situation in most other countries, where the former agreement continues in operation until a replacement is negotiated. The potential for termination greatly changes the balance of power in any renegotiation. The starting point for discussion is 'what exists' at that point in time, and if that is the conditions in the underpinning award, rather than in the EBA (which in most industries, other than retail and hospitality, are well above the award) then the bargaining powers of the parties are very different. Few employers have used this tactic of reverting conditions to the award, and where it has happened it has been applied only selectively (for example to redundancy provisions). However, the threat of it clearly has a psychological impact on the parties and a 'chilling' effect on employee expectations and power.

A second deficiency is employers' ability to successfully seek termination of industrial action, where it may cause inconvenience to other parties. Recent decisions of the Fair Work Commission have made it very easy for employers to do this, citing potentially harmed third parties (such as students who are awaiting exam results or who are anxious about their travel arrangements to their university).[17] This largely defeats the purpose of strike action — it would hardly be effective if it inconvenienced no-one. Yet employees here do not have an instant right to arbitration of their claim — and if it is arbitrated, there is little guarantee they would get the same outcome as if they had been allowed to pursue strike action.

The result of these and other restrictions on collective bargaining and industrial action is that Australia's industrial legislation is in breach of international standards agreed multilaterally by multitudinous countries through the International Labour Organization.[18] That is, employees' free bargaining power is reduced below internationally accepted benchmarks by our legislative arrangements and the legal interpretations of them. This is *not* part of an international pattern. The trend over the past four decades has been, if anything, to enhance the right to strike in many more countries than it has been to narrow it.[19] When Labor introduced enterprise bargaining in the early 1990s, the facilitative legislation was seen as enabling a

legitimate right to strike, while ensuring that strikes were, in effect, legitimate interest disputes, with rights disputes handed by the tribunal. Secondary boycotts were to be dealt with through the industrial tribunal, not the courts. The outcome in recent years has been far from this ideal.

The economic context of power

The legislative deficiencies affecting collective bargaining detailed above help explain part of the reason for the Australian crisis in wages growth. But the loss of worker power goes beyond these factors. If all of the deficiencies were remedied, worker power would still be less than it was in earlier decades. This is because of structural changes in the location of economic power. These structural changes are not unique to Australia, and their ubiquity helps explain why slow growth in wages is not a uniquely Australian phenomenon.

At the heart of these structural changes is the reorganisation of capital, in a process often referred to as 'financialisation'. Financialisation is the process through which an increasing share of economic activity is undertaken by banks, insurance companies, hedge funds and other financial institutions. In turn, these organisations' decisions and preferences play increasingly important roles in shaping the behaviour of other economic actors. Financialisation enhances the mobility and mobilising power of capital but restrains that of labour, leading to a structural shift in income distribution away from wages towards profits and executive remuneration.[20] Decisions are increasingly made by reference to their effect on monetary returns.

The logic of financialisation discourages accommodation by corporations of union and employee interests.[21] A simple example of how financialisation affects workplace accommodation is the recent case of the Rockpool Dining Group which, some time after it had been sold to a private equity group, was found to be 'saving millions of dollars a year from unpaid wages, with senior managers and chefs saying its profits are based on the systemic exploitation of workers'.[22]

Through financialisation, economic resources have been redirected from labour, and from parts of industrial capital, to finance capital. This is not because more finance work actually needs to be done — finance employment as a share of total employment has declined since the beginning of the 1990s. The share in national income of labour income in the finance sector has declined, as has the share in national income of labour income more generally. The share in national income of finance capital income, by contrast, has increased over the same period.[23]

Industrial capital has responded by increasingly shifting to 'not there' forms of organisation that concentrate power and profits in a small group of corporations

within a particular industry. These corporations in turn mimic the effects of financialisation, enabling firms at the top of the capital chain in an industry to enjoy high profits while other firms face pressures on their margins, and wages and labour shares are depressed. 'Economic rents' are no longer captured by capital and labour in 'protected' industries but instead are captured by rentiers in finance capital and chief executive officers. Economic rents are moneys earned that exceed that which is economically or socially necessary to achieve the production of a particular thing. Reductions in relative wages and profits in industries subject to heightened cost competition are countered by increased profits in quasi-monopolies and in finance capital, even though no more labour resources are needed for the financial sector to perform its function. (Likewise, increased institutional power for chief executive officers increases rents they receive above anything socially necessary for them to undertake their function, but this is a matter for another chapter.)[24]

Financialisation not only diminishes the collective bargaining power of workers and reduces the labour share of national income, but also diminishes the incomes and power of many peripheral parts of industrial capital itself — particularly those parts employing precarious labour of one form or another. So the precarious workers who might, if they are brave enough, seek to negotiate with these peripheral corporations find that there is little to negotiate over. Changes to collective bargaining laws might improve their prospects but they will not overcome the inherent imbalance of power in that restructured economic relationship.

Financialisation has itself promoted, and been promoted by, the policy process often known as 'neoliberalism'. This is a set of policies designed to promote 'markets' and 'competition'. Financialisation and neoliberalism have also promoted a set of labour market arrangements that shift the balance of power, beyond those relating to the Fair Work Act itself. The growth of contractor or labour hire firms (for example, in mining and manufacturing), franchises (as in retail and hospitality), 'spin-off' firms (for instance, in communications) and public sector contracting-out have in turn encouraged the growth of precarious work. This encompasses casual work, 'permanent' workers with lower job security, underemployment, or even the hiring of what are purported to be 'independent contractors'. This has promoted the flexibility demanded by these firms but precarity for the workforce. With precarity comes greater potential for victimisation, less likelihood of being able to secure the collective support of fellow employees in pursuing collective action, and therefore less likelihood of people forming a union or engaging in collective bargaining. Union density amongst casuals is little more than a quarter that amongst 'permanent' workers.[25]

The emphasis on maximising financial returns and minimising costs, in an era of neoliberal policy, has also promoted the growth of temporary migrant

employment with visa conditions that give great power to employers of temporary migrant labour. This facilitates power imbalances that promote the underpayment of workers (that is, pay and conditions below legally binding minima).[26] While there is no time-series evidence on changes in rates of underpayment, new models of corporate organisation have heightened incentives for cost minimisation, and concern about underpayment has been heightened in recent years through a series of exposés and studies.[27]

Reversing the crisis in employee power

The crisis in Australian wages is really a crisis in worker power. Part of the solution lies in changing the rules around which bargaining and wage determination operate, to remove the bias against employees (a bias often referred to as 'controlling union power'). In particular, Australian industrial laws need to be made more consistent with international norms on the right to strike and on collective bargaining. These laws and precedents introduce distortions into the bargaining process that give capital an advantage it would not normally have — that is, they transfer rents from labour to capital.

Thus bargaining procedures should be simplified and complexities removed. The right to strike should be reinstated as the default position, with specific exemptions drawn up where such a right clearly should not exist (for example, where there is an agreement in place covering the same issue and the same workers). If secret ballots are to be retained, the responsibility should fall on the union, not the Fair Work Commission or employer intervenors, to ensure that they happen. Prohibitions on multi-employer bargaining should be removed. The terms and conditions under agreements should continue after they are terminated, until a replacement agreement is negotiated.

Industrial laws also need updating to account for changing economic structures. An employer should not be able to avoid accountability simply by new forms of organisation. Franchisors and other corporate forms at the top of a 'capital chain' should not evade liability for underpayment lower down the chain simply because they did not know or were not expected to know about such underpayments.

The challenge goes deeper than this, however. Restoring employee power, and the potential for significant wages growth, also requires changes in broader economic structures. It means reducing the seemingly untrammelled power of the financial sector, and the incentives that drive anti-social behaviour. It means reducing the growing, quasi-monopoly powers of the substantial corporations (though they might not all employ so many workers) at the top of the capital

chain in each industry. In short, it requires a set of policies that are beyond what can reasonably be discussed in this book — it is a book in itself. The required changes constitute no small task. The wages crisis, after all, is not a crisis for those who benefit from low wages.

Endnotes

1. Abetz 2014.
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4. Peetz and Yu 2017.
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6. DJBS 2018 and previous years.
7. ABS 2018c; Isaac 2018; Stanford 2018a.
8. Peetz 2016.
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10. Rosenfeld, Denice and Laird 2016.
11. Jaumotte and Buitron 2015; Addison 2014.
12. Isaac 2018.
13. Peetz 2012.
14. Cowgill 2013; Isaac 2018.
15. See, e.g., *CFMEU v John Holland Pty Ltd* [2015] FCAFC 16.
16. *Re Aurizon Operations Ltd* [2015] FWCFB 540.
17. See, e.g., *Sydney Trains v Minister for Industrial Relations* [2018] FWC 632.
18. McCrystal 2010.
19. Peetz 2016.
20. Stilwell and Jordan 2007.
21. Thompson 2010.
22. Schneiders and Millar 2018b.
23. Peetz 2018.
24. See Chapter 10 of this volume. On determinants of executive remuneration, see Peetz 2015.
25. ABS 2017a (Table 18.1).
26. See, e.g., Schneiders and Millar 2015.
27. More detail in this volume about underpayment is in Chapter 12; about temporary migrant workers in Chapter 13; and about new forms of 'not there' corporate organisation in Chapter 11.

8

Public sector austerity and its spill-over effects

Troy Henderson

This chapter describes the impact of public sector austerity in Australia in recent years, with a particular focus on its spill-over effects on broader labour markets. The chapter begins by reviewing the traditional justifications for public sector austerity — arguments that, since the Global Financial Crisis (GFC) and the Great Recession, have increasingly been called into question. The next section of the chapter outlines several specific austerity policies that have been applied to public sector employment and wage determination in Australia. These mechanisms have included the privatisation of public services, marketisation of public services, outsourcing of public sector work, downsizing of public services and administration, the application of so-called efficiency dividends to departmental budgets, and explicit caps on public sector wage growth. The chapter then considers the 'chilling effects' that these forms of public sector employment and wage austerity have had: not only directly on public sector employment and remuneration, but also indirectly on broader labour market outcomes (including in the private sector). These spill-over effects are especially visible in the years since the end of the mining investment boom around 2012 — which is exactly the time period that witnessed the unprecedented deceleration of overall wage growth in Australia.

The final section of the chapter makes the case for treating public sector employment and wage decisions as both a key instrument of macroeconomic

policy, and a means to creating a 'good society'. The chapter concludes with several specific policy recommendations that, if implemented, would constitute a decisive break with the logic and practice of public sector austerity, and would help to ameliorate the broader problem of wage stagnation in Australia.

The logic of public sector austerity

Public sector austerity has been a key facet of neoliberal policy making in Australia for decades. Austerity can be defined broadly as a suite of policy mechanisms aimed at reducing the fiscal and economic footprint of the public sector, while changing the ways in which social services and public infrastructure are provided. The core theoretical justification for public sector austerity centres on the claim that private firms, markets and competition are inherently more efficient than the direct public provision of goods and services. This superior efficiency, the theory asserts, should benefit consumers by way of lower prices and/or lower taxes for the goods and services they consume. The economy can thus be strengthened by reducing the footprint of government and public services, including reductions in public sector employment and compensation.

There are ancillary justifications provided for austerity policies, including the purported 'crowding out' effect of public sector investment on the private sector, and 'public choice' theory (which posits a link between self-interested bureaucrats and politicians and unsustainable growth in public expenditure).[1] Most commonly, austerity policies have been introduced in response to an apparent 'fiscal crisis', manifested in large budget deficits or growing public debt. These fiscal conditions are often described as a state of 'emergency' for which the only possible response is the imposition of public sector austerity.

Since the 1980s, public sector austerity has become a default policy setting for many governments in Australia, at both the Commonwealth and the State level, and in essence has become a 'conventional wisdom' in Australian politics and policy. The assumption that government has become 'too big', and that fiscal issues must be solved by shrinking it, is unchallenged in many circles. As Cahill and Toner suggest:

> Markets have become the preferred means of delivering public amenities, and a general aversion to direct government service provision sits alongside rhetorical fidelity to 'slimming the state'.[2]

In the aftermath of the GFC and the Great Recession, the neoliberal economic framework has lost much of its credibility, but its policy prescriptions have nevertheless proved stubbornly resistant to change. Nowhere is this entrenched character of neoliberal public policy more evident than in the case of public sector

austerity. However, this policy priority has had very mixed effects in Australia, even judged against its own criterion: namely, a desire to reduce deficits.

Austerity has been applied in an inconsistent and highly politicised fashion in Australia. Governments selectively invoke looming fiscal 'crises' to justify particular budgetary or programme policies which would otherwise be considered unacceptable by the broader population. Yet fiscal constraints rarely stand in the way of implementing costly policies by these same governments (such as tax cuts, tax preferences for various forms of private business, major defence purchases, and others) which are considered more legitimate or desirable by conservatives and the business community.

Apart from the inconsistent application of austerity policies, the credibility of these policies has also been damaged by their lack of success in resolving fiscal problems in Australia (and even more glaringly in other countries). Despite years of fiscal restraint and relative (and often absolute) government downsizing, Australia's budget deficits remain significant. This is in large part due to the negative side effects of austerity on broader macroeconomic conditions (sapping employment, incomes and aggregate demand). The resulting negative impacts on economic growth simultaneously undermine governments' fiscal balance (which rises and falls automatically with the state of the macroeconomy, independently of discretionary fiscal decisions). We will explore these negative spill-over effects in detail in this chapter, with a focus on austerity measures applied to public sector employment and wages.

The policy mechanisms of public sector austerity

Public sector austerity includes a toolkit of policies that have been repeatedly implemented at the federal and State/Territory levels of government over the past few decades. They include privatisation, marketisation, outsourcing, downsizing, so-called efficiency dividends, and public sector wage caps. These mechanisms intersect — and overlap — in a multidimensional effort to reduce the relative economic footprint of the public sector in the Australian economy, changing the way social services are delivered to Australians, and undermining the effectiveness of the public sector as a stabilising macroeconomic policy tool.

Privatisation runs the full spectrum from selling off large state-owned enterprises (such as the Commonwealth Bank, Qantas and Telecom) and natural monopolies (airports, ports, toll roads, electricity generators), to the sale of relatively small public institutions (such as land registries and government mints). Marketisation is a form of quasi-privatisation in which previously publicly provided services are transformed into privately provided services that still depend on public

funding (provided through subsidies to producers or consumers, and/or direct operating grants) as a normal state of affairs. Examples here include employment services, aged care, disability services, vocational education and training, health care and prisons.

Outsourcing is complementary to the marketisation/public subsidy model. It consists of the increasing use of private firms to provide a range of services and inputs for public sector activity and programmes that were previously performed in-house. For example, private consulting to government has become big business at all levels of government — throwing into doubt the claim that it is a way for government to save money. For example, the 18 largest federal government departments spent A$1 billion on contracting and consulting in 2014-15. That was a A$205 million increase in one year, nearly double the A$109 million the government claimed to have saved by cutting staff in the same period.[3] Over the last six years, the four largest accounting and consulting firms — PwC, EY, KMPG and Deloitte — alone have won more than A$3.1 billion in federal government contracts.[4]

Downsizing is a term familiar in corporate management practice, but it is increasingly applied in the public sector. In its simplest sense, downsizing implies reducing the number of staff in a particular government department or agency (such as CSIRO, the Australian Bureau of Statistics, the Australian Taxation Office or the Department of Human Services), or abolishing a department/agency/service altogether. But downsizing can also be interpreted as the process of reducing the relative size of the public sector in general: an object and outcome of public sector austerity. For example, public sector employment as a share of total employment has declined from 30% in 1987 to between 14-16% today.[5]

The erosion of public sector employment in recent decades is the composite outcome of several of the trends discussed above: privatisation, marketisation, outsourcing, and the downsizing of the public services and programmes that remained. This decline in public sector employment directly reduced the economic footprint of the public sector, and hence reduced the proportionate impact of public sector employment and compensation on overall labour market averages. Moreover, that effect is exacerbated by the fact that public sector employees tend to earn higher average wages than wage levels in the broader labour market (and hence the impact of downsizing on total compensation is even larger than its impact on headcounts). For example, one recent study found that

> [a]fter controlling for observed characteristics and individual fixed effects, we show that on average workers in the public sector earn about 5.1% percent more hourly wages than those in the private sector.[6]

So-called efficiency dividends are another tool of fiscal austerity: a blunt policy mechanism to reduce public sector expenditure. They generally involve

imposing arbitrary annual and ongoing budget cuts on government departments and agencies, assumed to motivate ongoing improvements in the real efficiency of delivering those services. At the federal level, the idea of an efficiency dividend was first introduced in the late 1980s. It was justified as an attempt to impose private sector discipline on the public service. Since its inception, subsequent federal budgets have maintained the practice, with the efficiency dividend rate fluctuating between 1% and 4%, with various exemptions.[7] Efficiency dividends have also been adopted by various State and Territory governments.

Finally, public sector wage caps have become a prominent and common mechanism of public sector austerity in Australia. These policies impose some arbitrary limit on the growth of public sector remuneration — capping wage or labour cost increases to, say, 2% per year.

Table 8.1 summarises wage caps that have been imposed by governments in various jurisdictions since the GFC. These wage caps are typically enforced by legislative measures that limit or eliminate normal collective bargaining processes and labour rights. This willingness to suppress normal wage-setting processes contradicts both traditional practice and international norms.[8] While wage caps are typically implemented during times of budget deficits, justified as a fiscal necessity, they usually remain in effect even as fiscal pressures ease.

Table 8.1: Public sector wage caps

Source: Author's compilation from budget documents and media reports.

Jurisdiction (Effective Date)	**Annual Wage Cap**
Commonwealth (2014): Wage Bargaining Policy	4.5% over three years; replaced by 2% per year
New South Wales (2011): Public Sector Wages Policy	2.5% per year
Western Australia (2014, 2017): Public Sector Wages Policy Statement	Wages capped at change in Perth CPI; replaced by maximum increase of A$1000 per worker
South Australia (2016): State Budget	1.5% per year for three years
Tasmania (2013, 2016): Public Sector Union Wages Agreements	2% per year
Northern Territory (2017, 2018): Public Sector Wages Policy	2.5% per year; replaced by 2% in 2018

The labour market spill-over effects of austerity

Public sector austerity has been a feature of policy making in Australia for several decades. However, its features and effects take on added economic and social significance in times of broader macroeconomic weakness, unemployment and underemployment. That is when the stimulative benefits of public spending (on both current public programmes and services, and investments in public capital and infrastructure) play a particularly important role in supporting aggregate demand, employment and incomes.

Weakness in broader economic conditions naturally produces larger budget deficits. Since tax revenues decrease with reduced employment, income and spending, and some forms of public spending (such as for income support programmes like Newstart) automatically increase during tough economic times, deficits naturally arise during macroeconomic slowdowns. This automatic fiscal response to slower growth or recession actually helps stabilise overall economic conditions, by supporting aggregate demand despite the downturn in private sector activity. But some governments, more concerned with fiscal balance than with overall economic stabilisation, respond to this normal (and healthy) deterioration in fiscal balances with austerity measures, in an often fruitless attempt to reduce the deficit. This will tend to exacerbate the macroeconomic downturn, since the effects of public sector spending cuts are now layered over the initial recession. It can even backfire in fiscal terms, since the macroeconomic side effects of ill-advised austerity further undermine government revenues.

A case study in the self-defeating consequences of austerity is provided by Australia's experience with wage caps and other restrictive policies imposed on public sector workers in the wake of the emergence of persistent deficits earlier in this decade. The near recession associated with the GFC in 2008-09 caused significant deficits at the Commonwealth and State levels. In addition to the normal deficits that would be expected in a downturn, proactive stimulative measures taken by governments (especially the Commonwealth government at the time, which quickly implemented a powerful stimulus package in response to the global downturn) resulted in even larger deficits. The macroeconomy and the broader labour market recovered relatively quickly after the GFC, in part thanks to the stimulus policies. By 2011 unemployment had returned to normal levels, wage growth had recovered and GDP growth was accelerating.

At that point, however, austerity policies were introduced by several Australian governments, as an urgent response to supposedly 'unsustainable' increases in public debt. The side effects of that pre-emptive austerity undermined the post-GFC recovery in private sector wage growth.

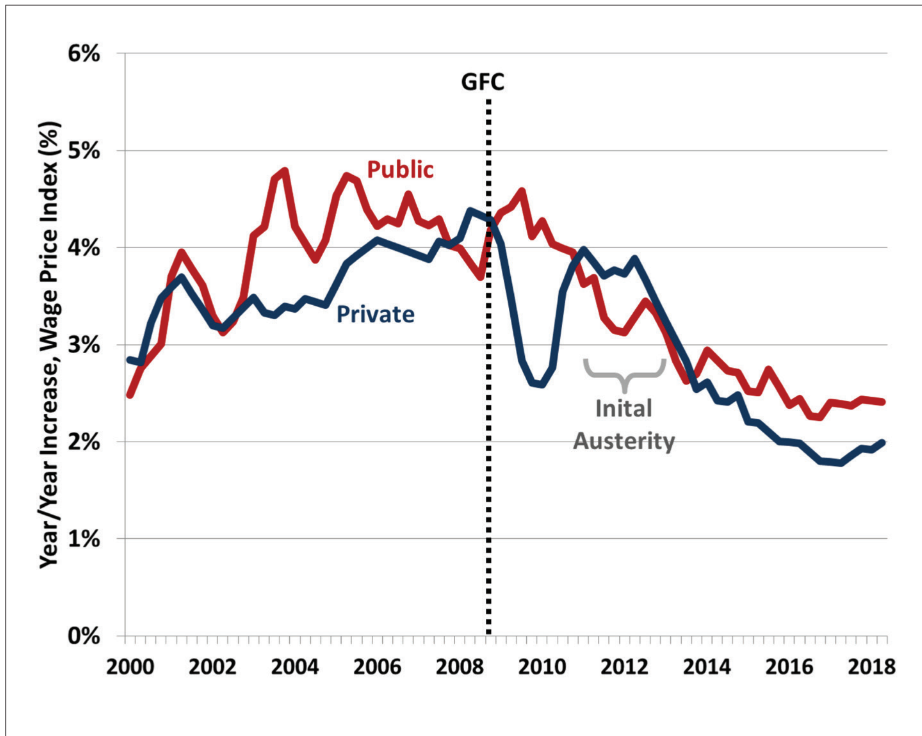

Figure 8.1: Private and public sector wage growth

Source: ABS, Wage Price Index, Cat no 6345, Table 1, seasonally adjusted data.

This history is visible in Figure 8.1, which depicts wage growth in the public and private sectors on the basis of the ABS's Wage Price Index (WPI) — the most commonly reported 'headline' measure of wage trends. Private sector wage growth plunged dramatically during 2009 and 2010, a perhaps understandable response to the sudden macroeconomic weakness. Public sector wages, in contrast, continued growing at their pre-crisis rates: in excess of 4% per year. That sustained wage growth in the public sector incrementally strengthened overall labour market and aggregate demand conditions, reinforcing the expansionary effects of the government's stimulus package. A quick macroeconomic rebound underpinned a quick recovery in private sector wage growth, which rebounded in 2011 almost to the same pace (about 4% per year) as had prevailed before the GFC.

However, at that very time public sector wage growth was commencing a severe and sustained deceleration, reflecting the restrictive austerity measures being imposed in many jurisdictions. For the next two years, public sector wages grew significantly more slowly than in the private sector. Some commentators

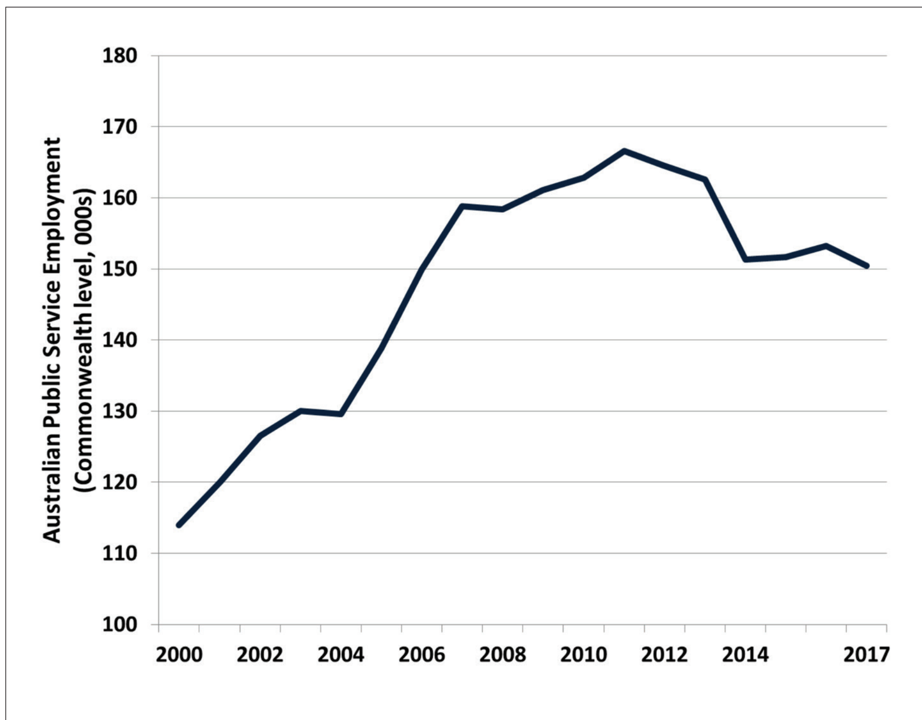

Figure 8.2: Total employment, Australian Public Service, 2000-17

Source: Author's Calculations from Australian Public Service Commission (2018), Table 1.

might argue this was 'fair', given that public sector wages had performed *better* than private sector wages during the immediate years of the GFC. But in terms of macroeconomic effectiveness, the suppression of public sector wage growth had a very counterproductive side effect: after two years of recovery, private sector wages then also began decelerating dramatically. In fact, by 2014 private sector wage gains had once again fallen below their public counterparts — which were also still decelerating, but not quite as quickly. Since 2014, wage growth in both sectors has continued to decelerate, with private sector wages leading the way in a perverse race to the bottom.

In those crucial years after the macroeconomy had recovered from the GFC, the pre-emptive subsequent imposition of austerity — with a specific emphasis on restricting public sector compensation — took much of the steam out of an encouraging post-GFC recovery in private sector wages. By dragging down wage increases for their own workers toward austere benchmarks (of as low as 2% per year), austerity-minded governments established a pattern of wage deceleration from which Australia has yet to escape.

Figure 8.3: Unintended consequences of the New South Wales public sector wage cap

Source: Calculations based on ABS, Wage Price Index, Cat no 6345.0, Table 2a, excluding bonuses.

Several policy measures contributed to the slowdown in public sector pay after 2011, which helped to set off this vicious cycle of wage deceleration. At the federal level, 2011 saw the lowest increase in median base salary in the Australian Public Service (APS) in over a decade, with median wage increases for the federal public service held to just 2.5%.[9] Moreover, the Commonwealth's arbitrary 'efficiency dividend', which had already been increased to 3.25% in 2008-09, was then boosted again to 4% in the financial year 2012-13. This forced government departments to downsize staff. The APS as a whole lost 15 256 positions between 2011 and 2014 — a decline of about 9% of its total workforce (see Figure 8.2).

At the same time, in 2011, the government of New South Wales, which is Australia's largest single employer,[10] introduced its own Public Sector Wages Policy, featuring a 2.5% annual wage cap.[11] Figure 8.3 illustrates the steep decline in *overall* wage growth in New South Wales (public sector *and* private sector) which followed the introduction of this policy. In the next couple of years, as already highlighted

in Table 8.1, more States and Territories, and then the Commonwealth, followed the New South Wales example and implemented their own explicit public sector wage caps (ranging between 1.5% and 2.5% per year).

It is indisputable that the premature shift to austerity policies by Australian governments after 2011 produced the desired deceleration of compensation costs in the public sector, justified as a contribution to deficit reduction. More damaging was the apparent contagion of that wage restraint into the broader labour market. The slowdown in public sector wage growth after 2011 led to a corresponding slowdown in private sector wage growth. Public sector austerity policies were not the only reason for the deceleration of overall wage growth, but the timing of that deceleration certainly supports the hypothesis that public sector wage caps and other austerity measures contributed to the broader wage slowdown.

Ironically, an important consequence of the slowdown in overall wage growth has been its impact in undermining income tax revenue for governments. Forecasts of wage growth are an important input to every budget projection — since wages determine income taxes, consumer spending (and hence GST revenue) and other key budget parameters. But governments do not trace the effects of wage restraint through to their logical conclusion when imposing arbitrary wage caps and other austerity measures. For example, the Commonwealth government follows a highly contradictory approach of predicating its budget forecasts on expected annual wage growth rising to 3.5% per year, while capping its own workforce's pay increases at just 2%.[12] The obvious irony of a government hoping for wage acceleration, while suppressing the wages of its own employees, is concerning.

The evidence described above not only indicates a failure on the part of government to make maximum use of public sector employment policies as an effective counter-cyclical macroeconomic policy lever. It also indicates that public sector austerity actually reinforced the negative private sector wage deceleration that, among other consequences, has badly undermined government revenue growth. How did public sector wage suppression spill over into a deceleration of overall wage growth? There are three major channels via which public sector austerity can spread into the rest of the economy. These channels include the 'composition effect', the 'demonstration effect' and the 'macroeconomic effect'.

The 'composition effect' is the direct impact of lower public sector wage growth on the overall weighted average wage growth of the total labour market. If lower wages are paid to the roughly 15% of the labour force employed in the public sector, then overall wage growth is immediately reduced accordingly (by a fraction of the reduction imposed on public sector workers). This composition effect is smaller than in previous decades, as a consequence of the decline of the relative

size of public sector employment. However, despite the combined and cumulative impact of privatisation, downsizing, outsourcing and so-called efficiency dividends, this direct composition effect remains significant.

The 'demonstration effect' refers to the way in which the arbitrary suppression of public sector compensation impacts wage trends among private sector employers. Public sector wage caps establish a highly visible benchmark for wage determination in the private sector, automatically influential since they are implemented by the largest employers in the country (namely, governments and public sector agencies). Private firms that supply government, in particular, will quickly invoke the government's wage cap as justification for their own wage restraint measures, in order to 'stay competitive' with a major customer. Even firms that have no direct business with public agencies will also invoke the government's highly visible wage targets as a convenient guide for their own wage offers.

Finally, there is a negative 'macroeconomic effect' arising from public sector austerity. By suppressing wage growth and hence undermining overall incomes and consumer spending, public sector wage austerity undermines aggregate demand conditions and the vitality of private sector activity (in retail trade and other consumer-sensitive 'downstream' industries). This negative impact on aggregate demand is experienced directly via the significant section (around 15%) of the total workforce that is employed in the public sector; but it is also experienced indirectly via private sector workers whose own employers have mimicked restrictive public sector wage benchmarks.[13] Reduced incomes in the pockets of millions of Australian workers imply reduced sales opportunities for thousands of Australian businesses — which in turn will undermine their own employment decisions and wage offers.

Conclusion: Rejecting the logic of austerity

Wage stagnation in Australia, as elsewhere, is a complex phenomenon with many contributing factors, but there is no doubt that public sector austerity has exacerbated this trend that is so badly undermining Australian living standards, household finances and even government fiscal conditions. A growing literature highlights not only the failure of neoliberal public policy to deliver its purported benefits (including balanced budgets, which remain), but also the social and economic harm that such policies cause.

The experience of austerity in Europe should serve as an especially cautionary tale for Australian politicians and policy makers at all levels of government. Government spending cuts there, in response to deficits that clearly originated from macroeconomic weakness, only worsened that underlying weakness in

purchasing power — and reinforced stagnation in GDP, damaged business and consumer confidence, thereby escalating indebtedness.

A rejuvenated public sector would treat public sector workers, and the public services they provide, as an economic and social asset — rather than as a burden.[14] In the Australian context, this more expansive vision for the public sector would entail the following measures:

1. rejecting 'surplus fetishism'[15] — the policy goal of achieving a fiscal budget surplus, prioritised above other economic and social goals — that is so often invoked to justify public sector austerity
2. placing a moratorium on further privatisation or marketisation of public institutions and services, and, where feasible, returning suitable institutions and services to public hands
3. prioritising the maintenance and development of in-house expertise within the public sector over outsourcing
4. ending the policy of imposing universal and ongoing 'efficiency dividends' on government departments and agencies in favour of a more differentiated approach to efficiency gains and service delivery within the public sector
5. abandoning the policy of imposing arbitrary wage caps on public sector remuneration which repress public sector wages growth, negatively impact broader labour market conditions and remove the right of public sector workers to free and collective bargaining over pay and conditions
6. embracing the use of public sector employment and investment as an essential counter-cyclical macroeconomic policy tool.

Among the many other benefits of opting to value and support public services and public sector employment, rather than targeting them for arbitrary restraint, is the significant contribution this would make to ending and reversing the unprecedented stagnation in Australian wages that has so badly undermined economic performance and household incomes.

Endnotes

1. McAuley and Lyons 2015: 20-1.
2. Cahill and Toner 2018: 1.
3. Gartrell and Hunter 2015.
4. West 2018.

5. Stanford 2018b: 28.
6. Mahuteau et al 2017: 1.
7. Horne 2012.
8. See, e.g., Senate Employment, Workplace Relations and Education References Committee 2004: ch 8.
9. See, e.g., Australian Public Service Commission 2018, Table 6.2.
10. State government departments and funded services (including education, transportation and public hospitals) employ a total of almost 400 000 workers: NSW Public Service Commission 2016.
11. Carabetta 2012.
12. Stanford and Henderson 2018b.
13. For example, in the case of New South Wales, Henderson and Stanford 2017 estimated that between 2011 and 2016 public sector pay restraint reduced consumer spending by A$3.4 billion, GDP by over A$8 billion and state government revenue by A$1.2 billion.
14. See Reed 2014; Stirling and Dromey 2017; Cribb 2017; Galbraith 2018.
15. See Richardson 2011; Murray and Henderson 2018.

9

Contracting out community services, marketisation and wages

Fiona Macdonald and Michael Pegg

Introduction

Over the last 30 years successive Commonwealth and State governments have privatised and outsourced many services and enterprises. Services and functions that were previously performed within the public sector range from electricity and telecommunications services to prison services, detention centres and vocational education and training. Privatisation and outsourcing have contributed to a decline in public sector employment from 30% of all employees in 1987 to just 16% in 2017.[1]

In some areas of outsourcing to the private sector there are questions about the large amounts of public money paid to consultants — for example, in relation to information technology services. However, in many other areas government contracting arrangements are used to keep costs down. The main rationale governments give for outsourcing and competitive tendering is to gain efficiencies, meaning that competition to provide the publicly funded services is often on the basis of cost. This places contracted service providers under constant pressure to

keep employee numbers down and wages low. While government funders hold the purse strings, and may effectively determine the amount that can be spent on labour to provide a contracted service, they take no direct responsibility for the pay and conditions of workers providing the services.

The large and growing social and community services sector is significant in this regard. Government contracting arrangements and funding models have over a long period stifled wages growth for very large numbers of relatively low-paid workers. While most social and community services are publicly funded, the majority of workers providing these services are not employed in the public sector. Rather, they are employed by not-for-profit community services organisations under contracted and other competitive or 'marketised' arrangements. Those arrangements 'support or enforce the introduction of markets, the creation of relationships between buyers and sellers and the use of market mechanisms' to allocate services.[2] Government contracts are often awarded on the basis of cost and, as services are labour-intensive and the bulk of costs are staffing-related, employees in the sector are particularly vulnerable to experiencing low pay and an inability to gain wage increases.

In this chapter, we focus on contracting out and marketisation of social and community services to explore how governments' competition policies have kept wages down and are likely to continue to do so under current policy settings. In the next section we provide an overview of contracting and marketisation in the community services sector. Following that, we explore in more detail the role of governments in keeping community services wages low through limiting enterprise bargaining. In the final section we examine the recently introduced National Disability Insurance Scheme (NDIS) to consider how its individualised 'cash-for-care' model of publicly funded social services is negatively impacting the wages and conditions of low-paid service workers.

Community services, contracting out and marketisation

Community services include services such as health, disability support, aged care, housing and homelessness services, child and family services, youth justice, child protection and employment services. Many community services are highly specialised and have traditionally been delivered by large numbers of small not-for-profit charitable and community-based organisations. Service users are often people who face complex and multiple issues such as health problems, unemployment, financial disadvantage and reliance on care and support services.

Community services and health care combined make up Australia's largest industry in terms of employment. The industry is currently experiencing relatively

strong growth and, in 2017, contributed more than any other industry to overall growth in employment.[3] Growth in community services is expected to continue to play a significant role in sustaining Australia's economic growth in the coming years, with important factors in this being the ageing population and the implementation of the NDIS.[4] Most community services continue to be located in the not-for-profit sector. Direct government funding to the sector is increasing, having already grown from A$10.1 billion in 1999-2000 to A$25.5 billion in 2006-07.[5] This growth is continuing, driven largely by the A$20 billion NDIS.

The not-for-profit community services workforce is relatively low-paid and dominated by workers in frontline service delivery roles. The workforce comprises mainly women (around 80%) and most workers are employed part-time.[6] Much of the work performed in the community services sector was traditionally performed unpaid by women in families and in the community as volunteers. Its association with women's unpaid work has led to systemic and gendered undervaluation of paid work in community services. This undervaluation has been remedied to some extent for some groups of community sector workers, following a successful equal pay case in 2012 that is discussed later in the chapter. However, much of the work continues to be relatively low-paid as, generally, pay rates are set by the safety net industrial award rather than through enterprise bargaining.[7] For example, in 2017, when average full-time adult weekly earnings in Australia were around A$82 000 per annum, the rates for experienced degree-qualified social workers were around A$59 000-$64 000. The full-time award rates for qualified disability support workers were A$47 000-$52 000 per annum.[8]

Governments have long provided funding to charitable and community organisations for service delivery. But from the late 1980s onwards Commonwealth and State governments started to introduce competition and contestability into these funding arrangements, while also outsourcing more public services to the sector. Competitive funding arrangements put additional pressure on wages in the relatively low-paid sector, contributing to wage gaps between community sector and public sector workers in similar jobs. For example, according to the Productivity Commission, in 2009 the wage gap between social workers employed in the community sector in Western Australia and social workers in that State's public sector was between 17-27%.[9] Similar wage gaps have been identified in other States.

One factor keeping community sector wages low is systemic underfunding by governments for the provision of contracted services. In 2010 the Productivity Commission found that the government routinely underfunded community services organisations contracted to provide services by 30% of the full cost of

service delivery.[10] The community sector experience has been that low levels of government funding for outsourced and other contracted services have led to '[c] onvergence around a similar, low cost, low quality service model'. It is a model that relies on lower-skilled and remunerated workers.[11] This is evident in the case of outsourced employment services for unemployed jobseekers.

The creation of a market for employment services has tended to exclude smaller, specialist service providers — mostly not-for-profits that had worked with particular disadvantaged communities and individuals. It has reduced diversity, increased standardisation, and led to the domination of large, mainly private sector firms. Over a 20-year period of outsourced employment services in a government-funded and managed market, there has been a growing concentration of large service providers, from 306 core Job Network providers in 1997 to 65 Jobactive providers in 2017.[12] In this case competition appears to have undermined the effective and efficient delivery of services, particularly for disadvantaged jobseekers.[13]

Successive governments have encouraged the entry of private for-profit companies into many other areas of formerly public and not-for-profit community service provision and this has placed additional pressures on wages and employment conditions. Outsourcing to the private sector is continuing. For example, in late 2017 the Commonwealth Department of Human Services (DHS) announced it would outsource some of its Centrelink call centres. In that year there was also a planned reduction of 1200 DHS staff, to be followed by a further planned reduction of 1300 staff in 2018-19. In 2018 funding for new call centre jobs has gone to multinational for-profit service provider Serco.[14]

Further privatisations and marketisation of community services are currently occurring under government policies that 'personalise' or 'individualise' service provision, creating what are known as cash-for-care funding schemes. Under these arrangements governments can more easily control costs than is possible through contracting out services. In cash-for-care and other so-called voucher schemes, individual service users or 'consumers' are allocated public funding to purchase their services on the market. The government can manage and control the services market (and effectively control wages) through policy setting and regulation, and often also through being the primary (or only) funder. At the same time, the government is not involved in direct service provision or in contracting services. The marketisation of disability services under the new NDIS is an example of a cash-for-care scheme. While the NDIS is still to be fully implemented, it appears that it is already having a significant negative effect on the wages and conditions of low-paid disability service workers. We discuss this in more detail later in this

chapter, after considering the more general issue of the impact of government funding on wages in social and community services.

In the following section we look first at how government underfunding has affected community services in the context of reliance on enterprise bargaining for pay increases. We also consider why the successful equal pay case for community services workers in 2012 has not solved the problem of low wages in the sector.

Enterprise bargaining and the SACS equal pay case

Employees in the community services industry were for a long time on the margins of the industrial relations regulatory sphere. They were excluded from the award system, only being recognised as industrial 'citizens' in the 1980s. In 1985 the first federal social and community services award was made, covering 306 community organisations delivering the Commonwealth Community Youth Support Scheme. Other awards for workers in the community services sector were made in the following years.[15]

By the early 1990s most of the workers within the community services workforce were covered by awards that set pay and minimum conditions of employment. This development put pressure on government funders to take account of award rates of pay when setting funding levels for contracted community services. However, at precisely the same time, enterprise bargaining became a feature of the Australian industrial relations system and, in theory, the main way for workers to gain wage increases. In the public service, as well as in many other industries including health, education, manufacturing, mining and construction, enterprise bargaining delivered wage increases significantly above the relevant award rates. Award rates of pay became 'safety net' minimum wages for those unable to benefit from enterprise bargaining. By the end of the first decade of the 2000s, evidence presented in the *Equal Remuneration Case* [2012] ('the SACS equal pay case') showed that pay rates in the community sector had fallen behind rates for comparable workers able to bargain, such as public service employees, by as much as 25-40%.[16]

Today, compared with employees in many other industries, community services employees are much more likely to be reliant on safety net awards for their pay and conditions.[17] This is likely to be due in part to the predominance in the sector of small employers, as these employers are less well resourced to engage in bargaining. However, given the chronic underfunding by governments for contracted services, it is also the case that there is often very little or no scope at all for employers to pay above-award wages. Indeed, it is sometimes specified in government funding contracts that public funds cannot be used to pay above-

award wages. So, while enterprise bargaining does occur in community services, the agreements reached tend to deal with minor flexibilities — for example, around leave entitlements — and they rarely offer pay rates significantly above the award safety net. The Australian Services Union (ASU), one of the main unions representing community services workers, has described bargaining in the sector as 'of limited utility in respect to improving the level of wages and salaries due to funding constraints'.[18] Outcomes from enterprise bargaining have not generally resulted in workers being much better off than they would be on award conditions.

In recent years there have been some large increases in pay in the community services sector as a result of a successful equal pay case for the SACS (social and community services) industry. In 2012 Fair Work Australia (as the federal tribunal was then known) awarded pay increases of between 19% and 41% pay to many SACS workers, to be phased in over eight years until 2020.[19] However, even after these increases are fully in place in 2020, there will still be a projected 40% gap between community sector wages and wages for equivalent jobs in the public sector.[20]

The SACS equal pay case commenced in 2010 with five unions, led by the ASU, seeking an equal remuneration order for workers covered by the Social, Community, Home Care and Disability Services Industry (SCHCADS Award) to address the gendered undervaluation of work in community services across Australia. The successful case followed an earlier successful equal pay case for SACS workers in Queensland.[21] The Queensland Industrial Relations Commission determined that work in the community sector had been undervalued because of gendered perceptions of the value of caring work — sometimes referred to as a 'care penalty'. The pay increases awarded in the Queensland and federal SACS equal pay cases were intended to remedy long-term gendered undervaluation of community services work — and as such represented a wages catch-up. Yet by 2020, the pay increases awarded by the federal tribunal will only have lifted the safety net award to where it would have been if not for the undervaluation of care work. The tribunal considered that around 40% of the pay gap between community sector and public sector wages was due to reasons that were not gender-related, such as relative union strength in bargaining. The pay increases awarded were not intended to address this part of the pay gap.

The federal SACS equal pay claim was strongly opposed by peak bodies representing for-profit employers and some State governments. Most not-for-profit community sector employers, by contrast, supported the unions' claims. After two decades of funding based on award rates, community sector employers faced recruitment and retention problems as pay rates were too low to attract

workers who could find similar work with better pay and job security in other industries, such as the public service, health and education. An important turning point in the case was an in-principle commitment from the Gillard Government to fund any pay increases that might be awarded by Fair Work Australia. This commitment followed a strong political campaign led by the ASU and other unions and supported by community sector employers, particularly through the Australian Council of Social Service and supported by Jobs Australia and National Disability Services. The federal government's commitment was later matched by commitments from the States and Territories, who also fund a great many community services.[22]

In the context of chronic underfunding, following the equal pay case some employers 'absorbed' the equal pay increases into enterprise agreements containing pay rates slightly above the award. This meant their employees did not actually receive any higher pay initially, or did not retain whatever small above-award premiums that had applied before the equal pay decision. For most of the community sector, however, the equal pay increases resulted in the award rates quickly overtaking bargained rates. While governments funded the equal pay increases, there remains very little capacity for employers to bargain above-award rates.

The SACS equal pay case delivered some catch-up to remedy historic undervaluation, but did not solve the problem of low wages for the community sector. As we have already noted there is still a very significant pay gap between community sector and public sector wages. Once the equal pay increases have been delivered in full at the end of 2020, in the absence of funding for bargained pay increases, it seems likely that community sector pay rates will slip further behind again, with a re-emergence of recruitment and retention problems in the sector within a few years.

In other areas of publicly funded social and community services there are many low-paid care workers whose wages were not affected by the SACS equal pay increases at all. As with most other community services, Australia has a strong tradition of delivering aged care and childcare services through public funding of not-for-profit organisations. For-profit provision now dominates some areas of both childcare and aged care following various marketisation initiatives by governments since the 1990s.[23] However, along with other workers in social and community service roles, the wages of low-paid aged care workers and childcare workers remain highly dependent on government funding. Unions representing both aged care and childcare workers have struggled to access enterprise bargaining to gain pay increases.

Under the current Aged Care Award, minimum weekly pay for personal care workers starts at A$765 (level 1) and increases to A$929 (level 7), meaning aged care workers may earn about half the average full-time adult weekly wage.[24] Service provision by for-profit companies is growing, amid concerns that for-profit providers are replacing higher-skilled and remunerated nurses with lower-paid care workers to increase profits.[25] The introduction of individualised care in home and community care for elderly people is also putting pressure on local government provision of these services. These issues for local government are especially apparent in relation to the NDIS.

'Cash for care' under the NDIS: The future for community services?

The NDIS was designed as a national scheme of support for people with significant and permanent disability. It is replacing a variety of services provided by the States directly or through contracts with not-for-profit organisations. As well as increasing funding to expand service provision to people who are eligible for the scheme, the NDIS radically reshapes funding arrangements for disability services. A central principle is that people with disability should have greater choice and control over their lives, including the planning and delivery of their supports. Under the NDIS 'cash-for-care' model, the 'consumers' of disability support services can now choose to access supports that meet their needs and preferences from a much wider range of service providers.

The NDIS has been a major source of employment growth in the Australian economy in the last year or so. It is estimated that from the commencement of the scheme in 2013, another 60 000 to 90 000 full-time equivalent workers will be needed in the disability services workforce by mid-2019. Over the period of the NDIS implementation, from 2013 to 2020, about one in five new jobs in Australia are expected to be in disability services.[26] However, while the new scheme is generating many new jobs in disability services, it is having negative impacts on the quality of disability support workers' jobs and wages.

Prior to the NDIS about three-quarters of the disability services workforce was employed in the not-for-profit community services sector; just over one in five were in the public sector; and a very small number (6%) were in private for-profit firms.[27] About 60% of the predominantly female workforce is part-time compared with an average across all industries of 30%.[28] Some disability support work is very short-hours work and there is a high level of multiple job-holding by disability services employees, suggesting that inadequate hours may be a problem for workers. Recent strong jobs growth in the sector has been dominated by the

expansion of casual work and, in 2017, 42% of workers in not-for-profit disability services were employed as casuals.[29] As a report by the peak employer body for not-for-profit disability services providers notes, '[c]ompared to the Australian labour force as a whole, jobs in disability are less likely to offer either a living wage or job security'.[30]

The marketisation of disability services under the NDIS is having negative impacts on disability support worker wages and conditions through a number of mechanisms. First, the implementation of the NDIS has seen State governments privatise some or all of their public sector disability services. Second, the new scheme is placing enormous pressure on the wages and conditions of the bulk of disability support workers who are employed in the not-for-profit community sector. Third, there is emerging evidence that the entry into the disability services market of private for-profit firms with very lean business models is further driving down wages in the sector. We now discuss each of these mechanisms in turn.

While the disability services workforce is expected to grow significantly under the NDIS, public sector disability services workforces in State and local governments are rapidly being dismantled through privatisations. The bulk of disability support workers in the States' public sector workforces are permanent full-time employees and their pay rates, set by enterprise agreements, are significantly higher than the SCHCADS Award rates upon which most disability workers in the not-for profit community sector rely. In most States, disability workers in the public sector also receive higher shift penalties and other benefits that make their take-home pay significantly higher than similar workers in not-for profit services.[31]

With the establishment of the new 'contestable' NDIS market for disability services, State governments have proceeded to privatise some or all of their publicly provided services. By mid-2018 New South Wales had privatised all public sector disability services, no longer providing supported accommodation or home and community care services, and resulting in an estimated reduction of 14 000 State public sector jobs.[32] The Western Australian government is also selling off 60% of the State's group homes for people with disability, affecting 500 public sector jobs, and the Victorian government has commenced processes to privatise most of its disability services, affecting up to 5000 workers.[33] Unions have negotiated agreements with State governments for current employees who transfer their employment to NGOs to maintain their pay levels. However, these agreements are time-limited, and they do not extend to the existing employees of the NGOs alongside whom the transferring ex-public sector employees will work.

Employment in the local government sector has also started to be cut as a result of the NDIS, as city and shire councils have decided they cannot continue to

provide services under the new arrangements. The primary avenue through which local governments have provided disability services is through the provision of support via the Commonwealth's Home and Community Care (HACC) services. In some States, especially in areas where there have been few other providers, local councils have been key providers of these services.[34] However, the local government sector is now ceasing to provide HACC services to people with disability funded under the NDIS, as to continue to do so would require cutting the wages and worsening the conditions of their home and community care workers.[35] Along with arguments about contestability and competitive neutrality, a key driver of the privatisation of public sector disability services is the inadequate NDIS funding, discussed in more detail below. The principle of competitive neutrality means that local government providers cannot choose to put their resources into ensuring high-quality services and reasonable pay and conditions for their employees, as this would be seen to give them an unfair advantage against other service providers competing to provide the same services at a lower cost.

The number of new Commonwealth public sector jobs anticipated to be created by the NDIS has been revised downwards since the inception of the scheme. At the time of the NDIS commencement, the new government agency that manages the scheme, the National Disability Insurance Agency (NDIA), was expected to employ 10 000 workers nationally once the scheme was fully rolled out. However, with a decision to outsource key NDIA functions, most of these planned new public sector jobs have also been outsourced (to date, mainly to the not-for-profit community sector, but also to the multinational Serco). The NDIA will now employ fewer than 3000 people.[36]

Outside the public sector the NDIS has created significant new pressures on the mainly not-for-profit service providers to find savings in delivering disability services. This represents the second mechanism by which wages and conditions are squeezed in disability services. The NDIA regulates prices for services under the NDIS, placing caps on the amounts that service providers can charge. While it is planned to eventually remove the caps, the level of government funding for services will continue to have a major role in setting market prices, as many people with disability are wholly or mostly reliant on government NDIS payments to purchase their support services.

In 2017 evidence and submissions to a Productivity Commission review of NDIS costs identified the set hourly price for personal support and care as not providing adequately for the real costs of minimum award entitlements, for time spent by workers travelling between clients or performing necessary tasks other than face-to-face support, or for supervision and training.[37] More recently, another review acknowledged that many service providers are unable to operate profitably

under current NDIS pricing arrangements. This review, undertaken for the NDIA by private consultants, noted that the service providers having difficulties included those 'with more qualified, specialist or experienced workforces' and those with enterprise agreements 'that are more generous than the Award'.[38] The report implies that service providers will be able to operate profitably if they increase their casual workforces, utilise sole trader care workers, or adopt 'lean operating models'.[39] While the strong theme running through the report is that service providers should reduce their labour costs, research suggests that low-paid disability support workers are already experiencing wage underpayments and unfair pay practices under the pressures of NDIS pricing.[40]

Minor changes to NDIS pricing made in mid-2018 may partly address some issues, but they do not resolve the central problem of under-pricing NDIS services provided by disability support workers. This under-pricing also means that employers interested in using enterprise bargaining to negotiate new ways of working to meet the demands of service users are unable to provide pay increases as part of any deals for employees, even to gain flexibility. Under the NDIS, employers of disability support workers are being forced to prioritise cost-cutting over long-term workforce strategy. The funding levels provide no room for pay and conditions or innovative and flexible working arrangements above the award safety net. Instead, employers are increasingly resorting to casualisation, and most of the growth in disability support jobs under NDIS so far has been in casual employment.[41]

Another development in the disability support work labour market enabled by the introduction of the individualised funding model is the fissuring of employment in ways that reduce the capacity for workers to organise and bargain collectively for wages and conditions. This is a third mechanism by which downward pressure is applied to wages and conditions. Work is being reorganised by new (mainly for-profit) players in the market so that disability support workers are not employed by organisations. Instead they are engaged either by individual service users or as self-employed contractors, bypassing the employment relationship altogether.

This reorganisation has also seen the emergence of a platform or gig economy in which intermediary agencies provide 'matching services' that connect service users with disability support workers. Some agencies take commissions from both users and workers while maintaining that they are neither employers nor labour hire firms and have no responsibility for pay and other employment arrangements.[42] Some websites carry advertisements for disability support work to be performed by independent contractors at hourly pay rates that are lower than the relevant SCHCADS Award rates for casuals.

A skilled and stable workforce has been seen as essential to a system of quality support for people with disability. In addition, recent inquiries into the abuse and neglect of people with disability have identified such a workforce as necessary to reducing risks to people receiving support.[43] Aligning with this, the general preference of people with disability is to have their supports provided by people whom they know and trust and with whom they have an ongoing relationship. As the NDIS workforce expands, a significant challenge will be to build a skilled workforce with pay, job security and employment conditions that promote quality service provision through attracting and retaining workers with skills and experience. The low NDIS prices set by the NDIA are a major barrier to doing this.

Conclusion

Internationally, marketised 'care economies', such as that created under the NDIS, are mostly built on large workforces of low-paid workers in insecure work with poor working conditions.[44] The Australian experience outlined in this chapter points to how the shift from provision of services as part of the welfare state to market-based provision is driving labour cost-cutting and encouraging low-wage strategies for workers providing essential and valued social and community services in this country.

There are parallels in social and community services with the 'fissured' employment arrangements and creation of supply chains seen in other industries.[45] However, here State and federal governments manage the markets and control the funding that sets the price for labour. As we have discussed in relation to disability services, there is little capacity for most community sector employers to offer wage increases, as funding arrangements mean they are unable to pay anything significantly above award rates. This prevents meaningful enterprise bargaining, even where it would make good business sense for employers to pay higher wages in the interest of recruiting and retaining a stable and skilled workforce. It also prevents the development of innovative work and service practices that require enterprise bargaining.

One approach to this problem, with precedents in other government-funded sectors such as health and education, is to bring government to the bargaining table and to develop mechanisms for collective bargaining between government, employers and unions. This might entail sector-level bargaining, or the development of a framework of threshold matters that need to be met in single-enterprise agreements in order for organisations to qualify for funded pay increases. The objective of such an approach is to create mechanisms for ensuring decent jobs that support the development of a stable and skilled community sector workforce.

Multi-employer bargaining is already an option that has been used to some extent in the community sector. Multi-enterprise agreements have efficiency benefits, as they avoid duplication of effort for bargained outcomes that would probably be the same across multiple individual employers. However, multi-employer agreements suffer from the same limitations as single-enterprise agreements, as the government funding body is absent from negotiations. Both the Fair Work Act provisions for multi-employer bargaining and special provisions to enable low-paid workers to access collective bargaining require amendment before they are likely to be effective in facilitating bargaining that provides wage increases for community sector workers.[46]

More generally, the dominance of neoliberalism in Australia since the 1980s has underpinned views that public provision of essential social services is itself a problem and that competition and commercialisation will produce the best outcomes for people in need of public support. These views and the assumptions underpinning them are increasingly coming into question.[47] The impact on wages of the loss of large numbers of secure and relatively well-paid public sector jobs and of the pressures on community sector workers through contracting out, privatisation and marketisation should be one focus of that debate.

Endnotes

1. ABS 1998, 2017g.
2. Brennan et al 2012: 379.
3. ACTU 2018b: 148, based on ABS estimates for the health care and social assistance industry.
4. RBA 2018a: 63.
5. Productivity Commission 2010: 275.
6. ABS 2018h; *Equal Remuneration Case* [2011] FWAFB 2700 at [31].
7. *Equal Remuneration Case* [2011] FWAFB 2700 at [239].
8. FWO 2017c.
9. Productivity Commission 2010.
10. Productivity Commission 2010: 280-1.
11. ACOSS 2016: 5.
12. ANAO 2017: 7; Finn 2011: 10.
13. Smith and Merrett 2015; Sturrock 2018.
14. See Dingwall 2017; Dingwall and Whyte 2018.
15. Briggs et al 2007.

16. *Equal Remuneration Case* [2012] FWAFB 1000.
17. FWC 2018: 35; Meagher and Cortis 2010.
18. ASU 2012: 22.
19. *Equal Remuneration Case* [2012] FWAFB 1000; [2012] FWAFB 5184. For a detailed discussion of the case, see Cortis and Meagher 2012.
20. *Equal Remuneration Case* [2012] FWAFB 1000 at [72].
21. *Queensland Services, Industrial Union of Employees v Queensland Chamber of Commerce and Industry Ltd* [2009] QIRComm 33.
22. Macdonald and Charlesworth 2013: 577.
23. See Brennan et al 2012.
24. The Fair Work Commission's Aged Care Award rates are from July 2018. Average weekly earnings at November 2017 are from ABS 2018g.
25. ACOSS 2016: 9.
26. Productivity Commission 2017b: 319.
27. Martin and Healy 2010: 111.
28. Productivity Commission 2017b: 3.
29. NDS 2018: 4-5.
30. NDS 2016: 38.
31. See, e.g., in Victoria, HACSU Department of Human Services Disability Services Enterprise Agreement 2012-2016. See also Henderson 2018: 28; VPSC 2017: 18.
32. New South Wales, *Parliamentary Debates*, Legislative Council, 23 October 2013, 24530-24532 (John Ajaka, Minister for Disability Services).
33. HACSU 2017; Morton 2013.
34. MAV 2017.
35. MAV 2017: 1.
36. See Bo'sher 2015.
37. Cortis et al 2017; VCOSS 2017.
38. McKinsey & Co 2018: 25.
39. McKinsey & Co 2018: 25.
40. Cortis et al 2017; Macdonald, Bentham and Malone 2018.
41. NDS 2018: 2.
42. David and West 2017.
43. See, e.g., Parliament of Victoria 2016.
44. Cristiano et al 2016.
45. See Chapter 11 in this volume.
46. See Macdonald, Charlesworth and Brigden 2018.
47. Fine and Davidson 2018.

10

Executive remuneration in listed companies and wage setting

Kym Sheehan

Introduction

The wages of one group of Australian workers have experienced a different trajectory to that of other workers. Chief Executive Officers (CEOs) and other senior executives (known as Key Management Personnel or KMP) in Australia's largest listed companies have enjoyed continuing growth in remuneration over many years. Before examining the relationship between executive remuneration and wage setting within the firm, it is useful to understand CEO pay: what it is, how much it is and how it is set.

There are three basic components of CEO pay: fixed pay that is not linked to performance, a short-term incentive (STI) based on one year of performance, and a long-term incentive (LTI) scheme based on three to five years of performance. Fixed pay is paid in cash (with a component for superannuation), with STI paid largely in cash but including a deferred component of share-based payment, while LTI schemes are typically share-based payments. The theory is that STI and LTI are linked to performance, so they can vary from year to year (STI) or from performance period to performance period (LTI) based on achievement against the performance measures set. Tracking changes in CEO pay is therefore complicated

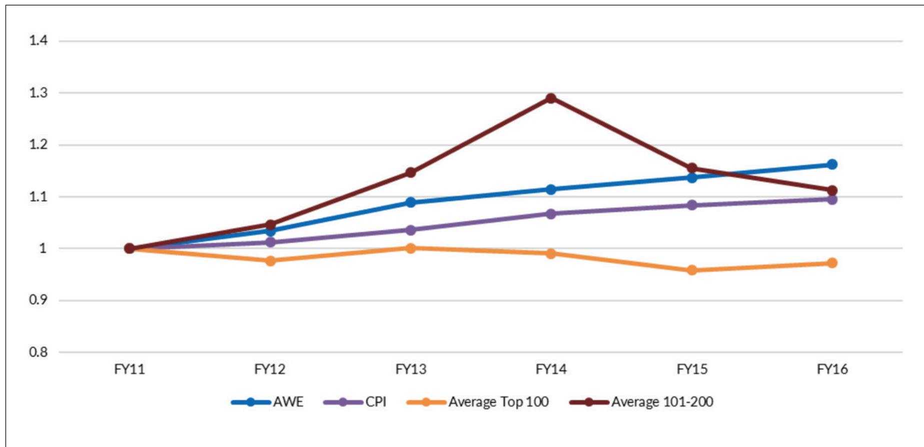

Figure 10.1: Changes in CEO fixed pay relative to AWE and CPI, FY2011-16
Source: ACSI 2017: 18.

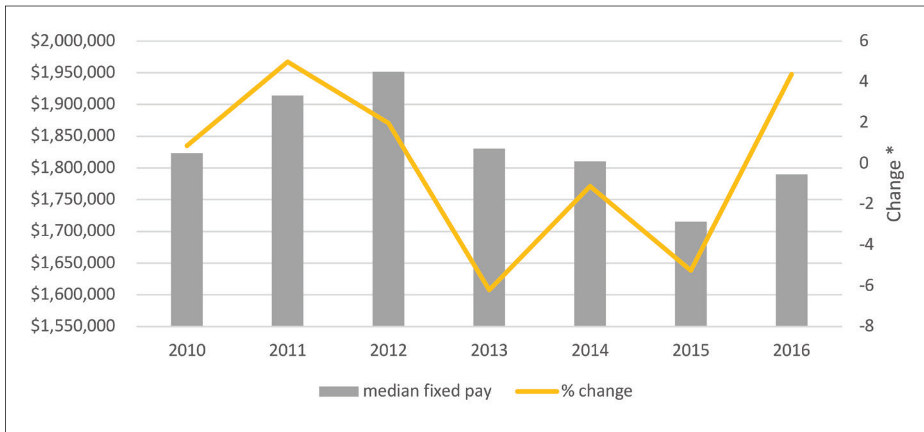

Figure 10.2: Changes in median fixed pay, ASX 100 CEOs, FY2010-16
Source: Calculations based on data from ACSI 2017: 28.

by the inclusion of components that are designed to vary based on individual and company performance.

For this reason, it is often useful to disaggregate CEO pay data into the various components, with fixed pay being a good proxy for wage setting for CEOs as the potential STI and LTI awards are set as a percentage of fixed pay. On one view of the data, over the period from 2011 to 2016 (reported as Financial Years,

FYs), average ASX 100 fixed pay has been growing at a slower rate than average weekly earnings and the consumer price index (Figure 10.1).

The same data source indicates that the rate of change in median ASX 100 CEO pay over the period 2010-16 is highly variable (Figure 10.2).

Yet these data don't tell the full story, as they are indifferent to changes in the CEO, whereas CEO pay is very much set at a level to attract and retain an individual, reflecting their reservation value (a fixed component reflecting the amount they would receive in another job in the market)[1] plus a performance component to reflect the CEO's contribution to company performance and consist of explicit and implicit incentives to perform. The explicit incentives allocate risk of non-performance between the CEO and the company,[2] while the implicit incentives reflect the CEO's desire to be viewed as one of 'The Talented'.[3]

A somewhat different view of what is happening in CEO pay can be found in data tracking changes in remuneration when the CEO doesn't change. Taking the same data source, but looking at median fixed pay (no performance component is involved, so this is 'coming to work' money) for a sample of incumbent CEOs over two time periods 2014-15 (65 ASX 100 CEOs) and 2015-16 (71 ASX 100 CEOs), median fixed pay has been typically increasing across each of these time periods: with the median value increasing 5.9% from FY2014 to FY2015, and by 9.4% from FY2015 to FY2016.

Table 10.1: Changes to median fixed pay across two time periods, sample of incumbents ASX 100 CEOs[4]

Sources: ACSI 2016: 33, ACSI 2017: 32.

2014	2015	2015	2016
$1 752 000	$1 855 000	$1 680 173	$1 838 232

Setting CEO pay

The factors that have been described in previous chapters as potential sources of the low growth rate in worker pay do not explain the trajectory of CEO pay growth. Prior academic literature comparing CEO-worker pay across countries has noted the importance of various country-level institutions of social power outside the company, such as equity market development as well as the extent to which the society tolerates inequality.[5] CEO pay literature focuses on power

within the corporation and the extent to which boards are captured by powerful CEOs.[6] While one solution to this power capture is to insist upon independence of the remuneration committee,[7] such an approach will have limited impact if the manner in which CEO pay is set has structural flaws.

A notable structural flaw is the use of benchmarks. ASX 100 CEO pay is set with reference to the market. On first blush this would appear consistent with how ordinary worker pay is set: supply and demand for labour. CEO labour has two components: a general managerial capital component (the general management knowledge and skills of any CEO) and a firm-specific component (what a CEO in this firm knows and what the CEO's skills are).

The market for CEO pay can be measured in a few different ways: by companies of a similar size (proxied in terms of revenues, employees, market share, size of operations around the globe, or else by market capitalisation), or by companies within a similar industry. Industry benchmarks may include peers outside of Australia to reflect the fact that some industries are not well represented in the major Australian market indices (for example, airline companies, or investment banks), so influences on CEO pay can include movements globally within an industry, as well as local factors.

Notwithstanding these different approaches, most ASX 100 companies will pay regard to the rates of remuneration for CEOs of other ASX-listed entities of a similar market capitalisation by taking either the whole ASX 100 index as the market, or a subset of companies from the top 20 (ASX 20), top 50 (ASX 50) or the companies from 51 to 100. This is evident from remuneration reports which disclose benchmarking data that were obtained from remuneration consultants, and were referred to by the committee in making any decisions on remuneration for the year ahead. Increases in the rate of remuneration in the index can therefore lead to a reappraisal of reservation value as executives learn what 'The Talented' earn in the market.

Market benchmarking can provide useful data on the general managerial capital component, which means boards are left to make some decisions on the firm-specific component. One input into that decision-making process is the remuneration levels within the senior management team reporting to the CEO: the CFO, the business unit heads (BUHs), the heads of support functions (such as human resources). Figure 10.3 below illustrates the fixed remuneration increases for same incumbent CEOs and other executives in the top 100 companies in the ASX 200 over the period FY2014-16. The rate for CFOs and BUHs has exceeded that of CEOs over the same period.

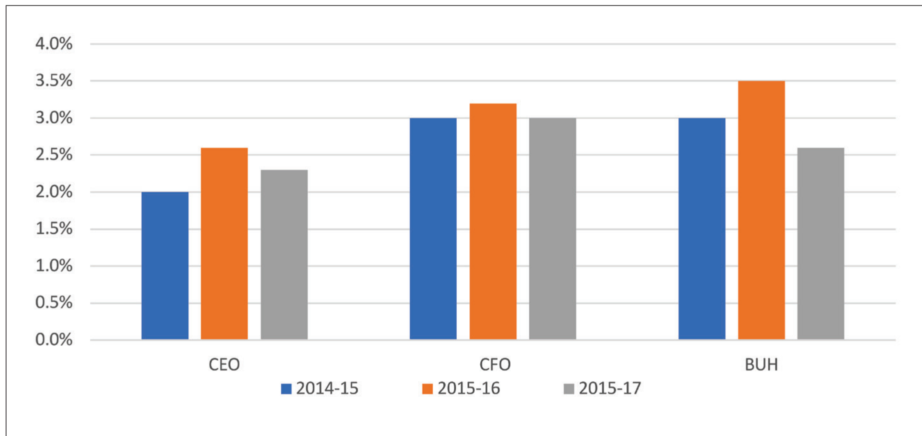

Figure 10.3: Changes in median fixed pay, ASX Top 100 CEOs, CFOs and BUHs, FY2014-16

Source: Calculations based on data from EY 2015: 13, EY 2016: 5 and EY 2017: 9, for incumbent CEOs and other executives year-on-year.

Setting the total remuneration package

As already noted, fixed pay is not the only component of executive remuneration: the typical executive remuneration package consists of both fixed pay and variable pay (pay that varies with performance, or that at least theoretically varies with performance). Performance in variable remuneration is typically set at three levels: *threshold* (the minimum level of performance required for any variable remuneration to vest), *target* (the level of performance the scheme is designed to achieve) and *stretch* (the level of performance required for all the variable remuneration to vest). The typical ASX top 100 CEO pay package in 2016 consisted of 31% fixed remuneration and 69% variable remuneration, based on the company and CEO achieving the 'target' level of performance[8] in the variable remuneration component. Should this ratio be maintained in subsequent years, but the board decides to increase fixed remuneration, the total target remuneration package will also increase. The signals for an increase will be the benchmark remuneration and internal pay relativities.

As Figure 10.4 below illustrates, there remains a significant pay gap between the target total remuneration of the CEO and the CFO and BUHs. Looking across the upper management roles in the top 100 ASX companies, the remuneration levels targeted for some incumbent CEOs and other senior executives over the

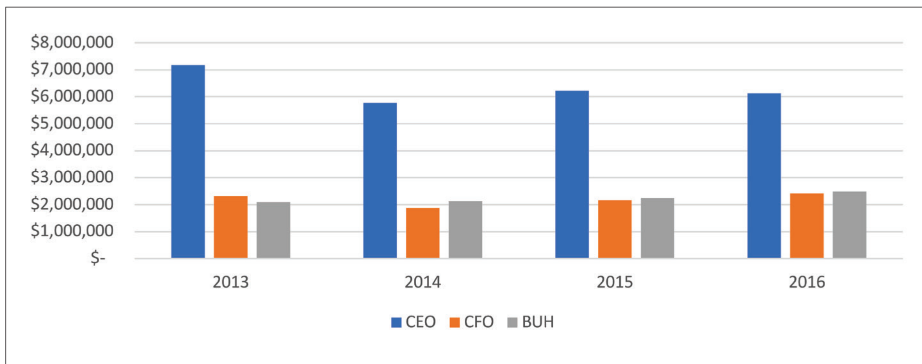

Figure 10.4: Target total remuneration packages, ASX Top 100 CEOs, CFOs and BUHs, FY2013-16

Source: Calculations based on data from EY 2015: 13, EY 2016: 5 and EY 2017: 9, for incumbent CEOs and other executives year-on-year.

period FY2013-16 have slightly different trajectories: target CEO pay has decreased, yet target pay has increased for both CFOs and BUHs.

At some point within the organisation, the total remuneration package shifts away from an emphasis on variable remuneration towards fixed remuneration. For example, in 2016, CFOs in the top ASX 100 companies had a split of 38% fixed remuneration to 62% variable remuneration, while BUHs had a 40% fixed remuneration to 60% variable remuneration split. As with CEO pay, if these fixed-to-variable-pay ratios are maintained year after year, any increase in fixed pay will increase the total target pay package. As the board looks to the market data and to its own internal data, it can form a picture of where CEO remuneration should be set.

Components of remuneration

It is not the amount of pay alone that is set by reference to this market. The breakdown of the total package into components of fixed remuneration, STI, LTI and other benefits (such as termination benefits, contractual notice periods) is also set with reference to the market. This includes not only the levels of each component and the way in which these are paid (cash and/or securities in the form of performance rights with nil exercise price), but also the performance measures chosen and the levels of performance required for variable remuneration to vest and how much should vest for that level of performance.

While LTI performance measures have defaulted to a standard suite of measures such as a market return (relative total shareholder return) or a profit measure (such as earnings per share), it is the STI scheme performance measures over which senior executives exert a large measure of control that most directly increase remuneration received by the CEO and other top executives. The impact on CEO and top executive remuneration is evident in choices about *what to measure*: sales, profit, safety performance or gender diversity. It is also evident in choices on *how to measure*: statutory profit per the accounting standards or underlying profit that excludes particular one-off items at the company's discretion; lead or lag measures of safety performance; the number of women in the workforce or number of women at senior management levels. Furthermore, *what levels of reward* should attach to particular performance outcomes impact the remuneration received; namely, the choice of allowing 30% or 50% of maximum STI to vest for threshold performance, 50% or 75% for target, 100% or 130% for stretch. A profit target expressed as a percentage increase on the previous financial year's profit, rewarding 50% of available STI for achieving 5% growth, will motivate senior executive behaviour towards achieving *at least* 5% profit growth. In the absence of other measures focusing on how profit growth is to be achieved, the senior executive has a choice: focus on the 'top line' and increase revenue, or focus on the 'bottom line' and decrease expenses.

By making choices on how best to achieve these measures, senior executives make choices on how to run the business. These choices, in turn, flow into the wages set for the rest of the organisation. Unlike the senior executives who have the largest proportion of their total remuneration as variable pay over which senior executives have some control, ordinary workers have the largest proportion of their pay as fixed pay. They are vulnerable to choices made by senior executives on how best to achieve the performance measures in the STI scheme.

Selection of STI performance measures

A key role for the CEO is to devise a strategy for the group. Once endorsed by the board, this strategy becomes the blueprint for business decisions over the life of the strategy. These decisions include what lines of business to pursue, the markets within which the company should operate, what level of growth should be targeted, how to take into account likely developments in regulation and technology, what the material risks facing the entity are and what can be done to manage or mitigate these.

The selection of measures within that STI scheme is said to incentivise delivery of strategy: what gets measured gets managed. STI performance measures typically

found in ASX 200 CEO pay are summarised below in Table 10.2. Two of these measures are worth noting: expenses/cost management (financial) and business plans/strategy/growth (non-financial). The latter performance is typically measured in terms of actions taken, so it can reward executives for doing things while at the same time measuring the impact of those actions via expense/cost savings.

Table 10.2: STI performance measures found in ASX 200 CEO pay

Source: EY 2017: 6

Financial measures	Non-financial measures
Net profit after tax (NPAT)	Safety performance (lead measures such as the number of toolbox talks, or lag measures such as total injury frequency rate, number of fatalities)
Revenue/sales	Environment/sustainability measures
Expenses/cost management	People/values/culture/behaviours
Return	Business plans/strategy/growth

The choice of measures and the performance levels set for the CEO are then cascaded down to his or her direct reports (CFO and BUHs), who then, in turn, cascade the measures down to their direct reports. For the BUHs in particular, the financial measures are frequently based largely on their own business unit performance, rather than overall group performance. This can mean that, at the end of the financial year, some BUHs receive more remuneration as their business unit is profitable. Given the visibility of performance (how much STI was received both in absolute terms and in terms of a percentage of what could have been achieved), these executives share the CEO's desire to be seen as 'The Talented'.

Transformation strategies and STI measures

One group of strategies used by several ASX 100 companies over the last four to five years are transformation strategies. These strategies aim to reposition the business away from its existing activities towards a different mix of activities. Typically initiated in response to poor financial performance, the strategy will include wage freezes for rank and file members, together with redundancies. What these strategies have in common is a performance measure in the STI scheme that rewards the CEO, CFO and BUHs for achieving quantitative (and in some instances qualitative) targets relating to the transformation strategy.

Case example: Qantas

Qantas provides a good case example of this type of plan. Over the period 1 July 2009 to 30 June 2012, its QFuture strategy was

> a three-year business transformation program aimed at equipping Qantas for sustainable growth in the increasingly competitive global aviation market. The program is targeting $1.5 billion in margin improvements over three years from 1 July 2009, with $1 billion delivered after two years.[9]

This transformation strategy achieved A$1.4 billion in improvements to 30 June 2012. Yet this alone wasn't sufficient to transform Qantas's business. As such, there was also a five-year turnaround plan for Qantas International (August 2011), plus a new transformation programme, which was mentioned in in its 2013 report. Its 2013 annual report was subtitled 'The Transformation Continues', highlighting the ongoing nature of this strategic programme (including reductions in unit costs). Financial year 2014 highlighted the accelerated transformation programme. First announced in December 2013, with a focus on cost reductions and seven other immediate priorities, its half-yearly report for the six months to 31 December 2014 emphasised substantial headcount reduction, which was also reflected in a one-off expense for redundancies. Financial year 2015 heralded the success of achieving A$894 million in 'transformation benefits', crucially ahead of the targets set. The 2016 annual report indicated a further A$557 million in benefits, while the 2017 annual report confirmed that some A$2.1 billion in benefits had been achieved since the programme was implemented during FY2014.[10]

For the executive staff, the Short Term Incentive Plan or STIP over this period specifically identified aspects of the transformation strategy within the non-financial measures. As the scheme's design allowed for vesting of the non-financial measures even where the financial measures were not achieved, it produced some 'interesting' outcomes. Aside from the CEO refusing a bonus in FY2012, he received some form of STI, either in cash and/or in deferred shares, over the entire period of this transformation journey. It must be observed that his fixed remuneration only increased in the early years of this journey (3% increase in FY2011),[11] with the CEO accepting a temporary 5% reduction in his fixed remuneration in FY2015. It otherwise remained unchanged.

What of the non-executive staff? In FY2017, 25 000 non-executive staff received a transformation bonus of A$2500, having previously received a bonus of A$3000 in FY2016 if they agreed to sign up to the 18-month wage freeze,[12] in line with the 3 July 2015 ASX announcement of the intention to pay bonuses to the 28 000 non-executive staff, with the timing linked to signing of new enterprise agreements. The wage freeze was said by Qantas to be separate to the transformation

strategy. Yet within the transformation strategy as it existed from 1 July 2009 in its various incarnations through to this announcement, a clear component within the strategy was to improve margins, reduce unit costs and achieve headcount reductions. The link between the wage freeze and corporate strategy was explained in the 2017 annual report:

> The Group-wide policy of implementing an 18-month wage freeze has helped to offset inflation, build a more competitive and sustainable wage position going forward and closes [sic] the gap to our major domestic competitors. 41 agreements have been closed with the wage freeze, covering nearly 23,000 employees. *This ongoing reduction of the Group's cost is in addition to the extended $2.1 billion Transformation target.* In August 2017, the Group announced a non-executive bonus of $2,500 for full-time and $2,000 for part-time employees, *for the successful completion of the turnaround program, subject to the employee group having signed up to the 18-month wage freeze*. This bonus will be recognised in 2017/18 as an item outside of Underlying PBT.[13]

What gets measured gets managed … and rewarded

Qantas was not alone in having a transformation strategy operating alongside wage freezes linked to enterprise bargaining. Other ASX 100 companies linking transformation strategies with wage freezes and enterprise bargaining at some time over the period since 2013 include Aurizon Holdings, BlueScope Steel and Fairfax Media. All of these companies linked transformation strategic goals to the incentive schemes for its CEO and executive management team. What gets measured gets managed: transformation was achieved, at least in the short-term horizon of these plans.

Other companies, lacking a neatly labelled 'transformation strategy', adopted a strategy requiring the CEO, but more particularly the BUHs, to cut costs and achieve productivity improvements. Of the 78 companies that have remained in the ASX 100 since 31 December 2013 to 1 July 2018, virtually all have included some kind of strategic programme involving cost reductions beyond what might be considered 'usual business' for management. Typically, these strategies were coupled with financial performance measures in the STI scheme rewarding growth in the financial profit measures. While achieving cost improvements need not necessarily involve redundancies or wage freezes as occurred at the transformation strategy entities noted earlier, a significant cost to be managed is employment cost.

Unlike non-executive employees, who rely on fixed wages for the bulk of their earnings and who are therefore sensitive to changes in the level, executive employees have the opportunity to earn sizeable cash bonuses, as well as being eligible to

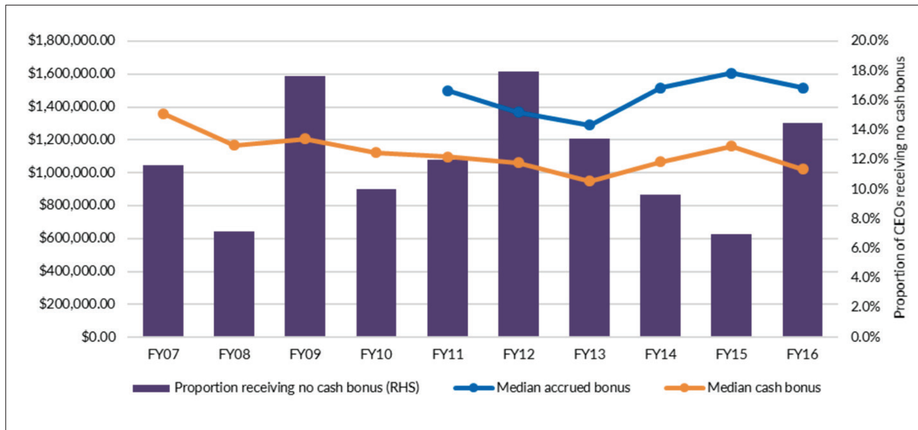

Figure 10.5: No cash and median cash bonus STI levels, ASX 100 CEOs, FY2007-16

Source: ACSI, CEO Pay in ASX200 Companies (August 2017), 20.

receive share-based remuneration in the formed of deferred STI awards and LTI awards. As Figure 10.4 above illustrated, executive remuneration is premised upon a target level of reward to be received for a target level of performance. Yet STI schemes don't start to pay out when the 'target' is achieved: they can pay out when 'threshold' performance is achieved.

And they have been largely paying out over this period. As illustrated above in Figure 10.5, at the two lowest points in the period from FY2007 to FY2016 (FY2009 and FY2012), seven out of 10 CEOs still received a cash bonus.

The median accrued bonus for the period FY2013 to FY2016 ranged from a low of A$1 million in FY2013 and FY2016 to A$1.2 million in FY2015. While turnover in CEOs and the lower rate of fixed remuneration (and thus target remuneration) paid to the replacement CEO could explain why no cash bonus payments were made in a particular year, the relative lack of variation in the median values suggests that achieving the STI bonus, even if not the full amount, has become the norm. ACSI notes:

> Only 18 [of the 79 ASX 100 CEOs in the study] received less than half of maximum [STI] for FTY16, which provides ongoing evidence that annual bonuses at many companies do not resemble performance pay, and instead appear to be a slightly variable form of fixed pay.[14]

Even the remuneration consultants have noted this trend, with a leading consultancy firm framing the conclusion in more subtle language:

> Across the market, STI payments do not fluctuate significantly year-on-year. Financial performance was lower in 2016 than 2015, while STI payments (as a percentage of target) were higher.[15]

Two factors can contribute to the level of bonus payments remaining unchanged. The first of these relates to the targets chosen. Nearly all ASX 100 STI schemes include non-financial performance measures. These can include qualitative measures linked to a strategy aimed at achieving reductions in operating costs, improving productivity, even going to the extent of relying on underlying financial measures that strip out the costs of the transformation strategy as one-off items (such as redundancy costs), while rewarding the activity of completing the transformation strategy tasks. As noted earlier, the Qantas 2017 annual report indicates that the one-off bonus for non-executive employees will be excluded from its calculation of underlying profit before tax, the key financial metric in the STI scheme.[16]

The second factor relates to the threshold and target performances required for any STI award to vest. These can be adjusted downwards to reflect expectations of lower levels of performance proposed by management as achievable during its annual budget and planning cycle. Executives can be rewarded for achieving a lower level of performance than the previous year because they have met the expected performance required. What gets measured — completing the strategy tasks — gets managed. The financial impact of these strategies can be identified as 'savings' for that year (and for the foreseeable future) while the costs of what it took to achieve this can be ignored.

Conclusion

On approving the strategy and the budgets, the board sends a signal, via the selection of measures and metrics in the variable remuneration, of its expectations of performance for the senior executive team (the CEO, CFO and BUHs). In doing so, it creates a chain reaction of performance expectations throughout the enterprise, as the CEO and his or her direct reports take their own performance measures into account in setting the measures for employees within their business units. If the approved strategy includes transformation or some other kind of fundamental shift in the way the company does business with a view to achieving cost savings, non-executive employees' wages and conditions are an obvious target for managers to focus on. This phenomenon offers one explanation for why employees are not seeing increases in their wages as they had previously experienced. The management team are being rewarded with extra payments for ensuring these costs are contained.

There is another factor that emerges from executive remuneration, in particular the suggestion made by market observers that STI awards usually vest. Senior executives themselves are largely indifferent to flat levels of fixed remuneration increases because they have high levels of variable remuneration to complement the fixed remuneration. One illustration of this differential impact can be seen by looking at increases in ordinary time earnings and CEO fixed remuneration. The average full-time adult weekly ordinary time earnings in November 2016 of A$1533.40[17] increased 2.2% over November 2015. The median fixed pay for incumbent CEOs in FY2015 was A$1.68 million and 2.2% of this was A$36 960 or A$709 per week. The CEO's fixed pay increase alone is just over 46% of these average weekly earnings.

For the CEO and other senior executives, provided their fixed remuneration remains in line with the market, while their variable remuneration achievements (measured by vested awards as a percentage of opportunity) confirms they are one of 'The Talented', flat rates of increase in executive pay in the market lack the impact they have on ordinary wage earners.

Endnotes

1. Diamond and Verrecchia 1982: 276; Moore 1985: 40.
2. Hart 1983: 19; Moers and Peek 2005: 5, 20-1.
3. Grossman, Stanford and Hart 1983: 149; Dewartripont, Jewitt and Tirole 1999: 84, 87; Fama 1980: 306; Holmström 1999: 177.
4. Reporting CEO pay data always include the median and average value, with the higher average value typically reflecting the variation in CEO pay across the sample. For example in 2016, the highest ASX 100 CEO fixed pay was A$6 781 903 while the lowest was A$362 100: ACSI 2017: 17.
5. Greckhamer 2016: 796-9.
6. Bebchuk and Fried 2004.
7. This is a recommendation of the ASX Corporate Governance Council 2014.
8. EY 2017: 5.
9. Qantas Airways Ltd 2011: 15.
10. Qantas Airways Ltd 2017: 4.
11. Qantas Airways Ltd 2011: 35.
12. Qantas Airways Ltd 2016: 16.
13. Qantas Airways Ltd 2017: 17 (emphases added).
14. ACSI 2017: 22.

15. EY 2017: 3.
16. Qantas Airways Ltd 2017: 17.
17. ABS 2017c.

Part III

Business structures and vulnerable workers

11

Fractured work

Josh Bornstein

Deconstructing work

In January 2015, retail giant Myer sought tenders for the cleaning of its network of stores throughout Australia. After years of underperforming in the highly competitive retail sector and under relentless pressure from its shareholders, Myer made clear to businesses that might tender that it was seeking to cut costs.

Amongst those that tendered for the work was Spotless, a provider of 'integrated facilities services' that is listed on the ASX and describes itself as 'committed to being an excellent Corporate Citizen'.[1] Spotless won the tender by pitching an innovative 'Hybrid Model' whereby the stores would be cleaned by both employees and workers classified as independent contractors.

It then approached Inci Corp, a labour hire company that provides cleaners to other businesses. The cleaners were overwhelmingly migrants from non-English-speaking backgrounds. Spotless told Inci Corp management that each employee was required to obtain an ABN and sign an 'independent contractor' agreement. Under the Hybrid Model, in periods of work that would ordinarily attract overtime or penalty rates, such as weekends and night shifts, the ABN cleaners did the work and were paid a flat rate of A$20 per hour. The award rate for work on Sundays was A$39.69. At all other times, Myer stores were cleaned by workers employed by Spotless who were paid award wages.

The ABN cleaners were treated as independent contractors under the Hybrid Model until late 2015, when their mistreatment was exposed on ABC's *7:30 Report*.[2] In a panicked response, Myer and Spotless directed Inci Corp to hurriedly 'convert' the workers from independent contractors back to employees.

This was not the first time Myer had been caught outsourcing labour to companies who underpay workers. In 2014, an investigation of a number of cleaning contractors used by Myer uncovered widespread underpayments, resulting in enforcement litigation by the Fair Work Ombudsman (FWO). Upon commencing the prosecution, the then FWO, Natalie James, stated she 'held concerns about the workplace practices of cleaning contractors engaged by Myer at various sites'.[3]

In its carefully calibrated press statement responding to the *7.30 Report* exposé, Myer went into damage control mode, attributing blame to Spotless:

> We only recently terminated the contract of a cleaning services provider which was not able to adequately demonstrate full compliance and appointed Spotless as our cleaning services provider to replace [it] less than six weeks ago.
>
> We have again sought full and urgent assurances from our cleaning provider, Spotless, that every person working on a Myer premises is being paid according to their rights and entitlements.[4]

These days, the catalogue of prominent Australian brands caught up in scandals about underpayment and mistreatment of workers has become so extensive that each new revelation has become almost banal. In recent years, 7-Eleven, Domino's Pizza, Caltex, Australia Post, Woolworths, Coles and many others have all been exposed for exploitative employment practices occurring in their networks and on their watch.

There is big money to be made in cutting wages, and just as much in suppressing wage growth. Fracturing and then reconfiguring the way we work has achieved both. For over 30 years, across many developed nations, businesses have been making money by cutting labour costs. In fact, reducing the cost of labour has developed into an art form; a key business strategy that appeals to both shareholders and consumers. Shareholders have banked the profits, while consumers have leapt on low-cost goods and services, without regard for the conditions in which the workers involved actually work. In our zeal for cheaper goods and services, we tend to turn a blind eye to the fact that workers such as Uber drivers and people delivering food on bikes are likely to earn less than the minimum wage.

This move away from secure to precarious forms of work has spread into the public and not-for-profit sectors. Government agencies routinely outsource significant functions while freezing real wage increases for public servants. A majority

of workers at Australian universities, once the bastion of secure employment, now find themselves in precarious arrangements, including a significant and rising number of academics employed on a casual basis.

The fissured workplace

> Never before have American companies tried so hard to employ so few people.[5]

To understand the transformation of the Australian labour market, it is necessary to first consider the US experience.

Throughout most of the 20th century, large corporations aggregated a range of different functions within the enterprise, employing substantial numbers of employees on site. Mostly the employees worked under a standard employment arrangement — full-time, ongoing employment. Major manufacturers, for example, employed staff on the production line, in marketing, training, human resources, information technology, finance, research and development, warehousing and transport.

Full-time employment accelerated as the preferred model after World War II and employees often worked for one employer for decades. The rise of the standard employment arrangement was associated with large capital and labour-intensive industrial processes and highly coordinated assembly lines. It was also a gendered model — in Australia, the living wage has historically been based on a male breadwinner supporting his family.

Then business started to reverse gear.

In the 1970s and 1980s, business schools, academics and economists advocated that companies focus on 'core' activities and divest non-core activities. They argued that businesses should prioritise core strengths and thereby enhance efficiency. They were joined by institutional shareholders, including private equity, hedge funds and, ironically, worker superannuation funds — all placing relentless pressure on businesses to cut labour costs. Former US Secretary of Labour Robert Reich observed that '[a]mong the voices demanding that companies make bold cost-cutting moves are the managers of large charitable foundations, retirement funds of university teachers, and union pension funds'.[6]

Initially, US companies led the charge in outsourcing manufacturing to China and call centres to India. When labour in China became too expensive, Bangladesh was substituted. Then companies realised that they didn't need to go offshore to achieve similar outcomes.

One of the first to join the dots about the transformation of business behaviour and the labour market was David Weil, Professor of Economics at the

Boston University School of Management. In 2014, Weil published *The Fissured Workplace: Why Work Became So Bad for So Many and What Can be Done to Improve it*. It meticulously documented how US companies walked away from employing staff in favour of sourcing workers through a range of different structures and intermediaries. Weil wrote:

> As major companies have consciously invested in building brands and devoted customers as the cornerstone of their business strategy, they have also shed their role as the direct employer of the people responsible for providing those products and services.[7]

Weil coined the term *fissuring* to describe how a corporation stops employing a large mass of workers and splinters them into smaller groups of workers. According to the Wall Street Journal, in some large US corporations, up to 50% of the workforce has been fissured.[8] Fissuring has been embraced throughout significant parts of the US economy and transformed the way work is transacted with profound consequences for the labour market and the US economy.

Weil traces the evolution of school janitors from working for schools to working for franchises. Hotel cleaners no longer work for hotels, but for labour hire companies and other third-party agencies.

Virgin America is reputed to have the highest revenue per employee because it stopped employing staff for baggage delivery, maintenance, reservations and catering, amongst others. These services are now provided to the airline by labour hire agencies. 'We will outsource every job that we can that is not customer-facing', says Virgin America CEO, David Cush.[9]

Budding CEOs continue to learn the art of cutting labour costs. Global Business Economics, a course which forms part of an MBA at the University of Melbourne's Business School, teaches the benefits of 'labour arbitrage', whereby companies outsource their work offshore. The use of the word 'arbitrage' is instructive: a term that has no bearing on efficiency, but rather refers to exploiting price differences in different labour markets to drive profit.

As the rebellion against secure employment spread beyond the US into other OECD countries, work has been sliced and diced into different and often precarious configurations. Today, a minority of workers in Australia are working in full-time ongoing jobs. A significant proportion of wage earners across developed economies have lost their income, bargaining power and fair share of the economic pie. Their work has become more precarious and they are more likely to be underemployed than ever before. The phenomenon has left economists puzzling at the failure of productive workers to generate wage growth. Between 1973 and 2016, growth in labour productivity in the US increased by 77%, but real wages increased by

approximately 12%.[10] Similar trends are now being observed here. The answer lies in the reconfiguration of the labour market.

The many flavours of fissuring

> Can I automate it? If not, can I outsource it? If not, can I give it to an independent contractor or freelancer?[11]

Direct employment can be replaced by a variety of different work arrangements. In many cases, fissuring involve the employer fracturing its employment relationship with staff and transitioning to a 'host' or 'lead company'. The 'lead company' is so called because it still calls the shots. Lead companies negotiate contracts to source labour using labour hire companies, supply chains made up of multiple contractors and subcontractors, franchisees, and workers classified (legally or illegally) as independent contractors. In many cases, a combination of these models is deployed.

The more conventional variety of the fissured workplace involves a triangular relationship between a lead company and a labour hire company which employs workers and provides their labour to the lead company. Labour hire company employees may work on-site alongside employees of the lead company for years on end, but are not treated as employees of that lead company.

Australia's national telco, Telstra, continues to shed large numbers of employees in favour of sourcing a significant number of workers through arrangements with labour hire companies. In a number of cases at Telstra, the triangular relationship appears problematic because the role of the labour hire company appears limited to processing pay. Is it more than a device used to try to avoid a direct employment relationship with the lead company? We may not get an answer. Such arrangements are rarely challenged by the workers involved.

Fissuring in Australian workplaces is not new, but its profound effects are now only starting to be understood. In 1991, the Federal Court decided that carpenters and labourers supplied by a labour hire company, Troubleshooters Available Pty Ltd, to a lead company, Odco, were not employees of *either* company, but instead were independent contractors. The decision meant that the carpenters and labourers were not entitled to minimum wage rates, annual leave, sick leave or many other employee entitlements.[12]

The Troubleshooters decision put a rocket underneath the labour hire industry, spawning a significant industry of labour hire businesses offering to cut businesses' costs. Over time, the competition between labour hire companies drove further downward pressure on the remuneration of the workers they used. It continues to this day.

In June 2016, the FWO delivered a damning report on the mistreatment and underpayment of shopping trolley collectors at Woolworths stores.[13] Trolley collecting is a low-skill, labour-intensive role, with 60% of trolley collectors born in Australia and 40% born overseas. For over a decade, the workplace regulator had been bringing civil cases of wage theft on behalf of underpaid trolley collectors. While the workplace regulator had successfully obtained numerous court orders against a range of small companies, in many cases, the company disappeared into insolvency leaving the workers empty-handed.

With a market capitalisation of A$40 billion, Woolworths is not a small company; it's an oligopoly. Its website states: 'At Woolworths Group, Corporate Responsibility has always been about doing the right thing … We understand our responsibility for creating a better tomorrow'.[14]

Woolworths trolley collectors are not employees of Woolworths. Instead they were provided to the food and retailing behemoth through what the FWO described as a web of 'complex labour supply chains with networks of corporate structures and intermediaries to facilitate cash payments, recruitment of vulnerable workers and production of false records'.[15] At the bottom of the supply chain, workers were paid as little as A$10 per hour — less than half the lawful rate.

The regulator uncovered a workplace with doctored or non-existent pay records, coercion of vulnerable, poorly paid workers, and 'shady contractors' supplying the workers. Breaches of workplace laws were found in 80% of Woolworths' sites. Although Woolworths undoubtedly profited from the exploitation of the trolley collectors, it could not be prosecuted for their mistreatment under the *Fair Work Act 2009* ('the Fair Work Act'). As Woolworths was not the 'employer' and under current laws it could not be established that the company 'knowingly involved' itself in the wage theft, the company was able to avoid liability.

In each fissured workplace, the lead company puts at least one barrier (and frequently more than one) between itself and the workers it relies upon. The barriers between Woolworths and the workers provided enough plausible deniability to avoid liability for their mistreatment.

Uber, Deliveroo and Foodora (the last of which has recently exited Australia) all interpose an app between the company and the vast number of workers delivering people or food to their destination. Like all gig economy businesses, Uber, Deliveroo and Foodora claim to employ none of these workers but instead treats them as 'independent contractors'. The claim is being challenged in tribunals and courts around the world, including in Australia.[16]

The legal distinction between an employee and an independent contractor is notoriously difficult to apply to different work arrangements, many of which

have been contrived to try to ensure that workers are not classified as employees. Wrongly classifying an employee as an independent contractor, otherwise known as *sham contracting*, is prohibited by the Fair Work Act. In 2015, the High Court found that an employer that sourced two housekeepers via another entity, both of whom were treated as independent contractors, was party to unlawful sham contracting.[17] Nevertheless, sham contracting is so widespread that there is no regulator that can effectively police it or stop it.

Millennials on bikes

> [N]ecessitous men are not, truly speaking, free men, but, to answer a present exigency, will submit to any terms that the crafty may impose upon them.[18]

Under Australia's legal system, workplace rights and responsibilities are almost entirely conferred on employees and employers. Independent contractors, who are theoretically self-employed entrepreneurs, have relatively few rights. They have no job security. They have no meaningful right to band together, bargain and withdraw their services. They are not entitled to a minimum wage.

Laws that provide a measure of employment security, including unfair dismissal and redundancy, don't apply to independent contractors. They can be unfairly dismissed without recourse. When comedian and writer Catherine Deveny was fired by Melbourne newspaper *The Age* in 2010, after posting controversial tweets, she had no recourse. Although Deveny had produced a weekly column for *The Age* for nine years, she was retained as an independent contractor.

The power of a lead company to unilaterally make decisions impacting independent contractors is almost absolute: to hire them, remove them, what to pay them, the conditions of their labour. By replacing employees with independent contractors, a business can eliminate the need to negotiate and bargain with those who provide its labour.

Millennials on bicycles have loomed large in the seemingly endless worker classification wars. While disputes about whether Uber and Deliveroo workers are independent contractors or employees continue to reverberate in courts around the world, Australia's High Court dealt with similar issues in 1989. The court decided that bicycle couriers had been illegally classified as independent contractors, finding that

> [i]n classifying the bicycle couriers as independent contractors, the Court of Appeal fell into error in making too much of the circumstances that the bicycle couriers owned their own bicycles, bore the expenses of running them and supplied many of their own accessories. Viewed as a practical matter, the

> bicycle couriers were not running their own business or enterprise, nor did they have independence in the conduct of their operations.[19]

In the decades since, hapless judges have applied a redundant common law to elaborate schemes designed to subvert standard employment. The process has been a farce. The decisions have veered in all directions and produced absurd results under which workers with no capital, no staff and no entrepreneurial disposition are 'reborn' as independent contractors. Gig economy workers are merely the latest in this unfortunate conga line.

In the conception of reality propagated by gig economy entrepreneurs, the person who delivers your pizza on their bike is an entrepreneur in the business of food delivery services. They may not have a business plan, any capital or the ability to employ anyone else. They may be couch surfing with friends because inner city rent is too steep. Yet Deliveroo will insist that these delivery drivers are entrepreneurs, relishing the 'flexibility' of technology-enhanced new ways of working. In fact, such delivery service people are not even working; they're 'partnering' Deliveroo in its journey to greatness.

If they are sick and cannot work, they don't get paid. The time spent waiting for a gig or job is at their cost. Gig workers are piece workers with apps — bidding with each other to win jobs or shifts, and thereby reducing their remuneration. The gig economy industry has succeeded — with considerable chutzpah and ingenuity — in persuading the population that piece work is not only desirable, but is an inevitable consequence of the technological revolution.

A post-bargaining labour market

> A workforce that is more easily divided than in the past may find itself more easily conquered. In other words, a world of divisible work may reduce workers' wage-bargaining power.[20]

Although they are agreements with individuals, there is nothing individual about employment contracts. Almost invariably, these contracts are template documents prepared by company lawyers, presented by the employer and then signed by employees. There are pro forma terms about confidentiality, restraints of trade, termination of employment, company policies and so on. From company to company, they are all in remarkably similar terms.

To find an employment contract containing evidence of negotiation over its terms is extremely rare. The same observation can be made about franchisors' contracts with franchisees. Once again, they are in identical terms, heavily skewed in favour of the franchisor. They are presented to the franchisees and signed

unchanged. The same phenomenon can be observed with many independent contractor agreements. Identical terms.

In contrast, the terms of an enterprise agreement made by an employer and a trade union vary widely, reflecting genuine negotiation and collective bargaining. Some contain a detailed disciplinary process, affording employees the right to natural justice. Others have no such protection. The point is that such agreements contain unique and relevant differences, reflecting the fact that they're only concluded after bargaining has taken place; there's no 'one size fits all' imposition on the employees. In larger workplaces, employees have tended to enjoy greater bargaining power, reflected in the terms that they are able to negotiate.

Fissuring work inhibits collective bargaining. By splintering the workers into smaller configurations, workers lose bargaining power. Australian laws only permit collective bargaining between an employer, its employees and a nominated 'bargaining representative' — most commonly, a trade union. This means that when workers bargain for better conditions with a labour hire company, they are usually caught up in a charade. The labour hire company is a patsy, caught in the middle between a union, on one side, and the lead company hiding behind it, on the other. This charade requires the labour hire company to plead poor because it is being screwed down on price by the lead company. Behind the labour hire company, the lead company — while absent from the bargaining table — drives the price of labour down.

Amazon recently established a distribution centre in Melbourne's south-eastern suburbs, in a warehouse that used to house workers employed by Bunnings. The Bunnings workers, members of the National Union of Workers (NUW), obtained a collective agreement which paid them A$12 an hour over the minimum rate.

In contrast, Amazon is sourcing 200 workers at the facility via labour hire company Adecco. Those workers earn minimum wages, and are unable to bargain with Amazon, which has refused requests to engage with the NUW. Bargaining with Adecco is not meaningful because the power to set wage rates rests with Amazon.

Lead companies like Amazon routinely require labour hire companies to tender for contracts with the lowest-price bidder awarded the contract. If the workers are supplied to a lead company by a labour hire company, the lead company can use the threat of being replaced with another cheaper labour hire company as commercial pressure to suppress any price increases. This downward pressure is passed down the line to workers retained by the labour hire company, suppressing wages.

Typically, franchise contracts are heavily lopsided in favour of head office. Franchise operations like 7-Eleven, Baker's Delight and Domino's Pizza impose contracts on their franchisees which regulate in extraordinary detail the franchisee's business. The contracts stipulate the hours of operation, room temperature, product placement, inventory levels, store layout and so on. Head office exercises complete control over their franchisees' operation. In the case of 7-Eleven, its contract stipulates that stores must be open 24 hours a day, 7 days a week. 7-Eleven head office takes 57% of gross profit. The relentless downward pressure on costs imposed by the franchisor is ultimately experienced by employees working for franchisees in an industry now beleaguered by frequent wage theft scandals.

In 2015, a wage theft scandal of unprecedented proportions engulfed 7-Eleven, costing it approximately A$150 million dollars in back pay. The company asked Professor Allan Fels to chair an independent panel to assess claims for compensation from workers. On reviewing the franchise contracts, Fels observed, '[m]y impression — my strong impression — is that the only way a franchisee can make a go of it in most cases is by underpaying workers, by illegal behaviour'.[21]

Wage theft and wage stagnation

As companies have steered away from direct employment relationships and pushed workers towards engagement by other entities, the responsibility for complying with legislative standards has been splintered. As the fate of Woolworths' trolley collectors, Myer's cleaners and 7-Eleven's store workers underlines, when responsibility for compliance moves from the larger, secure businesses to smaller, and sometimes, marginal operations, the risk of non-compliance soars. In its more extreme manifestations, life and limb are endangered.

As more businesses achieve cost reductions, their competitors are pressured to meet or beat the reductions. In a number of cases that have been exposed, business models in fissured work environments are built on illegal underpayment of workers — also known as 'wage theft'. Significant parts of the economy appear to rely on wage theft, including the hospitality, retail, agriculture and franchising sectors.

Franchising has long been a feature of Australian business, but it is only in recent years that evidence of systemic underpayment and exploitation of workers has emerged. Prominent franchisor Michael Sherlock, who founded Brumby's Bakeries, argues that abuses of franchisees and their workers happens 'when you get corporates or venture capitalists or listed companies in and they put their … shareholders ahead of franchisee profitability'.[22] The mistreatment of workers in franchises is emblematic of a broader malaise in business culture.

Whilst the workplace has been fundamentally transformed, the laws that govern work relationships haven't kept pace. Mostly those laws remain geared to the post-war standard employment relationship between employers and employees. In other words, they are largely redundant. The situation is not unique to Australia. According to *The Economist*, '[t]he fundamental problem is that in America, as in many other rich countries, employment law has failed to keep up with the changing realities of modern work'.[23]

That workplace laws are increasingly irrelevant to a growing part of the workforce is no accident. As fissuring has unfolded in Australia, the debate about the content of labour laws has been fiercely contested. Australia's peak business lobby, the Business Council of Australia, together with its allies have successfully campaigned for decades for company tax cuts and laws that weaken unions and suppress wages. Wage growth stagnates; union density has collapsed; the number of workers covered by collective agreements is in freefall; and employee share of economic growth nudges record lows. Unions and the labour movement have been comprehensively outmanoeuvred.

There is a fine line between company tax avoidance and evasion. Some of our major corporations, including BHP and Rio Tinto, stand accused of the former, while Chevron has been successfully prosecuted for the latter. The situation has parallels with the labour market. For years, major corporations including CBA, Telstra and Rio Tinto have devised strategies to avoid bargaining with employees and unions. Other businesses, such as Uber, have sought to avoid the industrial relations system altogether. The same lawyers and accountants that have established elaborate structures involving multiple entities to subvert tax obligations are now applying a similar methodology and logic to fissuring work, succeeding in subverting workplace laws, weakening unions, eliminating bargaining and suppressing wages.

Conclusion

> There is good reason to think that power imbalances play a big part in the rich world's wage stagnation.[24]

In June 2018, the European Central Bank met in Sintra, Portugal, with much of its deliberations focused on the 'wage puzzle'. Why has wage growth stagnated in countries where productivity has risen and where unemployment is low? Increasingly, the realisation is dawning on economists and policy makers that the structural changes in the labour market wrought by fissuring are a major contributor. Those changes are not inevitable, but are, rather, the product of profound changes in business culture, politics and regulatory failure.

For the first time in living memory, the Governor of the Reserve Bank of Australia, Phillip Lowe, declared a 'low wage crisis' in June 2017 and naïvely urged employees to ask for higher wages.[25] Since then, wages have continued to stagnate.

The low-wage crisis is an economic crisis like no other. When business groups confected and prosecuted a 'productivity crisis' campaign between 2010-13, arguing that labour laws were hindering productivity, ABS data showed that productivity was increasing. Treasury reported that productivity increased in the five years to 2015-16 at an average annual rate of 1.8% — a rate that exceeded that over the past 30 years. Nevertheless, in response to this 'crisis', the federal government directed the Productivity Commission to constitute an inquiry to determine whether workplace laws should be further deregulated. The major outcome of that inquiry was a recommendation to cut penalty rates for workers in the retail and hospitality industries, an outcome that has since been delivered.[26]

The response to the low-wage crisis could not be more different. There is no urgent government review or inquiry. No investigation by the Productivity Commission. Instead, the federal government and the big business lobby have urged Parliament to legislate company tax cuts, arguing that they will stimulate wage growth. In June 2018, Lowe's position on wage stagnation had evolved. He now says that a loss of employee bargaining power has contributed to wage stagnation.[27] Lowe's comments to the audience of bankers in Sintra underlined the enormity of the political challenge facing those who advocate policies to enhance employee bargaining power. Lowe recounted that when he questions Australian businesses about why they don't offer more pay for highly sought-after workers, they 'look at me as if I'm mad'.

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12

Wage theft and young workers

Keelia Fitzpatrick

Introduction

The mass underpayment of 7-Eleven workers was one of the biggest new stories in Australia in 2015. An investigation by Fairfax Media and ABC's *Four Corners* uncovered workers being paid as little as A$10 an hour — more than A$7 per hour less than the then minimum wage. This vast pay gap was frequently covered up by doctored time sheets and rosters. An alarming 'cash back scheme' was used by some franchisees across 7-Eleven's franchise network. Workers were paid the correct legal wages into their bank accounts. But behind closed doors and hidden from CCTV cameras, they were forced to give back half their pay to the employer. The company's Australian head office was heavily implicated. A whistleblower released documents to Fairfax Media/ABC demonstrating that 'Head office is not just turning a blind eye, it's a fundamental part of their business'.[1] The impact of the revelations stemmed from both the scale of the underpayments and the fact that they were linked to one of the most recognisable brands in the world. Questions were quickly asked of the Australian government and the federal regulatory body — the Office of the Fair Work Ombudsman (FWO). The regulator was placed under further scrutiny when it came to light — via the media — that the FWO had conducted dozens of raids on 7-Eleven stores in the preceding years. How and why had the regulator failed to stop this kind of wage fraud happening to

thousands of workers in hundreds of convenience stores across the country? What was wrong with our workplace laws?

Australians were rightly shocked by the estimates that 7-Eleven workers, a large proportion of whom were international students, experienced wage theft exceeding A$150 million.[2] At this time, the phrase 'wage theft', an informal term describing the underpayment of wages owed to a worker by an employer, was uncommon and used mainly by some trade unions and workers' rights activists. Fast forward to 2018 and the term has become common terminology for politicians, the FWO and commentators. It implies intentional wrongdoing by the employer. This reflects a significant change in public attitude toward the issue. It is the result of a stark increase in the volume and seriousness of wage theft stories reaching public ears. Past explanations that underpayment is caused by 'bad apple employers' or due to an employer's 'honest mistake' are now being interrogated and largely rejected.

The crisis of pervasive wage theft is prompting unions and community groups to try innovative campaigning techniques and to explore legal alternatives. This shift in public opinion and the exploration of new campaigning and legal approaches represent a critical moment in the Australian industrial landscape. This chapter will explore what is meant by the term wage theft and the workers experiencing it, the regulatory and legal context underpinning it and emerging solutions to the problem.

What is wage theft?

Wage theft is the colloquial term that describes under- or non-payment of minimum wages and entitlements that are rightfully owed to a worker. Employers commonly engage in practices of wage theft by paying a base hourly rate that is below the relevant award or minimum wage base rate, ignoring obligations to pay penalty rates for hours worked in the evenings, on weekends or on public holidays. Failing to comply with obligations to pay overtime rates or other incentive-based payments, bonuses or loadings also constitute wage theft. Other practices include failing to provide or pay out leave entitlements or failing to pay superannuation entitlements. It can also include 'off-the-clock violations' where staff are required to work beyond their scheduled or clocked-off finishing time, or to complete training relating to their employment without pay. Wage theft commonly occurs for young and/or migrant workers who are reliant on the statutory minimum wage or modern award system. But it can also take place where an employer fails to comply with the wage and entitlement provisions of an enterprise agreement.

Each of these scenarios constitute breaches of the *Fair Work Act 2009* ('the Fair Work Act'). Specifically, the Act requires that employers pay an employee amounts referable to the performance of work in full. Failure to do so may constitute a contravention of a term of a modern award.[3] The Fair Work Act provides that, in such situations, the person who has been underpaid may seek a range of civil remedies, including compensation and pecuniary penalties. For the Young Workers Centre (YWC), a legal and organising centre in Victoria, recovering underpayments is the legal issue for which most young people are seeking assistance. The following wage theft case studies are shared by young workers who have been assisted by the YWC.

Tina's story

Young workers regularly experience wage theft when they are paid an hourly 'flat rate' that is below or near the award base rate of pay but does not include any penalty or overtime rates provided for in the relevant award. This was Tina's experience when she worked at a dumpling house in Melbourne's China Town district during her time in Australia on a Work and Holiday visa. During her 11-month employment period as a waitress at the restaurant, she was paid A$12 and A$14 per hour (the A$2 increase was the result of a conversation Tina had with her boss where she asked about being paid the minimum wage). The total amount owing to Tina, were she paid in accordance with the legal rates prescribed in the Restaurant Industry Award 2010, was just over A$20 000. After finishing at the restaurant, Tina attempted to recover this money with the support of the FWO, specifically by using their mediation process. As this mediation process is voluntary, many employers choose to not participate. Tina's employer, however, did participate and made her an offer of A$3000 to settle the dispute. Tina refused this settlement amount and sought information and assistance from a number of organisations, including the National Union of Workers.

As Tina reached the expiration of her visa and final weeks in Australia, she pursued the matter through Court. Justice Connect (which assists individuals to access free legal help) assisted Tina in filing an urgent small claims application in the Federal Circuit Court. Due to language barriers, the YWC was granted leave to represent Tina in the SCT, whereas other workers must ordinarily represent themselves. The employer was ordered to pay A$20 000 to Tina, but did not face any penalties for breaches of wage laws as they cannot be ordered in the small claims jurisdiction. The employer also did not face any investigation by the FWO, as the courts do not automatically require the regulator to investigate such breaches. In many ways, Tina's story is a wage theft success story. However, this outcome was only achieved with the resources provided by a trade union and pro

bono assistance from two community legal centres. It shouldn't require this extent of work to pursue nothing more than a worker's statutory entitlements.

Jordan's story

Another common practice of underpaying employees is when they are employed on a part-time basis but in practice are treated as a casual without being paid the legal 'casual loading'. This occurs when employers want the flexibility of a casual worker whose hours of work can be changed every week, but at the cheaper part-time hourly rates. In addition to changing hours, ordinary part-time work entitlements, including personal or annual leave, are often either ignored or are identified on pay slips in name only (but are never provided for or paid out in reality).

This was Jordan's experience during his time as a kitchen hand and waiter at a café in Camberwell in Melbourne's east. He never received a written contract of employment, and consequently was unsure whether he was employed on a part-time or casual basis. Jordan was paid a flat rate of A$16 as a kitchen hand, A$18 an hour as a waiter and A$20 per hour as a bar attendant during his time at the café. He regularly worked weekends and public holidays, but received no penalty rates during these times, nor was he paid any personal or annual leave. His hours changed most weeks, but he did not receive the 25% casual loading he was entitled to under the Restaurant Industry Award 2010. Jordan expressed his frustration to Fairfax Media about his experience of wage theft: 'You look at your boss; he's driving around in an expensive BMW and sending all his kids to private schools and living in a huge mansion', he said. 'The least he could do is pay me properly'.[4] Jordan successfully won back more than A$8000 from his former employer, with legal assistance from the YWC.

The 'University of Subway' story

A regular wage theft experience for young people is being directed by their employer to attend unpaid compulsory meetings or complete unpaid mandatory training. This is an experience of many teenage employees working at some of Subway's approximately 1400 Australian stores. For the vast majority of these young workers, the job with Subway is their first foray into the world of work. As such, many of these workers tend to have low levels of understanding of workplace norms and employment rights and are not confident in speaking up about their concerns. Many of these young Subway workers do not know that all time spent by an employee undertaking workplace training is time that they are working and therefore time for which they should be paid. Consequently, they do not object

when they are directed by their employer to complete mandatory 'University of Subway' modules at home and are not paid for the time this training takes.

The YWC has spoken with workers from franchisees across Subway's network who are required to complete over 20 'University of Subway' modules through a centrally managed online portal run by 'Subway Partners 24/7'. Modules cover induction-type information like workplace health and safety, but also include 'baking great bread', 'how to build a breakfast sandwich' and 'cleaning the customer area'. Penny and Renee are sisters who worked at a Subway store in Melbourne's eastern suburbs. Like many Subway employees, both were required to complete more than 15 hours of University of Subway modules from home and on an unpaid basis. Penny and Renee told *The Project* in 2017 that this training 'took hours, all out of our own time, and if we didn't complete it by a certain date we just wouldn't get shifts anymore, or wouldn't get to work there ever again'.[5]

How big is the problem of wage theft?

Australia's workplace relations frameworks provide some of the best minimum standards in the world. There is an assumption that this, in and of itself, ought to protect employees and prevent widespread worker exploitation. However, a lack of effective regulatory enforcement, a decline in union membership and the complex legal processes that face individuals seeking restitution has resulted in an industrial landscape where wage theft is a low-risk option for some employers. Young and migrant workers are disproportionately impacted by wage theft due to their inherent vulnerability in the labour market. That vulnerability stems from their low levels of understanding of their workplace rights and their precarious status.

Some suggest that wage theft is a longstanding problem that has always existed and affected marginal sections of the Australian labour market. However, what appears to have changed in recent years is the scale of the problem. Evidence provided by academic research, advocacy and representative organisations and media reports shows that wage theft in low-paid, award-reliant sectors is now widespread and normalised. Several studies and reports outlined below highlight how wage theft has become a mainstream issue.

As illustrated by 7-Eleven's and Tina's story, some of the most extreme cases of wage theft relate to temporary migrant workers. A 2017 study that surveyed 4322 temporary migrants in Australia from 107 countries found that almost a third (30%) earned A$12 per hour or less. Almost half (46%) of participants earned A$15 per hour or less (excluding 457 visa holders), compared to the 2016-17 hourly adult minimum wage of A$17.70. This wage theft was evident across many

industries, but was especially prevalent in food services, and particularly extreme in fruit and vegetable picking.[6]

The accommodation and food services industry is also renowned for widespread non-compliance with workplace laws, a problem which is most profound for migrant workers in this sector. A 2015 audit[7] of fast food sites found that 84% of fast food stores were responsible for some type of underpayment; 39% were paying incorrect base rates of pay; and 44% were not paying penalty rates or loadings. Over the past five years, the FWO has undertaken numerous audit campaigns in the hospitality industry. While the results have been variable, the findings all broadly confirm that wage theft is rampant in this sector. For example, an audit campaign conducted in 2013 found that 31% of accommodation/taverns and bar businesses were in contravention of the Fair Work Act, and 53% of these contraventions were monetary.[8] In 2015, a subsequent FWO audit found that 46% of restaurants, cafés and catering businesses had at least one wage payment contravention.[9] Notwithstanding these campaigns and other compliance-related activities, the FWO continues to find concerning levels of contraventions. For instance, an audit undertaken in 2016 found that 47% of takeaway food businesses were paying their employees incorrectly.[10] A YWC 2016 survey[11] of 1028 young people (below 30 years of age) in Victoria found that one in three young retail workers are not paid the minimum award wage, losing an average of A$1.77 per hour and on average A$32.16 per week. This survey found that overall, one in five young workers are not paid the basic minimum wage they are entitled to and are losing an average of A$3.12 per hour and A$59.02 per week. Three in four young workers worked unsociable hours such as nights, weekends and public holidays, but less than half of those workers were paid penalty rates for their work. Other areas where widespread wage theft has been documented include the cleaning and horticulture industries.[12]

Compliance and deterrence

The extent of non-compliance by employers suggests that there are profound problems with the enforcement of wage laws in this country. It seems that many employers, particularly in certain sectors, perceive that the risk of getting caught and facing any consequences for their non-compliance are so low that there are few reasons to stop their unlawful behaviour. In assessing the effectiveness (or otherwise) of enforcement, this chapter reflects on two critical elements: first, the enforcement strategies used by the FWO; and second, the number of matters involving wage theft which are ultimately taken to court.

The FWO's litigation policy makes it clear that taking matters to court is a course of last resort. Litigation is saved for matters where there is 'deliberate exploitation of vulnerable workers', employer refusal to cooperate with the FWO or a 'significant history of noncompliance'. Instead, the FWO utilises a variety of statutory enforcement tools for 'cases of serious noncompliance' (where dispute resolution or small claims are not appropriate to solve the matter). First, there are infringement notices, which may include on-the-spot fines (maximum of A$1260 for individual or A$6300 for a corporation) for failure to keep time and wage records or have the right information on a pay slip or employee record. In 2016-17, the FWO issued 665 infringement notices. Second, compliance notices are used when an employer hasn't (or is believed to not have) complied with the law. Compliance notices generally require the employer to take specified steps to rectify the matter. If the notice is not complied with, the FWO can take the action to court to enforce the notice. In 2016-17, the FWO issued 192 compliance notices that led to the recovery of A$333 000 in unpaid wages. Third, there are enforceable undertakings, which are 'legally enforceable arrangements' with employers who agree to address contraventions and prevent future breaches. In 2016-17, the FWO entered into 40 enforceable undertakings.[13]

How many employers who underpay their workers end up facing court action when they break the law? It's difficult to determine a definitive number, but it seems that the numbers are relatively low. Claims can be brought by individual workers, industrial associations or the FWO.

Federal courts report on claims commenced within national practice areas, but given the breadth of the courts' jurisdiction, these claims can arise under many parts of the Fair Work Act, as well as under other pieces of legislation. By way of example, we know that 1191 matters were commenced in the Industrial Division of the Federal Circuit Court in 2016-17, but the proportion of those matters relating to claims for underpayment of wages is not reported.[14]

Similarly, in the Federal Court in 2016-17, 270 matters were commenced within the Employment and Industrial Relations National Practice Area. Again, it is unknown what proportion of those matters are claims for underpayment of wages.[15] A combined total of 1461 matters commenced federally, relating to all manner of industrial matters in a year, suggests that the total number of underpayment claims in the federal court system, relative to the prevalence of the problem, is not high.

In Victoria, the Magistrates' Court has jurisdiction to determine claims relating to breaches of awards (among other industrial matters). It reports that in 2015-16, 116 complaints were filed in the Industrial Division of the Magistrates'

Court, of which 89 were small claims ('proceedings in which a party is seeking an amount whether by way of damages or underpayments of $20,000 or less').

In 2016-17, the FWO initiated 55 civil penalty litigations. 75% (or 41 matters) related to wages and conditions. They secured A$4.8 million court-ordered penalties.

The FWO has also disclosed to Parliament that

> [i]n 2014-15 the FWO assisted parties involved in … 14,291 separate allegations relating to underpayment of entitlements. … In 2014-15, there were 42 litigations commenced involving underpayment breaches as part of the alleged contraventions, which represents 84% of all litigations commenced in this period.[16]

This figure represents only 0.29% of all allegations of underpayment lodged with the FWO in the same reporting period.

When contrasted with the prevalence of wage theft outlined above, the number of cases going to court is extremely low.

The pervasiveness of wage theft in Australia suggests that the Fair Work Act's regime of civil penalties (monetary fines) to ensure employer compliance with minimum wage obligations is not effective. The Act and enforcement activities carried out by the FWO are not driving compliance or deterring employers from engaging in breaches of the Act.

It is worthwhile examining how the FWO's suite of enforcement tools were used in the most notorious case of wage theft we have witnessed in Australia: the case involving 7-Eleven. Prior to the Fairfax Media/ABC investigation in 2015, the workplace regulator had conducted three separate raids on dozens of 7-Eleven stores between 2008 and 2015.[17] On each occasion, serious payroll issues were found. Raids in October 2009 targeted 56 stores in Victoria and led to a single legal action. This action by the FWO against the franchisee was successful, but the owners put their business into administration and the workers never received the wages owed to them. The FWO undertook further raids of 20 7-Eleven franchises across the country in September 2014 and found that 60% were underpaying wages. The whistle-blower who worked with the Fairfax Media/ABC investigation commented on 7-Eleven head office's response to these raids, stating that 'head office put in place processes to make it look like it was serious about addressing the problem. But he says few cross-checks were done, which made the process more like smoke and mirrors'.[18]

A total of 11 litigation proceedings against 7-Eleven franchisees have been filed by the FWO as at July 2018.[19] Importantly, 7-Eleven's head office was not

held responsible for the wage theft perpetrated by its franchisees, despite evidence suggesting that head office was responsible for payroll administration. The FWO's main compliance response has been to enter into a proactive compliance deed with 7-Eleven head office in late 2016. The 7-Eleven proactive compliance deed is only one of 17 such deeds entered into since 2009. Measures covered by the deed include the introduction of biometric shift scanning systems technology and 7-Eleven-owned CCTV in all stores so that head office can oversee employees' hours to ensure that they are paid correctly. Further, the deed covers arrangements of how the 7-Eleven Wage Repayment Program will operate and creates new auditing and reporting mechanisms between 7-Eleven and the FWO. Unlike enforceable undertakings, proactive compliance deeds are non-statutory instruments and therefore do not have any in-built mechanism for enforcement of the relevant commitments.[20] It remains to be seen what impact this combination of compliance approaches by the FWO will have on 7-Eleven head office, franchisees and the prevalence of wage theft more generally in Australian workplaces.

Solutions

Wage theft criminalisation

In May 2018, the Victorian government announced its commitment to making wage theft a criminal offence should it be re-elected at the 2018 state election. The proposed law will apply to both businesses and individuals, such as directors or senior managers. In a clear nod to the 7-Eleven case, the policy specifically makes reference to third-party liability provisions, in order to 'make sure the laws capture head franchisors who oversee wage theft by franchisees, or companies who try to avoid liability through complex corporate structuring'.[21] The proposed offences, which will also include failing to keep employment records and falsifying employment records, will have a maximum penalty of 10 years' imprisonment, or a maximum fine of A$190 284 for individuals and A$951 420 for corporations. Restitution orders will also be available to ensure that guilty employers pay back workers the money they owe. Importantly, the commitment also includes the establishment of a Victorian Wage Inspectorate to assist in the implementation of these new laws.

An important element of wage theft criminalisation is that in addition to a sentence, a conviction carries automatic disqualification from managing corporations for five years in accordance with section 206B of the *Corporations Act 2001*. This will address the phoenixing tactic used by some employers to place their

company into administration to avoid paying monies owed to workers or creditors and then shortly thereafter creating a new company with a different name.

Advocates and campaigners for the reform argue that the threat of criminal penalties, including jail time and being unable to manage corporations for five years, will act as a meaningful deterrent for employers in a way that the current civil regime is failing to achieve. It is also argued that egregious and non-compliant perpetrators of wage theft, like the case of Todd Buzza, should face consequences akin to those convicted of property theft.

Before underpaying young workers in his Melbourne burger joints, Todd Buzza had a long, documented history of unscrupulous business practices. In 2012, he featured in an *A Current Affair* segment entitled 'Todd the Shodd', which detailed a string of individuals to whom Buzza owed money or services as part of a building company he previously ran. In the same year, Buzza was convicted of failing to disclose bankruptcy to his customers in the Ringwood Magistrates' Court. In 2013, Consumers Affairs Victoria issued a public warning about his deceptive conduct.[22] Buzza went on to open two 'Burger Buzz' stores in inner city Melbourne, serving burgers and alcohol and employing a number of young and migrant workers. Since opening these stores, a number of Burger Buzz employees have alleged that they were paid below minimum wage and not paid penalty rates. Some say they were simply not paid any wages for weeks of work.

The FWO have a relatively long history of compliance activities with Buzza. In 2014, inspectors formally notified Buzza on two occasions of minimum pay obligations.[23] Following this, the FWO issued seven compliance notices requesting back pay for seven workers.[24] Its first legal action against Buzza in June 2016 related to underpayments owed to seven workers totalling A$7113. The FWO brought a second legal action against Buzza in January 2017 regarding a further five employees who worked at the Brunswick outlet and were underpaid A$7513. It was also alleged that Buzza and his company knowingly provided inspectors with false and misleading records and failed to comply with a statutory Notice to Produce issued in relation to relevant employment records. This action led to Federal Circuit Court Judge Jones ordering penalties of A$258 495 against Buzza's company and A$51 735 against Buzza personally in May 2018.[25]

It is difficult to estimate how many workers had their wages stolen by Buzza between the FWO's first interactions with him in 2014 and the closure of Burger Buzz's Brunswick outlet in late 2017. At the time of writing and after four years of the FWO's various compliance resources targeting Buzza, it remains unclear whether any of the workers will receive the money they are owed or whether the penalties ordered by the Court will be paid. Buzza's repeated and unremorseful

wage theft is the kind that advocates of wage theft criminalisation argue would be covered by criminal provisions: the kind of offender who cannot be stopped by the current threat of, or actual, civil legal action.

Campaigning: Hospo Voice and YWC

Groups like YWC and United Voice Victoria's Hospo Voice project demonstrates a new approach to engaging young people working in award-reliant, non-unionised industries where wage theft is rampant. These new approaches to unionism are required in atomised industries where effective enterprise bargaining is near impossible.

Both groups are using traditional campaigning tactics like snap protests and recruitment blitzes of popular shopping and eating areas to build worker power and to target non-compliant employers. These tactics are successful in gaining media coverage about wage theft and growing community support for affected workers.

New digital tools, including online petition platform Megaphone and Rate My Boss, are empowering workers to voice concerns and amplify issues they are having in the workplace. Hospo Voice's Rate My Boss platform allows hospitality workers to anonymously rate and provide information on how Melbourne's cafés, bars and restaurants treat their staff. This tool was created for hospitality workers so that they could warn their peers about bad bosses and highlight the good employers in the sector. It is also intended to be a useful tool for consumers, who are increasingly alive to the fact that worker exploitation is rampant in Melbourne's food and drinking scene.

The normalisation of wage theft in Melbourne's food scene was encapsulated by the wage theft scandal revealed at Barry café in Northcote in Melbourne's inner north. The café serves trendy brunch and lunch meals, coffee and local beers. Staff were generally paid a flat rate of A$18 to A$20 per hour with no penalty rates paid for weekend shifts. Once they became aware of the underpayment, they requested to meet with the café owners as a group. The owners refused and offered to discuss the matter with staff individually. The group of workers then sought assistance from YWC, who helped to draft a group email signed by nine staff members requesting that they be paid the appropriate award rates. In the following days, several of the workers who had signed the group email had their shifts cancelled or were told they were no longer needed.[26] This retaliatory response and the wage theft by the café owners led to the workers and their union, Hospo Voice, organising a community protest outside the café, which gained national media coverage. The owners' explanation for paying below-award rates was that they instead gave staff free meals, free coffee and a paid meal break. Following

the protest and widespread media coverage, the owners sent a number of workers participating in the organising efforts an email stating that 'if the harassment continues to hurt and devalue our business each of you will be sued individually and collectively'.[27] Claims relating to the workers' dismissals and underpayments are currently being pursued on their behalf by the YWC.

The action taken by the Barry café workers, with support from Hospo Voice and YWC using new and old campaigning tools, marked a key industrial moment in 2018. It demonstrated a number of key elements in coming to grips with and tackling the wage theft. First, wage theft has become entirely normalised amongst some employers, who behave brazenly when reminded of their statutory obligations regarding minimum wages. Second, young people in precarious work can get organised and challenge unlawful behaviour by employers, given the right support and tools.

Conclusion

Stagnant wage growth in Australia is deservedly receiving necessary attention from economists, civil society and, surprisingly, the governor of the Reserve Bank of Australia. Central to this conversation is examining the extent to which our legal structures and regulatory infrastructure is facilitating wage growth and, more fundamentally, ensuring employer adherence to laws setting minimum wages. There is mounting evidence suggesting that these structures are failing to ensure employer compliance with minimum pay rates, and this is a pervasive problem impacting young and migrant workers. It has been amplified by frequent and high-profile media reporting, in particular the Fairfax Media/ABC investigation of 7-Eleven and other high-profile restaurant empires and chains. The adoption of the term 'wage theft' to describe the actions of employers and the problem more broadly reflects the impact this evidence and reporting is having on public opinion. Whereas wage theft was previously understood to be perpetrated by rogue or ignorant employers, it is now seen as having become normal practice in the hospitality and retail industries. This has necessarily led to unions exploring new campaigning and organising tools to activate workers who are paid unlawful wages, and policy makers exploring significant legislative and regulatory reform.

Endnotes

1. See Ferguson and Danckert 2015.
2. See Ferguson 2017a.
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5. Network Ten, *The Project* 2017.
6. Berg and Farbenblum 2017.
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11. Bright and Fitzpatrick 2017: 7-10.
12. Berg and Farbenblum 2017.
13. FWO 2017a: 23.
14. Federal Circuit Court of Australia 2017: 56.
15. Federal Court of Australia 2017: 149.
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20. Howe, Hardy and Cooney 2014: 219.
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13

Temporary migrant workers, underpayment and predatory business models

Iain Campbell

Introduction

Temporary migrant workers (TMWs) are 'persons who live in a host country without a right of long-term residence and who undertake paid work during their stay'.[1] Three main facts about their presence in Australia are relevant to the discussion of wage stagnation. First, there are large numbers of TMWs in Australia, currently around 1.2 million persons. Second, those numbers have increased strongly over the past 15 years. Third, when employed, many TMWs are subject to exploitation, including wage payments that fall below — sometimes well below — the minimum levels specified in employment regulation.

This chapter summarises evidence concerning each of these three points and then considers the implications for wage stagnation. Data to illuminate the implications are sparse, and I focus on drawing out key arguments that might help the broader discussion.

One link to slow wages growth, as highlighted by orthodox economics, stems from the simple fact of increased numbers, which add to labour supply and thereby help to moderate wages growth. This chapter argues, however, that the more salient point concerns the way many TMWs are mistreated within the workplace in industry sectors such as food services, horticulture, construction, personal services and cleaning. TMW underpayments, which appear both widespread in these sectors and systemic, offer insights into labour market dynamics that are also relevant to the general problem of slow wages growth. They offer a window into what can be characterised as *predatory business models*. These seek to take advantage of weak bargaining power amongst employees, whether TMW or 'local',[2] to minimise labour costs and to improve the position of the business in competitive product markets.

TMW numbers

Most TMWs in Australia possess valid visas that mix temporary residence and work rights. Five main groups can be distinguished according to the visa type:

1. *temporary skilled workers* in a range of industries allegedly subject to skill shortages (previously the subclass 457 visa, which has been recently replaced by the new subclass 482 visa)3
2. lower-skilled workers, employed primarily as *seasonal workers* in horticulture (the subclass 403 visa)
3. *working holiday makers* (visa subclasses 417 and 462)
4. *international students* (now a single visa subclass 500, but I also include the subclass 485 post-study or graduate visa)
5. *holders of select bridging visas*.

The first two are modern versions of 'guestworker' schemes: that is, dedicated TMW programmes that are demand-driven and permit temporary residence in Australia for the specific purpose of paid work with an approved employer. The third and fourth are de facto TMW schemes which are designed for other purposes, such as cultural exchange or education, but grant work rights that allow visa holders to engage in paid work during their stay.[4] The fifth group is an omnibus administrative category, which groups together a heterogeneous assembly of persons who have applied for a change in visa status, often from one of the other TMW categories, and whose case is still to be decided.

Beyond these five officially administered groups, the category of TMW also includes a sixth group, composed of 'undocumented workers' who lack long-term residency and work rights and are employed in breach of the immigration

regulations, perhaps because they have overstayed a valid visa or because they have a valid visa that lacks work rights.[5]

The total number of TMWs present in Australia is large. Latest stock data indicate that international students form the largest group, accounting for 535 811 persons at the end of March 2018 (with graduates on the 485 visa adding a further 65 246). Working holiday makers and temporary skilled workers are also substantial groups, accounting for 148 124 and 151 596 persons respectively. Holders of bridging visas, most of whom have work rights, have expanded to 194 875 persons. It is difficult to estimate the total number of undocumented workers. Although not as significant as in other OECD countries, this group may still include up to 100 000 persons. The smallest contribution comes from lower-skilled workers on the Seasonal Worker Programme (SWP), which, though growing, accounted for only 8457 visa grants in 2017-18.[6]

In all, the total number of TMWs in Australia is around 1.2 million persons. If we include New Zealand citizens and permanent residents, who can enter Australia under a special subclass 444 visa, without time limits on their stay and with unrestricted work rights (though without access to most social security payments), then the total is close to 2 million persons.[7]

The turn to temporary labour migration is a recent phenomenon in Australia, which is beginning to overshadow and indeed displace the traditional emphasis on permanent migration. One index of the relation between the two streams comes from ABS data for November 2016. These data revealed that 1 666 900 persons who were born overseas had arrived in Australia in the previous 10 years and were aged 15 years and over on arrival (excluding Australian and New Zealand citizens before arrival). Amongst this group, 599 200 had first arrived on a permanent visa, while 1 058 000 had arrived on a temporary visa.[8]

Increase in TMW numbers

Despite the significance of temporary labour migration, reliable data are sparse and scattered. There is little disagreement, however, that net TMW numbers in Australia have increased strongly over the medium term. Official stock data indicate that the visa programmes for international students, temporary skilled workers and working holiday makers have tripled in numbers since the late 1990s.[9] These three visa groups — especially international students — are the main channels for the overall increase in TMW numbers.[10]

Because the major temporary visa programmes are (predominantly) uncapped, TMW numbers are responsive to labour market forces. However, government

policy remains crucial, first in opening (and occasionally closing) visa categories, second in altering the conditions attached to each visa category, and third in regulating the transition between visa categories, especially into the permanent stream. Decisions by the federal Coalition government under John Howard to introduce easier pathways to permanent residency for temporary visa holders, especially international students and temporary skilled workers, gave a major impetus to TMW visa programmes. Most international students and temporary skilled workers, together with many working holiday makers, see themselves as involved in a project of 'staggered' or 'multi-step' migration, whereby they hope to leap from their present status into a more long-term visa status, ideally permanent residency. One result, as temporary migration expands while the permanent stream remains effectively capped, is a lengthening queue of onshore applicants for permanent residency.[11]

Since 2005, both Labor and Coalition governments have continued to be active in adjusting temporary visa categories. Though the rhetoric is sometimes at odds with the practice, the main thrust of government policy has been towards promoting temporary labour migration. The dominance of this policy direction reflects a range of influences, including perceptions of the economic cycle and ideological commitments. But one key factor has been persistent business pressure, expressed through lobbying from employer associations and other groups, such as educational institutions, who share an interest in preserving and increasing the supply of TMWs.[12]

Employment and underpayments

Not all TMWs are employed at any one point in time, but most are, with the result that employed TMWs now make up around 6% of the total Australian workforce.[13] An aggregate figure of 6% from a workforce that is currently over 12.5 million is relatively modest, but it is important to note that TMWs are not evenly spread throughout the workforce. Instead, they are highly concentrated in a few industries, such as food services, horticulture, construction, personal services and cleaning, where they almost invariably occupy lower-skilled jobs, either full-time or part-time.

A recent online survey of TMWs, primarily international students and working holiday makers, asked for details about their lowest-paid job. It found that around 38% of these jobs were in food services (as a waiter, kitchenhand or food server), with a further 11% in professional services, 9% in farm work (as a picker or packer or farmworker), 9% in cleaning and 8% in retail.[14] Though these data are for lowest-paid jobs, they are consistent with scattered information

in other sources about all jobs.[15] TMW jobs tend to be characterised by limited requirements for entry-level training or skills and high turnover. They are located throughout Australia, including rural and regional areas, largely in line with the industry distribution, but many are found in the major urban areas, including Sydney and Melbourne. The social processes that channel TMWs into these jobs are poorly researched, but relevant factors include the impact of visa restrictions and discriminatory recruitment practices in more highly skilled and high-wage labour markets.

Though standard accounts describe Australian immigration as oriented to skilled labour, this characterisation stands at odds with the abundant evidence on expanding temporary migration and the character of TMW jobs. It is true that many TMWs, like their counterparts in the permanent stream, are highly qualified and in this sense skilled. However, the fact that their work is primarily in lower-skilled jobs suggests that it is more accurate, as several scholars point out, to speak of a shift in Australia towards a de facto *low-skilled* migration programme.[16]

TMWs generally lack access to forms of social protection, such as social security benefits, Medicare insurance and free hospital treatment, but most are entitled to the same protections under labour law as local employees, including minimum wage rates.[17] Formal rights are not, however, the same as effective rights. Media exposés in 2015 of intensified exploitation of international students in the 7-Eleven franchise network helped to stimulate a rich and growing body of research, incorporating surveys, industry case studies and in-depth interviews, which has documented the poor work experiences of TMWs. This literature identifies a range of features that commonly characterise this segment of the labour market. These include casual status, undeclared or 'off-the-books' work, bogus self-employment and 'fissured' structures such as labour hire, subcontracting, franchising and outsourcing. In addition, the literature delves into aspects that are linked to precariousness or insecurity within jobs: that is, employment insecurity, low wages, lack of social protection and limited control over wages and working time.

The aspect that is most relevant for analysis of wage stagnation is underpayments, or what is commonly called 'wage theft'. Underpayments (that is, wage payments below the prescribed legal minimum) encompass a variety of employer practices. Regular below-minimum hourly rates are the most familiar and straightforward form. But other employer practices should also be included, such as unauthorised deductions, protracted unpaid trials, unpaid 'learning periods', unpaid setting-up or closing-down time, non-payment of loadings and penalty rates, refusal to pay for all hours of labour, refusal to pay wages owed and non-payment of minimum engagement periods. Also relevant are long hours of

unpaid overtime and cashback schemes, which are familiar ways of preserving a front of apparent compliance while effectively undermining the hourly wage rate. Non-payment of compulsory superannuation, which similarly robs the worker of a component of their pay, also fits within the concept of underpayments.

Evidence on TMW underpayments is extensive and readily available in media investigations, reports from the Fair Work Ombudsman (FWO), testimony in public inquiries and scholarly studies using in-depth worker interviews. This is backed up by research incorporating survey instruments. The most wide-ranging evidence on underpayments comes from an online survey, entitled the National Temporary Migrant Work Survey (NTMWS), of over 4000 TMWs in late 2016. When asked about the hourly pay in their worst-paying job, 46% of respondents cited A$15 per hour or less, including 30% who cited A$12 per hour or less. Most underpaid jobs were also characterised by non-receipt of payslips and cash payments.[18] Several other surveys focus just on international students, and at least two surveys target working holiday makers in farm work. Results from one survey of harvest workers, primarily working holiday makers, revealed intriguing detail on underpayments that were differentiated by the method of payment. Whereas the Horticulture Award 2010 set a minimum rate of A$21.09 for Level 1 casual employees at the time of the survey, the results indicated median payments of A$19 for direct employees paid by the hour, A$15 for employees of contractors paid by the hour, A$12 for direct employees paid by output and A$8 for employees of contractors paid by output. Payment by output, or piece rates, was almost invariably associated with low wage levels that often seemed to plummet below what would be required for subsistence.[19]

The existing research points to diverse TMW experiences of underpayments. It is true that not all TMWs are in precarious work. Amongst primary visa holders in the temporary skilled migration programme, the problem of underpayments is likely to affect a minority, leaving many to enjoy relatively decent wages and conditions. The problem is clearly more prevalent amongst international students and working holiday makers, but even here some TMWs obtain jobs that pay the minimum hourly rate. Underpayments are probably most pervasive in the case of undocumented workers. It is also important to note that when underpayments do occur, they can range from moderate to severe.[20] Nevertheless, the evidence indicates a strong pattern of widespread underpayments, heavily influenced by the fact that TMWs are clustered in what can be described as 'hazardous' industries where labour cost minimisation is a dominant strategy and employer non-compliance with labour law is common.[21]

Business models

As with employer non-compliance in general, underpayments are sometimes excused as unfortunate mistakes, committed by poorly informed or distracted employers. Alternatively, underpayments may be acknowledged as intentional, but portrayed as the action of 'rogue' employers, where the adjective 'rogue' carries the dual implication that the offenders are only a small minority and that they lack the scruples possessed by the moral mainstream of employers. But the extent and consistency of the post-2015 evidence has persuaded many observers that the problem of underpayment reaches well beyond a small number of employers. Instead, it is a widespread and systemic problem, which has become embedded within certain industries, often in association with forms of business organisation that diffuse and obscure responsibility, such as franchises, chains of subcontracting and labour hire.[22]

The significance of business models centred on underpayments was identified in the early days of the 7-Eleven controversy, when Alan Fels, who administered the first stage of the compensation scheme for affected employees, highlighted the terms of the franchise relationship and noted that '[i]t seems to me that the business model will only work for the franchisee if they underpay or overwork employees'.[23]

Subsequent studies have extended the argument to other settings and added some valuable caveats. They indicate that business models centred on underpayments, while sharing a common orientation to labour cost minimisation, take different forms, shaped by factors such as sector, spatial location, nature and extent of competitive pressure, size and composition of the labour supply, and size of enterprise. They also suggest that such business models, though widespread, and perhaps even dominant in some sectors, are by no means universal. A margin for discretion, sometimes narrow, sometimes broad, is still available to employers. Thus FWO audits, even in sectors such as food services (cafés, restaurants and takeaway food services) in highly competitive locations, uncover cases of compliance as well as non-compliance.[24] Perhaps the clearest evidence is from horticulture, where case studies of different vegetable-growing regions point to a range of diverse labour-use practices and ongoing tension amongst stakeholders about the necessity and legitimacy of underpayments.[25]

Business models centred on underpayments aim to realise an unfair financial advantage, primarily by paying employees less than what is required by law but sometimes — in the case of undeclared work — with an additional bonus from avoiding taxation and superannuation liabilities. Employers may also be able to benefit from a shift in the effort bargain, confident in the expectation that labour

supply will be endlessly replenished by new cohorts. Such business models can be described as predatory in two basic senses. First, they seek to take advantage of vulnerable employees, who are impeded in one way or another from challenging underpayments. Second, they seek to steal a march on competitors, who may be more reluctant to underpay or less capable of doing so.

Predatory business models appear opposed to moral reckoning, but they may still be cloaked in moral arguments. Justifications for underpayments often appeal to a belief that businesses are entitled to pay below the legal minimum if that is what the labour market allows or demands (the 'going rate') and if that rate furthers the fundamental goal of business survival and profitability. This belief is consistent with the dominant neoliberal philosophy, which celebrates market forces and regards protective regulation as an impediment to business freedom. Such beliefs in the priority of markets often surface in statements by employer representatives, or, more tentatively, in pleas by employers in court cases brought by the FWO. In one court case, the operators of a Malaysian restaurant in Sydney argued that they had carefully set their pay rates, which fell to as little as A$11 per hour, after conducting 'independent market research' that revealed that small restaurants paid low (illegal) rates.[26]

Discussion of business models is often sidetracked by reference to co-ethnic employment — that is, employment by someone of the same ethnicity, and the risk that this ends up as 'co-ethnic exploitation'. It is true that co-ethnic exploitation does occur, especially in some 'ethnic' cafés and restaurants, and it is often centred on very low wage rates. However, intensified exploitation, even in food services, is by no means confined to 'co-ethnic employment' and there is no basis for assuming that all or even most employers of a specific ethnicity participate in or condone such practices.[27] Co-ethnic exploitation is best treated as just a subsidiary variant within a range of predatory business models that are oriented to taking advantage of worker vulnerability.

A focus on business models reminds us that TMWs are not the only group to experience underpayments. It is true that TMWs in aggregate face higher risks of mistreatment at work than local workers in aggregate. The FWO notes that TMWs account for 18% of the disputes that the FWO assists with and 49% of court cases commenced, although they only make up 6% of the workforce.[28] Given the likelihood that TMWs are reluctant to complain, such figures are in fact likely to underestimate the relative rate of mistreatment. TMW vulnerability can be linked to personal attributes such as lack of knowledge of Australian employment regulation, low levels of English proficiency, youth, inexperience and distance from family and other networks that can provide advice and assistance. Also important

for some visa groups is the effect of immigration restrictions, which can enhance dependence on the employer and heighten the reluctance either to complain or to organise and engage in collective bargaining. These factors in turn interact with industry location.[29]

Nevertheless, local workers are also likely to encounter predatory business models and underpayments. This is especially true for groups such as students, young workers searching for a secure full-time job and persons pushed off social security payments in the course of workfare reforms. They are 'in the same boat' as TMWs, insofar as they share some, though not all, of the elements of 'vulnerability' ascribed to TMWs, and they face high risks of underpayment when — like TMWs — they are employed in hazardous industries, such as food services. Evidence of underpayment for local workers, especially young workers, in these industries is emerging in media investigations, government inquiries and FWO reports.[30]

Research focusing on TMWs supports the contention that predatory business models are widespread and reach into the local workforce. Though subject to segmentation processes, employed TMWs are not enclosed in isolated labour market segments. With a few exceptions — for example, in some 'ethnic' restaurants and in certain ethno-specific subcontracting arrangements — workplaces that contain TMWs also contain local workers. In low-wage industries, most workers receive poor wages and conditions. A study of international students in food services, for example, refers to the exclusion of TMWs both from the major fast food chains, which base their business model on junior rates of pay for school students, and from 'high-end' cafés and restaurants, in favour of clustering in either ethnic or mainstream restaurants. The study notes that most international students are found in mainstream restaurants, where poor wages and working conditions, including underpayments, are shared by both TMWs and locals, predominantly local students.[31]

Implications for wage stagnation

The three points summarised above are connected to the issue of slow wages growth, albeit in different ways. One link is via the increase in TMW numbers, which expands labour supply and exerts downward pressure on wages, both across the board and in the sectors where TMWs are concentrated. Unfortunately, as noted above, data are sparse, especially on TMWs but also on wages, and few studies seek to calculate the strength of the link. This is the stuff of orthodox labour market theory, which sees wages as equilibrating simple supply and demand forces. But orthodox analyses tend to focus on immigrant numbers in general, or perhaps just on permanent immigrants, and on labour market effects at an

aggregate national level. The studies tend to find only a minor impact of increased immigration on wages. However, orthodox approaches have been slow to develop more fine-grained analyses of the impact of temporary migration in specific lower-skilled labour markets.[32] The most targeted approach is in a recent Productivity Commission report, which notes the size of the TMW workforce aged 15-24 in comparison with the cohort of local youth aged 15-24. But it is mainly oriented to assessing possible displacement of local youth and is unable to draw any firm conclusions other than the need for more analysis.[33]

A focus on raw numbers of TMWs may miss the main link to slow wages growth. It is the third point concerning underpayments and predatory business models that seems richest in implications. This point suggests, first and most obviously, added drag on wages growth in sectors where such underpayments and predatory business models have become embedded. If they become more widely practised, underpayments pull down average hourly wages. If a substantial number of firms in a specific labour market intensify strategies of labour cost minimisation by pushing wage rates below the legal floor, it can unleash a dynamic of competition around wage rates that foreshadows wage decline rather than wage growth for employees.

One important question at this point concerns whether employer practices of underpayments are in fact spreading. Arguments in support of opposite answers to this question can be mobilised. On the one hand, evidence of widespread and systematic underpayments, both of TMWs and local workers, is steadily accumulating. On the other hand, the FWO has mounted vigorous efforts to combat underpayments, including the adoption of a proactive policy of 'strategic enforcement' that seeks to target specific industries (and regions) and vulnerable workers.

A recent assessment argues that increased reporting of wage theft does indeed signal an increase in the prevalence of underpayments.[34] Underpayments have long been an element of employer practices in Australia, as historical accounts of enforcement in low-wage industries testify.[35] However, Clibborn and Wright refer in their assessment to several novel factors that favour intensification and spread. One factor is the availability to employers of an expanded supply of vulnerable labour. This is partly to do with increased supply of TMWs. As shown by the example of changes to the 417 visa and the ensuing transformation of labour markets for harvest labour, expanded supply of vulnerable TMWs can have a significant impact on employer practices.[36] But increases in other sources of 'flexible' labour supply such as full-time students and those pressured off benefits due to welfare 'reforms' can also have an effect. Increases in labour supply allow employers in

sectors already oriented to flexible and low-wage employment, such as horticulture and food services, to sustain and extend strategies of labour cost minimisation.

It would be wrong, however, to treat change in the labour supply as a distinct force that is exogenous to labour markets. The horticultural example demonstrates the important role of government policy, influenced by employer lobbying, in opening the tap for an increased supply of 417 visa holders. Similarly, it would be wrong to overemphasise the contribution of labour supply to wage levels. Clibborn and Wright go on to highlight the significance of contextual factors, such as the decline of trade unions as traditional vehicles of enforcement, the scattered responsibilities and limited resources of the FWO, and the increased fragmentation of regulatory structures. Part of the problem here concerns (widening) gaps in the regulatory system — for example, casual status, piecework in horticulture, bogus self-employment and inadequate enforcement — and the impact of new 'fissured' structures that facilitate avoidance of employment obligations. Also significant, in my judgement, are forces affecting employer practices. These include familiar factors, such as increased competitive pressures on individual employers. But they also include the erosion of norms concerning adherence to minimum labour standards under the influence of neoliberalism and financialisation.

The arguments and evidence cited above suggest a spread of predatory business models within low-wage industries.[37] They suggest an unfolding process of degradation in these labour markets. The effects in other industries are less clear. Employers in other industries are generally not as committed to labour cost minimisation as the centrepiece of their employment practices. They may rely on employment practices that give higher priority to innovation, skill development, productivity growth and service quality, and they may be more cautious about practices that are wasteful of 'human resources'. Moreover, other industries often lack the full set of conditions that favours the introduction of underpayments. Clibborn and Wright note that underpayments tend to be prevalent in industries characterised by

> weak or absent unions, extensive casual employment and subcontracting, intense commercial competition, labour cost minimisation as a dominant business strategy, and other features associated with poor job quality.[38]

Nevertheless, there is no room for complacency. Several contextual conditions listed here are found throughout the economy. The discussion above highlights worker vulnerability or weak bargaining power as an important channel for the emergence and consolidation of predatory business models, and weak bargaining power is a generalised problem throughout the economy under current policy settings. Moreover, it would be wrong to underestimate the ripple

effects of underpayments in individual firms. Though the consequences are most immediately felt within competing firms, the force of bad example can have a wider impact on employers in other industries, who may be motivated to demand similar advantages in their employment practices.

Conclusion

This chapter argues that the expansion of temporary labour migration is a significant development in Australia and that it has implications for wage stagnation. However, the chapter suggests that the main connection is not through the increase in numbers. Instead, it suggests that the chief significance of looking at TMWs is as a window into important practices and risks facing workers, whether they are temporary or local.

The chapter suggests that TMWs should not be isolated as a cause in the analysis of wage stagnation. Underpayment of TMWs is indeed associated with negative labour market effects. But underpayment of TMWs is itself best seen as an outcome rather than a cause. I argue that it is an outcome of specific business models that stretch out to encompass many local workers as well as many TMWs.

Endnotes

1. Boese et al 2013: 317.
2. I use the term 'local employee' to encompass all employees other than TMWs. It therefore includes both Australian citizens and holders of permanent residency, irrespective of birthplace.
3. The position of skilled temporary migrants is discussed further in Chapter 14.
4. For the distinction between dedicated and de facto TMW programmes, see Tham, Campbell and Boese 2016.
5. Howells 2011; Segrave 2017.
6. Most figures are from Department of Home Affairs 2018. But estimates for graduate visa holders are from Webster 2018; estimates for undocumented workers are from Howells 2011; and estimates for the SWP are from Howes 2018.
7. The number of New Zealanders is large, amounting to 669 115 persons in March 2018. However, because numbers are stable (Department of Home Affairs 2018) and the pattern of labour market integration parallels the

mainstream of the workforce, their presence has only limited relevance to the arguments in this chapter.

8. ABS 2017f. Data refer to visa on arrival, which may be different to current visa status. One major transition is from a temporary visa to a permanent visa. At the time of the survey in 2016, an estimated 362 300 persons who had arrived on a temporary visa had subsequently transitioned to a permanent visa or Australian citizenship (ABS 2017f). It should be noted that ABS surveys restrict their scope to 'usual residents', thereby generating underestimates of TMWs.
9. Mares 2016: 55.
10. The SWP is expanding, but it remains small. Trends in undocumented workers are difficult to estimate. Visa overstayers, mainly from tourist and student visas, form the largest component, but recent reports suggest that the number of visa overstayers has 'hardly shifted' since 2011, despite large increases in both tourist and student visa grants. See Dissanayake and Elton-Pym 2017.
11. As to the notion of 'staggered migration', see Robertson 2018. For data on transitions between temporary visas and permanent residency, see Productivity Commission 2016: 411-34.
12. Wright and Clibborn 2018.
13. The percentage employed varies according to visa category, ranging from a likely 100% for SWP participants to an estimated 50% for international students: ABS 2017f; see also Productivity Commission 2016. The overall estimate for TMWs as a proportion of the workforce is from the Fair Work Ombudsman (FWO), cited in Clibborn and Wright 2018: 212.
14. Berg and Farbenblum 2017: 20-1.
15. See, e.g., Reilly et al 2017: 29.
16. Boucher 2016; Wright and Clibborn 2018.
17. Protection under labour law may not be universal because employment contracts for TMWs who are working in breach of immigration rules may be invalid and unenforceable. This would undermine protection for all undocumented workers, but also TMWs with work rights who are working in breach of limits in their work rights: for example, international students working more than 40 hours per fortnight during term time (see Berg 2015). Moreover, although TMWs are covered in most respects, they do not qualify for the Fair Entitlements Guarantee in the event of their employer entering into liquidation or bankruptcy. In contrast, TMWs in the dedicated programmes (that is, temporary skilled workers and seasonal workers) are subject to special rules, at least some of which aim at

protecting their wages and conditions. For example, primary visa holders in the temporary skilled programme are attached to an approved employer and are expected to be in full-time employment on at least a minimum salary (A$53 900). For more detail on this, see Chapter 14.

18. Berg and Farbenblum 2017.
19. Underhill et al 2016. Low piece rate payments are likely to be unlawful, but they exist in a grey zone, given that piece rates are not unlawful as such in horticulture, so long as there is a (written) agreement with the employee and so long as the rates are set at a level where the 'average competent worker' would earn 15% above the minimum hourly rate. Yet the number of 'average competent workers' working on piece rates in horticulture seems surprisingly low. One recent case involved seasonal workers from Vanuatu, who alleged that piece rates had been set so low by the contractor that none of the 50 tomato pickers on a Shepparton farm qualified as an 'average competent worker', despite hours of arduous effort: see 'Pickers to test vulnerable workers laws', *Workplace Express*, 8 August 2018. For survey evidence concerning wages of international students, see Clibborn 2018; Marginson et al 2010; Reilly et al 2017. For working holiday makers in farm work, see also FWO 2016f.
20. Precise calculation of below-minimum hourly rates is difficult. The national minimum wage sets a benchmark, but this applies to permanent workers, and casual workers should receive an additional 25% (the 'casual loading') to compensate for missing benefits such as paid annual leave. Moreover, awards often prescribe higher minimum rates and higher payments ('penalty rates') for work in non-social periods such as evenings and weekends. See Clibborn 2018.
21. The NTMWS report notes that '[u]nderpayment was widespread across numerous industries but was especially prevalent in food services, and especially severe in fruit and vegetable picking': Berg and Farbenblum 2017: 5. The notion of 'hazardous' industries draws on the list of industries nominated by the FWO as targets for strategic enforcement. See Tham, Campbell and Boese 2016: 195.
22. Clibborn and Wright 2018; Senate Education and Employment References Committee 2016; Senate Education and Employment References Committee 2017.
23. Ferguson, Danckert and Toft 2015, quoted in FWO 2016e: 55-6.
24. See, e.g., FWO 2015.
25. Case studies in Virginia (South Australia) and Bundaberg (Queensland) are discussed in Howe et al 2017; Reilly et al 2018. Diversity in employment

practices has several dimensions — the labour supply source; the mechanisms of recruitment, e.g. direct or indirect (labour hire); and the mechanisms of payment, e.g. hourly rates or piece work. See also Underhill et al 2016.

26. 'Restaurant to pay $300,000 and engage auditor after deliberate breaches', *Workplace Express*, 22 August 2016.
27. Campbell, Boese and Tham 2016; Clibborn 2018.
28. Cited in Clibborn and Wright 2018: 212; Productivity Commission 2015: 918.
29. TMW vulnerability is usefully discussed in Clibborn and Wright 2018: 209; Productivity Commission 2015: 918ff; Productivity Commission 2016: 402ff; Reilly et al 2017: 28-9. The argument concerning the interaction of individual vulnerability with employer practices in poorly regulated industries is developed in Tham, Campbell and Boese 2016.
30. Senate Education and Employment References Committee 2017.
31. Campbell, Boese and Tham 2016. See also Senate Education and Employment References Committee 2017.
32. Boucher 2016.
33. Productivity Commission 2016: Appendix D.
34. Clibborn and Wright 2018.
35. Bennett 1994a; Maconachie and Goodwin 2010.
36. According to a recent study, the 2005 visa rule that allowed a second one-year visa for 417 visa holders who could demonstrate that they had completed 88 days of 'specified work' in regional areas had the effect of pushing an additional 37 000 workers per annum into the horticultural workforce. The authors argue that this distorted 'the horticulture labour market by placing downward pressure on wages, lowering labour standards and casualising the workforce': Reilly et al 2018: 25.
37. Though the specific dynamics differ from one nation to another, this may be an international development. Research by Annette Bernhardt and her colleagues in the United States describes the rise of non-compliance as an emerging strategy in the re-organisation of work at the bottom of US labour markets. See Bernhardt, Spiller and Theodore 2013.
38. Clibborn and Wright 2018: 212.

14

Is there a wages crisis facing skilled temporary migrants?

Joanna Howe

Scarcely a day goes by without another headline of wage theft involving temporary migrant workers. From 7-Eleven to Woolworths and Australia Post, very few major brands have been untouched in some way by such a scandal. Many of these stories concern underpayments or 'cash-back' schemes involving temporary migrants on visas for a non-work purpose, usually international students and backpackers.

In this chapter we explore a largely *untold* story in relation to temporary migrant workers. Although this story will not grab headlines — as it tends not to involve foreign workers being paid less than A$10 an hour — it exposes a very real wages crisis facing workers on the Temporary Skill Shortage (TSS) visa (formerly the 457 visa) in Australia. This crisis has been precipitated by the federal government's decision to freeze the salary floor for temporary skilled migrant workers since 2013.

It may be tempting to characterise this decision as a simple oversight by a busy government. But as the ensuing story attests, there likely exists another, more subversive, motive for failing to increase minimum wages for TSS visa holders. In conspicuously ignoring a central recommendation of its own review into this issue, the government has chosen to put downward pressure on real wages for temporary skilled migrants, thereby surreptitiously allowing the TSS visa to be used in lower-

paid jobs. This is at odds with the government's claim to be protecting Australian jobs by replacing a discredited 457 visa with a robust, new integrity framework for its shiny successor — the TSS visa.

A special minimum wage

Before exposing how this wage freezing has transpired, we first need to explore the government's role in fixing minimum wages for temporary skilled migrant workers. In Australia, these workers are employed via the TSS visa and they must be paid no less than a salary floor.

This salary floor is called the Temporary Skilled Migration Income Threshold (TSMIT). TSMIT was introduced in 2009 in response to widespread concerns during the Howard Government years of migrant worker exploitation. This protection was considered important because an independent review found that many 457 visa workers were not receiving wages equivalent to those received by Australian workers, despite being employed in the same workplace and performing the same work.[1] This review proposed the introduction of a single minimum wage for temporary skilled migrant workers by reference to ABS data on average weekly full-time earnings. The Rudd Government acted accordingly, introducing TSMIT, which established an annual minimum wage for skilled temporary migrants. Now employers seeking to sponsor a worker on a TSS visa must nominate an annual salary at a rate that is at the same level or higher than TSMIT.

TSMIT's function is two-fold. First, it aims to ensure that the TSS visa is only used for skilled occupations and not for lower skilled occupations where there may be 'labour shortages' but no 'skill shortages'. In effect, TSMIT is intended to act as a proxy for the skill level of a particular occupation. It prevents unscrupulous employers misclassifying an occupation at a higher skill level in order to employ a TSS visa holder at a lower level. For example, an unscrupulous employer seeking to employ an overseas worker as a 'Kitchen Hand' by nominating them as a 'Cook' would still have to pay them at least at the TSMIT level, which of course would not be profitable given that cooks generally attract higher wages than kitchen hands. In this way, TSMIT functions as an entry-level threshold to protect lower-paid Australian jobs from being replaced by a temporary migrant workforce.

Second, TSMIT seeks to ensure that TSS visa holders earn sufficient wages to maintain a reasonable standard of living, given they do not have access to the same level of government and social support as Australian citizens and permanent residents. This salary floor is intended to decrease the pressure on skilled temporary migrant workers to breach their visa conditions by working for employers other

than their sponsor. TSMIT is intended to be set at a level that ensures that visa holders earn a sufficient income to support themselves from the one job.

There are two flexibilities within the TSMIT regime. The first occurs through 'the TSMIT exemption provision' which allows employers to sponsor a TSS visa holder in a situation where the worker's guaranteed annual earnings meet the TSMIT requirement, although their nominated base salary is below it. Guaranteed annual earnings include monetary and non-monetary benefits. This approach recognises that a number of industries and occupations provide for non-salary-related earnings as part of a salary package, such as guaranteed allowances and fringe benefits, including those provided under salary sacrificing arrangements. This TSMIT exemption provision allows for TSS visa applications to be advanced despite the base rate of pay being below TSMIT. For example, between 2013 and 2016, there were 2146 visa nominations approved for the occupation of 'Developer Programmer' at an average annual salary of A$46 270, over A$7000 below TSMIT during this period.[2]

The second option available to employers seeking to engage overseas workers below TSMIT is through labour agreements. These are a non-standard pathway within the TSS visa programme which allow for employers to sponsor overseas workers through a private agreement with the Department of Home Affairs. Although these agreements take longer to negotiate, they allow for employers to get concessions on key aspects of the TSS's regulatory framework, including TSMIT and standard requirements on English-language ability and eligible occupations. Typically, labour agreements provide for a 10% reduction on TSMIT. The rationale for allowing concessions to be granted through the labour agreement mechanism is to ensure that employers can still access temporary migrants where genuine shortages exist but through a framework that allows the Department of Home Affairs more time and dedicated resources to verify that relevant stakeholders (such as unions) have been consulted and that proper scrutiny of labour market testing and related evidence are able to be made. The labour agreement framework also enables Home Affairs to verify there are sufficient protections in place to ensure overseas workers are employed in compliance with Australian law as those employed in lower-skilled jobs are more susceptible to exploitation.

Furthermore, TSMIT does not operate in isolation but interacts with a 'market salary rates' requirement, which is another essential part of the regulatory framework safeguarding the integrity of the TSS visa. Employers of TSS visa holders are required to pay them above TSMIT *and* the annual market salary rate for the worker's occupation. This rate is what an equivalent Australia worker earns, or would earn, working in the same occupation. If there is no equivalent local worker,

the annual market salary rate is set by reference to relevant awards and enterprise agreements. Although the market salary rates requirement is an important integrity measure within the TSS visa framework, it can be a challenging aspect to enforce, as it requires Home Affairs to ascertain what the correct rate is for an occupation and to verify that this has actually been paid to the visa holder. In some (usually regional) locations, the market salary rate may be lower than TSMIT, so the latter acts as a salary floor for skilled migrants.

In sum, there are two mechanisms to protect the wages of temporary skilled migrants. Both TSMIT and market salary rates work together to send a price signal to employers that the TSS visa can only be used for skilled occupations and to ensure that TSS visa workers receive enough income to support themselves at a commensurate rate to Australian workers in the same jobs. Since 2013, the government's failure to fix TSMIT at a proper level has eroded its protective ability over time, which is the chief cause of the wages crisis now confronting temporary skilled migrant workers, a subject to which we now turn.

The sin of omission

TSMIT's protective ability is only as strong as the level at which it is set. In its original iteration back in 2009, it was set at A$45 220. This level was determined by reference to average weekly earnings for Australians, with the intention that TSMIT would be pegged to this because the Australian government considered it 'important that TSMIT keep pace with wage growth across the Australian labour market'.[3] This indexation occurred like clockwork for five years.

But since 1 July 2013, TSMIT has been frozen at a level of A$53 900. This decision has occurred with very little parliamentary fanfare or public scrutiny. In fact, few appear to have noticed this very deliberate attempt to erode TSMIT's place as an essential integrity measure within the TSS visa's regulatory framework.

In 2014, the then Minister of Immigration and Border Protection used his discretion to not index TSMIT, following a review of the integrity of the 457 visa scheme in that year. This decision was consistent with a finding from this review, which recommended that there be no further indexing of TSMIT until a full review of TSMIT was conducted.[4] The subsequent 2016 review of TSMIT, conducted by John Azarias, did indeed recommend that TSMIT be indexed in accordance with the seasonally adjusted Wage Price Index.[5] The review recognised that the 457 visa programme is aimed at skilled and experienced workers and that employers seeking to nominate workers in occupations where salary levels are below TSMIT should use the TSMIT exemption provision or pursue a labour

agreement. The Review noted these mechanisms allow 'considerable scope for sponsors to access workers who would not otherwise be eligible',[6] and suggested that indexation should occur in a regular and planned manner, which is visible and publicly transparent.[7] Notably, the government, to date, has not provided a response to this review or adopted its key recommendation that TSMIT be indexed to the Wage Price Index on an annual basis. A 2016 Senate Committee report observed that the consequence of failing to index TSMIT is that 'the salary floor decreases in real terms each year as wage inflation occurs'.[8]

Table 14.1: Comparison table of the annual average salaries and TSMIT

Source: Based on data from ABS, Average Weekly Earnings, Australia, Catalogue no 6302.

Time period	Annual average salaries[9]	TSMIT	Indexation	Difference between annual salary and TSMIT
2009-10	$62 270	$45 220	n/a	$17 050
2010-11	$65 328	$47 480	5.00%	$17 848
2011-12	$67 881	$49 330	3.90%	$18 551
2012-13	$70 340	$51 400	4.20%	$18 940
2013-14	$73 980	$53 900	4.80%	$20 080
2014-15	$75 603	$53 900	0.00%	$21 703
2015-16	$77 194	$53 900	0.00%	$23 294
2016-17	$78 832	$53 900	0.00%	$24 932
2017-18	$80 278	$53 900	0.00%	$26 378

Mere oversight or under the table?

There is now a gap of more than A$26 000 between the salary floor for temporary skilled migrant workers and annual average salaries for Australian workers. This means that the TSS visa can increasingly be used to employ temporary migrant workers in occupations that attract a far lower salary than that earned by the average Australian worker. This begs the question — is the erosion of TSMIT allowing the TSS visa to morph into a general labour supply visa rather than a visa restricted to filling labour market gaps in skilled, high-wage occupations?

The former infamously occurred during the Howard Government years when loopholes in the 457 visa's framework allowed employers to use this visa to employ lower skilled workers. By 2006 nearly a quarter of 457 visa holders were only semi-skilled, with a report noting that although the 457 visa was a skilled visa, many 457 visa holders were travel agents, hairdressers, sales assistants, transport clerks, cooks and bakers.[10] This same report noted that in terms of actual salaries paid to 457 visa holders, 25% of those in trade occupations reported average incomes of less than A$35 000 and one-third of professionals reported average incomes under A$50 000, well below the wage levels earned by Australians in commensurate work at that time.[11] By and large these low wages were made possible through regional concessions and a poorly enforced minimum salary level requirement under the 457 visa prior to 2009.

The 457 visa's chequered history during the Howard Government years raises questions as to whether a subsequent Coalition government, almost a decade on, is guilty of achieving a similar erosion in minimum wages and minimum skill-level requirements for temporary migrant workers through its management of the TSS visa.

One step forward, two steps back

The fanfare surrounding the government's announcement that it would be abolishing the 457 visa signalled the return of temporary migrant workers as a political issue. The bipartisan political consensus in favour of the 457 visa eviscerated in 2013 with then Prime Minister Gillard's infamous speech in Western Sydney proclaiming that Labor would stop foreign workers being put at the front of the queue with Australian workers at the back.[12] Five years later in April 2017, when Prime Minister Turnbull dropped his bombshell announcement that the 457 visa would be abolished, he said the 457 visa had lost the trust of the Australian people. Rather disingenuously, he replaced it with the new TSS visa, which ostensibly does much the same thing as its predecessor but with a new name and a few modifications.

The most important, and indeed positive, aspect of the new TSS visa, is that it is based on an assessment of which skilled occupations are in need in the Australian labour market. This seems like a blindingly obvious thing to do, but prior to the introduction of the TSS visa, the 457 visa allowed sponsorship of any occupation listed on the Consolidated Sponsored Occupation List (CSOL). This list was an infrequently updated catalogue never designed to help pinpoint occupations in demand in a rapidly changing economy. The 457 visa's reliance on the CSOL has been replaced by the TSS's reliance on a new set of lists, each of which is

maintained by the Department of Jobs and responsive to a regular stakeholder engagement process. The TSS visa is now broken down into two streams, one of which is a short-term two-year entry channel for skilled occupations that are deemed in immediate demand but do not provide a pathway to permanent residency. This is supplemented by a four-year entry channel for occupations that tend to be of a higher skill level, and thus of greater value to the Australian economy in the medium to long-term. Occupations on this list do provide a pathway to permanent residency, as they are deemed likely to be in demand by employers over a longer period of time. There is also a more limited Regional Occupations List which recognises that regional areas often have a more expansive set of skill shortages because of a smaller pool of available local labour. These reforms are a step in the right direction. They go some way to moderating employer demand for temporary migrant workers by ensuring that employers can only sponsor visa holders in occupations that are on the list through the standard TSS visa pathway.

This positive reform makes it all the more surprising that the government has consistently failed to index TSMIT. If its rationale in abolishing the 457 visa is to ensure that its successor visa operates within a robust framework that only allows employers to sponsor overseas workers in skilled occupations in demand in the Australian labour market, then why allow the minimum salary level to be eroded over time? The effect of this erosion is to allow employers to sponsor overseas workers in lower paid and likely, lower skilled jobs. This goes against the view expressed in the 2016 Azarias Review that a robust TSMIT is needed to ensure that visa holders are skilled and have sufficient means to support themselves in Australia.[13]

An example — cooks and chefs

Under the new TSS visa framework, the occupation of 'Chef' is on the four-year medium- to long-term occupation list, whereas 'Cook' is on the two-year list, with the latter providing no pathway to permanent residency. This is intended to reflect that the Australian economy has a greater long-term need for chefs but the occupation of 'Cook' is one that local workers could be trained to undertake within a two-year period, thus eliminating the need to bring in overseas workers in that occupation.

But this does not occur in a simple, linear fashion. If employers find it cheaper to hire overseas workers as cooks than Australian workers, they are likely to continue to offer these jobs to overseas workers rather than locals. The failure to index TSMIT means that the minimum wage for overseas workers is being increasingly eroded over time. With the average cook in Australia earning A$53

130 according to one assessment,[14] which is right on the border of TSMIT's current level, the decision not to index TSMIT enables more employers to hire overseas cooks.

This is coupled with the possibility that unscrupulous employers will choose to nominate an overseas worker as a 'Chef' rather than a 'Cook' to enable a four-year period of employment rather than two years, with some migration agents providing employers and workers advice on how to do this.[15] Although advocates of the present system will argue that employers have to test the labour market through advertising, this is a process that is difficult for Home Affairs to properly and rigorously scrutinise, and one that has been discredited before, including by the government's own review which recommended its replacement with an independent labour market testing model.[16] In this way, employers can recruit overseas workers as 'Chefs', who will mainly be performing the job of a 'Cook' and being paid at the lowest level possible under TSMIT. The failure to index TSMIT means that this type of subterfuge becomes a profitable undertaking for an employer.

But why would employers go to all the effort of hiring a temporary migrant worker on a TSS visa over an Australian worker?

Renowned Australian demographer Graeme Hugo observed that employers 'will always have a "demand" for foreign workers if it results in a lowering of their costs'.[17] The simplistic notion that employers will only go to the trouble and expense of making a TSS visa application when they want to meet a skill shortage skims over a range of motives an employer may have for using the TSS visa. These could be a reluctance to invest in training for existing or prospective staff, or a desire to move towards a deunionised workforce. Additionally, for some employers, there could be a belief that, despite the requirement that TSS visa workers be employed on equivalent terms to locals, it is easier to avoid paying market salary rates and conditions for temporary migrant workers who have been recognised as being in a vulnerable labour market position. A recent example of this is the massive underpayments of chefs and cooks employed by Australia's largest high-end restaurant business, Rockpool Dining Group, which found that visa holders were being paid at levels just above TSMIT but well below the award when taking into account the amount of overtime being done.[18] When clocking in to work via a thumb touch-pad, workers were told to record two sets of figures — the hours they actually worked, alongside the hours rostered and paid for. This masked an underpayment of over A$20 000 to some workers' annual salaries.

Put simply, *temporary* demand for migrant workers often creates a *permanent* need for them in the labour market. Research shows that in industries where

employers have turned to temporary migrants en masse, it erodes wages and conditions in these industries over time, making them less attractive to locals.[19] So if more TSS visa holders are employed as chefs and cooks, it corresponds that less locals will be. As TSS visa holders are less likely to be unionised and more willing to work long hours for low wages, this creates a situation where wages and working conditions in the hospitality industry are reduced over time, thus making this type of work less attractive to Australians and creating a permanent skill/ labour shortage. These factors make a robust TSMIT, which properly corresponds with wage levels Australians receive in skilled jobs, a key attribute of an integrity framework for the TSS visa.

TSMIT wars

For such an oblique acronym, TSMIT courts significant controversy. Although two government reviews have identified the need for its existence, there continue to be repeated employer requests to remove TSMIT altogether or to reduce it for certain occupations and regions. The basis for a regional TSMIT is that having a national wage floor systematically disadvantages employers located in low wage regions. A recent report commissioned by employers and stakeholders supportive of a more expansive labour migration programme found that 'quite large differences in wage levels and in the cost of living across regions of Australia mean that a single level for the TSMIT cannot fulfil its functions in all regions of the country'.[20] For example a skilled job such as an 'Automotive Mechanic' in metropolitan Sydney will ordinarily attract a much higher wage than the same job in regional South Australia.[21]

It is quite true that in some regional locations the cost of living is higher, or wages are lower than they are in metropolitan centres, thus making the TSMIT's single level a rather crude way of determining whether visa holders' have sufficient funds to support themselves or as a proxy for an occupation's skill level. Both the Deegan Review in 2010 and the Azarias Review seven years later were sympathetic to this view but ultimately concluded that it would be too administratively complex, unwieldy and potentially susceptible to manipulation to permit regional variations on TSMIT through the standard 457/TSS visa pathway. Both recommended using labour agreements to achieve this outcome, with the Azarias Review acknowledging that this mechanism has to be sufficiently resourced to work efficiently and responsively to employer requests to access overseas workers.

It may be that the government's repeated failure to index TSMIT is its attempt to decrease the level of this wage floor over time consistent with the argument expressed by employers, particularly those in the regions, of the need to reduce TSMIT to enable them to access workers on the TSS visas. The problem with this

approach is that it is underhand — seeking to achieve flexibility for employers in the TSS visa outside of the labour agreements pathway via TSMIT, a mechanism intended to protect wage levels for migrant workers and job opportunities for Australians.

Creative accounting to subvert TSMIT

Although wage theft is not ordinarily associated with skilled migrant workers but more with backpackers and international students, there are concerns that some employers are evading TSMIT. A national survey of temporary migrant workers found that 24% of 457 visa holders who responded to the survey were paid less than A$18 an hour.[22] Not only are these workers not being paid in according with TSMIT, but they are also receiving less than the minimum wage.

A number of cases also expose creative attempts by employers to subvert TSMIT. Given the challenges many temporary migrants face in accessing legal remedies, these cases are likely only scratching the surface in terms of employer non-compliance with TSMIT. In one case, a hairdresser who was meant to receive guaranteed earnings of A$53 945 per annum (or A$27.30 per hour for a 38-hour working week) under the sponsorship arrangement only received A$17 an hour, as her employer required her to repay A$200 each week.[23] The Commission rejected the employer's argument that this repayment was necessary because this was a new business that could not afford to pay TSMIT during its establishment phase. In another case, a worker from the Philippines employed as a hotel worker was required to split her salary, which was set at the level of TSMIT, with her partner.[24] This provided a way for the employer to circumvent TSMIT by nominally agreeing to pay the required amount for the primary 457 visa holder, but then in practice paying well below it because of the wage splitting between the primary visa holder and her partner. Ms Virata also alleged that she regularly worked 12 to 16 hours per day, despite being remunerated for a 40-hour work week, and that she felt that she was forced 'to submit, obey and follow everything' if she wanted to keep her job.[25] This case exemplifies the tendency of 457 visa holders to perform additional work on an unpaid or severely underpaid basis because of their reliance on employer sponsorship.

Combined, then, with the problems with enforcement and compliance, it is not hard to conclude that the failure to index TSMIT is contributing to a wages crisis for skilled temporary migrant workers. As Chapter 4 in this book attests, the evolution of wage regulation exerts considerable influence on the overall pattern of wage growth. So the failure to index the salary floor for skilled migrant

workers is likely to affect wages growth for these workers, as well as to have broader implications for all workers in the Australian labour market.

Described by the Department of Immigration and Border Protection as a 'major component' of the TSS visa and as 'an entry-level salary threshold to protect lower-paid Australian jobs',[26] it is highly surprising that the government has chosen to freeze TSMIT over a five-year period, despite its own review recommending a contrary approach. It is time, therefore, for proper public and parliamentary scrutiny of TSMIT and its place within the TSS visa's regulatory framework.

Endnotes

1. Deegan 2008: 27.
2. Azarias 2016: 27.
3. Explanatory Statement, Migration Regulations 1994 (Cth), *Specification of Income Threshold and Annual Earnings* (IMMI 13/028).
4. Azarias 2014: 56-7 (recommendation 5).
5. Azarias 2016: 44 (recommendation 3).
6. Azarias 2016: 35.
7. Azarias 2016: 38.
8. Senate Education and Employment References Committee 2016: 60.
9. Full-time adult ordinary time earnings at May the previous financial year × 52.
10. Khoo, McDonald and Hugo 2005: 6.
11. See Table 10 in Khoo, McDonald and Hugo 2005.
12. Coorey 2013.
13. Azarias 2016: 19-20.
14. See www.payscale.com/research/AU/Job=Cook%2C_Restaurant/Salary (accessed 6 November 2018).
15. See, e.g., www.salvomigration.com.au/blog/how-to-be-sponsored-as-a-chef-and-not-as-a-cook (accessed 6 November 2018).
16. Azarias 2014.
17. Hugo 2009: 59.
18. Schneiders and Millar 2018c.
19. Ruhs and Anderson 2010.
20. Whetton and Cebulla 2017: 11.
21. Cebulla and Whetton 2017: 7.
22. Berg and Farbenblum 2017: 27 (Figure 15).

23. *Williamson v Bumford* [2016] WAIRComm 190.
24. *Virata v NSW Motel Management Services Pty Ltd* [2015] FWC 7932.
25. O'Brien 2015.
26. Department of Immigration and Border Protection 2017: 297.

Part IV

Stakeholder perspectives on causes, consequences and solutions

15

A business perspective

Saul Eslake

Introduction

Persistently slow wages growth has become one of the most pressing challenges facing Australian economic policy makers — as both Prime Minister Scott Morrison (whilst he was still Treasurer) and Reserve Bank Governor Philip Lowe have explicitly recognised.[1] Even the Business Council of Australia acknowledges that 'real consumer wages are stagnant and per capita GDP growth remains flat'.[2]

Australia's experience of persistently low growth in both nominal and real wages is by no means unique. Indeed, Australia's experience of unusually and persistently slow growth in wages is more recent than that of other 'advanced' economies — largely on account of the 'resources boom', during which resources companies bid up wages in order to attract workers to work in remote and uncongenial locations, forcing many non-resources employers to bid up wages in order to retain their staff.

But since the employment-intensive phase of the 'resources boom' peaked in late 2013, Australian wages growth has decelerated to below the average pace in the four largest 'advanced' economies (see Figure 15.1).

Allowing for the effects of the 'resources boom', and the fact that Australia did not experience a recession in the aftermath of the global financial crisis of

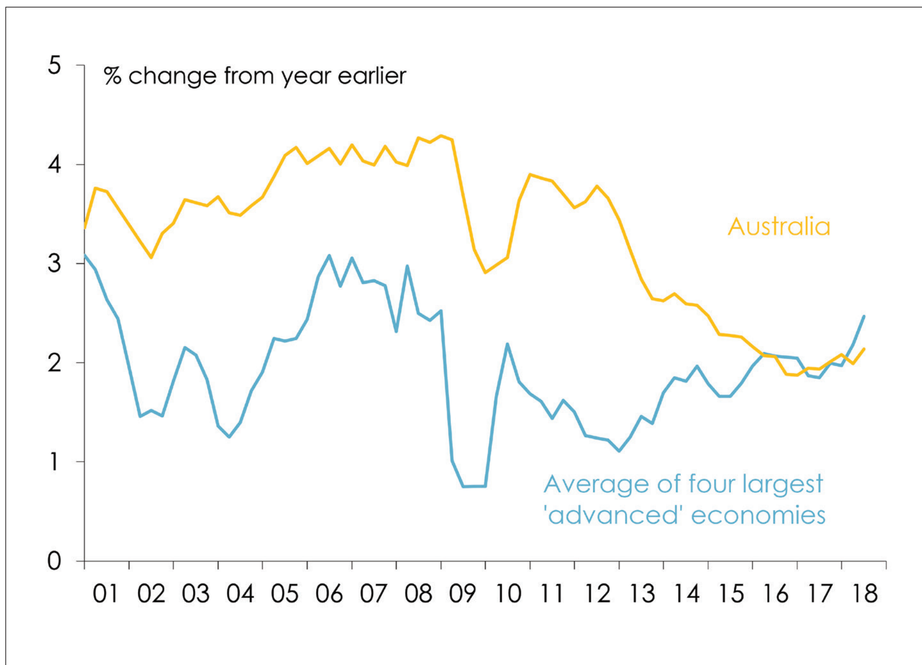

Figure 15.1: Wages growth in Australia and the four largest 'advanced' economies

Source: Calculations based on ABS, Wage Price Index, Cat no 6345; and US Bureau of Labor Statistics, Japan Ministry of Health, Labour and Welfare, Germany Bundesagentur fur Arbeit, and UK Office for National Statistics via Thomson Reuters database.

2007-09, wages outcomes in Australia appear to have been broadly similar to those in other 'advanced' economies.

Wages and productivity

In particular, Australian wages growth has diverged significantly from (measured) growth in labour productivity — in contrast to what conventional economic theory predicts, but similar to what has occurred in other 'advanced' economies over the past two decades.

Figure 15.2 shows movements in labour productivity and two alternative measures of real wages — one from the perspective of workers (the wage cost index deflated by the CPI) and the other from the perspective of employers (the wage cost index deflated by the non-farm GDP price deflator).

The divergence between labour productivity growth and the real consumer wage shown in Figure 15.2 indicates that most of the rewards of improvements

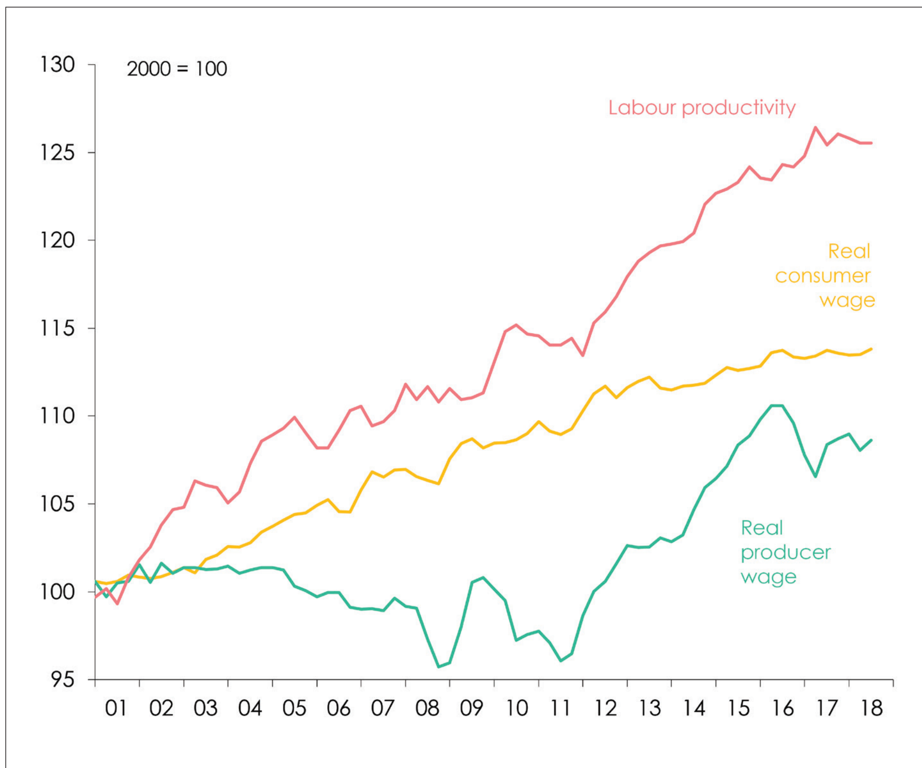

Figure 15.2: Labour productivity and real wages in Australia, 2000-18

Source: Calculations based on ABS, Wage Price Index, Cat no 6345; Consumer Price Index, Cat no 6401; ABS, Australian National Accounts: National Income, Expenditure and Product, Cat no 5206. Real consumer wage is wage cost index deflated by the CPI; real producer wage is wage cost index deflated by the implicit price deflator of non-farm GDP.

in productivity have accrued to employers, rather than to employees. The greater divergence between labour productivity growth and the real producer wage reveals that most of the income gains arising from the net improvement in Australia's terms of trade since the early 2000s (which accounts for most of the difference between movements in the CPI and in the GDP deflator) have also accrued, at least in the first instance, to employers (or to governments, in the form of taxes).[3]

Figure 15.3 illustrates two of the more important consequences of this divergence between productivity and wages growth (however measured). First, real unit labour costs have declined by nearly 10% since the turn of the century. This is a measure of the extent to which real (producer) wages have failed to keep pace with productivity growth. Second, and as a direct result, the 'wages share' of

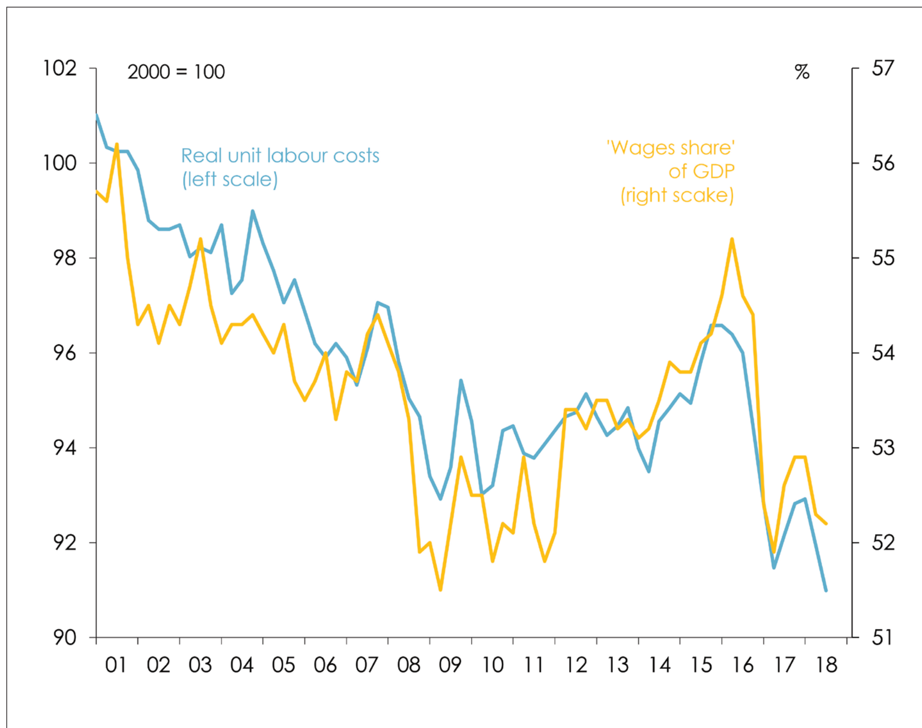

Figure 15.3: Real unit labour costs and the labour share of national income, 2000-18

Source: ABS, Australian National Accounts: National Income, Expenditure and Product, Cat no 5206. Real unit labour costs are labour costs deflated by the GDP price deflator per unit of output (or, alternatively, real hourly labour costs divided by output per hour worked, i.e. labour productivity).

Australia's national income has over the past decade been almost 1.75 percentage points lower, on average, than it was during the preceding 25 years.

The divergence between the growth rates of labour productivity and real wages in Australia and other 'advanced' economies over the past two decades is almost the exact obverse of what Australia and other 'advanced' economies experienced in the 1970s and early 1980s, when real wages increased much more rapidly than labour productivity, resulting in the emergence of what came to be known as the 'real wage overhang'.[4] This was widely believed to be a major reason for the large and sustained increase in unemployment in Australia and other 'advanced' economies during this period. And reversing it was a principal objective of the Prices and

Incomes Accord between the Australian Council of Trade Unions and the Hawke Labor government.[5]

By contrast with that period, Australia and other 'advanced' economies are now confronted with what could be called a 'real wage underhang'.

The emergence of this 'real wage underhang' does have one positive consequence. The decline in real unit labour costs over the past decade (the result of real wages having grown more slowly than labour productivity) has almost certainly contributed to the relatively strong growth in employment (especially when compared with the more modest growth in real GDP) which many 'advanced' economies (including Australia) have experienced during the recovery phase from the downturns induced by the financial crisis of a decade ago.

In effect, the decline in real unit labour costs appears to have encouraged the substitution of (relatively cheap) labour for capital. And, if so, this would help explain some of the other unusual characteristics of the 'recovery' from the post-crisis downturn in Australia and other 'advanced' economies — including the sluggish growth in business investment (notwithstanding strong growth in profits) and persistently slow labour productivity growth.

Why should business be concerned?

The corollary of the decline in real unit labour costs and in the wages share of national income since the turn of the century is that a larger share of national income has gone to 'profits': corporations' 'gross operating surplus' (roughly speaking, the national accounting equivalent of earnings before interest, tax, depreciation and amortisation) has averaged 26.7% of GDP since 2000, some 3.5 percentage points more than it did during the 1980s and 1990s.[6]

So from a business perspective, what is not to like about the trend decline in wages growth over the past decade or so?

An important part of the answer to that question derives from the observation that while the share of the national income pie going to corporate profits has increased, the pie itself has been growing at a much slower rate — so much so that the *growth rate* of corporate profits (as proxied by the corporate sector's gross operating surplus) has thus far during the current decade been slower than in any decade since the 1970s (Table 15.1).

Investors in, and the boards and managers of, corporations typically assess corporate economic performance not by the *level* of profits, or by the *share* of profits in some broader aggregate (such as GDP), but rather by the *rate of growth* of those profits from one period to the next. The value placed by stock market

investors on shares in publicly listed companies depends importantly on recent and expected future *growth* in earnings (profits) per share.

So if overall national income growth is below historic norms, the fact that the share of national income accruing to corporate profits is rising may be of less direct value to the owners and managers of businesses than a more stable share of a more rapidly growing national income would be.

Table 15.1: Real growth in corporate 'profits' and the corporate 'profits share' since the 1960s

Source: Calculations based on ABS, Australian National Accounts: National Income, Expenditure and Product, Cat no 5206. Gross operating surplus is deflated by the implicit price deflator of non-farm GDP. The '1960s' is 1960-61 through 1969-70, etc. The 'profits share' is total corporate gross operating surplus as a percentage of GDP at factor cost.
**Average annual growth in real gross operating surplus (% per year).*

Decade	Private non-financial corporations*	Public non-financial corporations*	Financial corporations*	Total*	'Profits share' (%)
1960s	6.7	5.1	9.2	6.6	20.0
1970s	1.4	3.9	0.0	1.6	18.9
1980s	4.2	7.4	10.7	5.2	21.9
1990s	3.0	0.7	10.8	3.8	24.4
2000s	5.2	-5.5	4.1	4.1	26.5
2010s	2.1	0.0	4.7	2.6	27.0

The slowdown in aggregate profits growth during the present decade is the direct result of slower growth in real GDP and (to a lesser extent) the decline in Australia's terms of trade since the peak of the 'resources boom'. Australia's real GDP growth has averaged 2.7% per annum thus far this decade, less than in any decade since the 1930s.[7] And more than half the real GDP growth that has been recorded thus far this decade is directly attributable to population growth: per capita real GDP growth has averaged just 1.1% per annum, equal to its performance during the 1930s (and slower than anything recorded since then).

One of the major reasons for Australia's relatively slow overall economic growth rate during the current decade has been the unusually weak growth in

household consumption spending, which typically accounts for just under 60% of GDP in Australia.

Even though Australia's population has grown at a faster rate during the current decade than in any since the 1970s, the growth rate of real household consumption spending has been slower than in any decade in the past 60 years. And a major reason for that has been that household disposable income has grown at an average annual real rate of just 2.2% per annum thus far during the current decade, which is again less than in any of the previous five decades, despite the more rapid growth in population during the current decade.

The largest component of household disposable income is wage and salary income — which over the first eight years of the current decade has grown at a slower rate (in real terms) than in any of the five preceding decades (despite stronger growth in employment than in two of those five preceding decades).

The growth rate of household consumption spending (and hence, all else being equal, the growth rate of real GDP) would have been even slower but for the fact that households have reduced the proportion of their disposable income which they save by 4 percentage points, to its lowest level since before the financial crisis. Their willingness to do so was in large part a by-product of the 'housing boom', which appears now to have peaked. As the Reserve Bank of Australia (RBA) Governor Philip Lowe has noted, many people who took out mortgages as interest rates came down during the current decade did so in the expectation that their incomes would grow at rates similar to those which had prevailed during the 1990s and early 2000s: '[w]ith their expectations not being realised, the real value of the debt stays higher than they expected and this is likely to affect their spending decisions'.[8]

This suggests that in the absence of a meaningful pick-up in the growth rate of real wages or some other component of household income, or a series of very large cuts in personal income taxes, the growth rate of consumer spending could be even slower in the years ahead than it has been over the past eight years. This is a prospect that ought to be of concern to the business community, especially given the absence of any obvious alternative driver of Australian economic growth, and the increasing downside risks to global economic growth over the medium term.[9]

One final reason why persistently slow growth in wages and salaries should be of concern to the business community is that it has contributed to the emergence of a more fractious political climate — in Australia no less than in other 'Western' democracies — which has been much less amenable to economic and other reforms of the sort that the business community has typically favoured. Again, RBA Governor Philip Lowe has pointed to the connection: '[s]low wages growth

is diminishing our sense of shared prosperity. If this remains the case, it can make needed economic reforms more difficult'.[10]

That does not mean that individual businesses should, of their own volition, immediately offer their employees a larger wage increase or that they should be forced to do so by legislation or regulation. Rather, the point of this analysis is that persistently slow growth in nominal and real wages of the past decade *has not* resulted in more rapid growth in *aggregate* business profits than during periods when wages were growing more rapidly; and that if it continues, the consequences for the Australian business sector as a whole, and for the Australian economy more broadly, are unlikely to be pleasant.

What should (and shouldn't) be done?

A variety of explanations for the emergence and persistence of the unusually slow growth in wages and salaries, in Australia and elsewhere, has been put forth both in this book and in other places. Many of these explanations are not mutually exclusive. Indeed, most of them ultimately come down to the proposition that the relative bargaining power of employers and employees has shifted substantially towards the former — although the reasons for that differ substantially.

In the Australian context, it seems likely that at least some of the ongoing slow pace of wages growth can be attributed to the persistence of relatively high unemployment, and underemployment, since the end of the mining boom.[11] However, the recent experience of other 'advanced' economies where unemployment has been below conventional yardsticks for 'full employment' for some time suggests that merely getting the Australian unemployment rate back down to 5% (traditionally held to approximate 'full employment' here) is unlikely, on its own, to prompt a significantly faster pace of wages growth — even if it were to be paralleled by a substantial decline in under employment.[12]

This suggests that policy makers should be willing to allow the unemployment rate, and underemployment, to decline to lower levels than they have in previous cycles before concluding that policy settings need to be significantly tightened.

Most economists concede that the combination of 'globalisation' and rapid technological innovation (particularly in the areas of information and communications technology) has contributed to a weakening in the bargaining position of employees vis-à-vis employers, and hence to the emergence and persistence of unusually slow growth in wages.[13]

However, very few economists would support proposals designed to slow or reverse the pace of globalisation or technological innovation in order to increase

the rate of growth in wages (even if they could be persuaded that that would be the result). A more rational response might be to consider that the impact of globalisation and rapid technological change warrants a reconsideration of the legal, regulatory and institutional frameworks within which wage bargaining takes place.

Some economists, and many business leaders and policy makers, argue that the slowdown in wages growth is directly related to the slowdown in labour productivity growth, which pre-dates the financial crisis of a decade ago.

There is no doubt that a higher sustained rate of labour productivity growth would result in a faster rate of growth in Australia's national income. However, there is no consensus as to how to achieve a sustained increase in the rate of labour productivity growth, in Australia or in other 'advanced' economies.

There is a growing body of evidence to suggest that one of the reasons for the slowdown in measured productivity growth across almost all 'advanced' economies is an increasing gap between a small number of firms at the 'productivity frontier' in different industries and a much larger number of 'laggards'.[14] RBA Governor Philip Lowe has suggested that these lagging firms are seeking to remain competitive 'by having a very strong focus on cost control … [which] does not make for an environment where firms are willing to pay larger wage increases'.[15]

Part of the solution to this problem may be an enhanced focus on education and training, particularly for those most poorly served by Australia's existing education and training systems.[16]

Nonetheless, the divergence between labour productivity growth and real wages growth over the past two decades suggests that there is no compelling reason to believe that faster labour productivity growth would, on its own, be sufficient to ensure a sustained increase in the rate of growth in real wages.

Nor is there any compelling evidence to support the contentions, made forcefully in Australia by business organisations and by the current Commonwealth government, that lowering the company tax rate will lead to higher real wages and/or faster real wages growth.

Advocates of reducing Australia's company tax rate typically point to the decline in corporate tax rates in other 'advanced' economies as a key reason why Australia should follow suit. But reductions in corporate tax rates in other advanced economies do not appear to have generated faster wages growth (or, for that matter, faster productivity growth or higher levels of business investment). Rather, reductions in corporate tax rates in advanced economies appear to have coincided with reductions in labour shares of national income. That is not to say

that lower corporate tax rates have *caused* real wages to grow at a slower rate than labour productivity — simply that they have done nothing to arrest or reverse this trend.

Of particular relevance in the Australian context, there is absolutely no evidence to support the seemingly widely held view that preferentially taxing small businesses will do anything to boost investment, employment, productivity or real wages.

Although small businesses (defined in ABS statistics as those with fewer than 20 employees) account for just under 44% of total private sector employment (excluding financial and insurance services), they have accounted for less than 5% of the increase in private sector employment thus far this decade. Over the two years since small businesses became eligible for a lower rate of company tax, employment at small businesses has increased by 0.9%, compared with a 3.4% increase over the two years prior to the commencement of this preferential tax treatment.[17]

Wages paid by small businesses are on average 44% lower than those paid by medium-sized businesses (those with between 20 and 199 employees) and 53% lower than those paid by large businesses (those with 200 or more employees).[18] That stems partly from the fact that labour productivity (industry value added per employee) is lower, on average, in small businesses than in larger ones. But it also suggests that increasing small businesses' share of total employment — which would appear to be one intention of taxing small business income at a lower rate than the income of larger businesses — would do nothing to increase average wages.

Small businesses are also less likely, in general, to engage in any kind of innovative activity than medium-sized or larger businesses.[19] Hence, preferential tax treatment for small businesses is unlikely to be particularly effective in stimulating greater innovation.

If there is any sensible way to use tax preferences as a way of stimulating increased innovation, investment, job creation or wages, it is more likely to be found by preferentially taxing *new* businesses, as opposed to small ones — since new businesses are much more likely to engage in innovation, and to create new jobs. And to the extent that new businesses create new jobs, the resulting competition for workers is more likely to exert some upward pressure, at least at the margin, on wages.

Moreover, since there are far fewer new businesses than small ones, the revenue foregone by preferentially taxing new businesses will be much smaller (and/or the preferences can be much larger than if they are granted to a wider spread of small businesses).

Finally, there are fewer 'perverse incentives' associated with preferentially taxing new businesses, since a 'new' business, if it survives, cannot help passing whatever stage at which it is no longer defined as 'new': whereas small businesses can and do elect to remain below whatever threshold entitles them to tax preferences as a result of being 'small'.

Conclusion

While it may seem, from the standpoint of an individual business, that wage increases can only be at the expense of profits, from a broader perspective this is a false dichotomy. As Henry Ford — hardly the most enlightened employer in history — recognised more than a century ago, wages and salaries are not solely a cost to an employer; they are also the income of customers.

The decline in the share of national income accruing to labour in Australia and other industrial economies over the past two decades — and the corresponding increase in the share accruing to 'capital' — has not resulted in faster growth in business incomes, or in economic activity more broadly. Rather, it has been a contributor to the persistently below-trend growth in Australia's economy — at least since the peak of the 'resources boom'. And it is a factor in the increasingly difficult political environment which Australia, in company with other Western democracies, has experienced during the past decade — an environment which has made it more difficult to advance reform proposals that business has typically favoured.

Business, therefore, has as much to gain from finding solutions to the problem of stagnant wages growth as any other segment of the Australian community.

This chapter has argued that the Australian economy is now hampered by a 'real wage underhang' which in important respects is the opposite of the 'overhang' which we confronted in the early 1980s. The solution to that problem called for compromises on all sides — including with regard to the frameworks within which wages and salaries and other conditions of employment were determined. But the outcomes were beneficial to both businesses and workers. The same spirit will be required if today's problem of stagnant wages growth is to be equally successfully addressed.

Endnotes

1. See, e.g., Scott Morrison, quoted in Belot and Doran 2017; Lowe 2017b; Lowe 2018.
2. BCA 2018: 29.
3. A significant proportion of the share of income gains accruing to governments as a result of improvements in Australia's terms of trade in the first phase of the 'resources' boom (prior to the onset of the financial crisis) and to a lesser extent during the second phase (from 2010 through 2012) were 'recycled' to households through income tax cuts and increases in selected social security payments.
4. See, e.g., Covick 1984; Russell and Tease 1988.
5. O'Brien 2015: 132, 162.
6. This was not solely due to the decline in real unit labour costs. As noted earlier, a substantial proportion of the income gains arising from the improvement in Australia's terms of trade since the early 1990s accrued (at least in the first instance) to corporate profits.
7. ABS 2018e. For years prior to 1959-60, see DFAT 2018.
8. Lowe 2018.
9. As identified, for example, by the IMF and OECD in their most recent global economic outlook publications: IMF 2018; Pereira 2018.
10. Lowe 2018: 9.
11. Treasury 2017: 16-21.
12. See, e.g., IMF 2017: 73-90; Hong et al 2018.
13. See, e.g., Bell and Keating 2018: 142-77; Van Reenen 2018.
14. See, e.g., Andrews, Criscuolo and Gal 2016; Van Reenen 2018; Lowe 2018.
15. Lowe 2018: 8.
16. Bell and Keating 2018: 339-40.
17. Calculations from data published in ABS 2018d.
18. ABS 2018d. These 'average wages' are derived by dividing total wages and salaries paid in the 2016-17 financial year by employment at the end of June 2017. Hence, they do not allow for differences in the extent of part-time versus full-time employment among businesses of different size, something on which no published data are available. However, it seems unlikely that any such differences, to the extent that they exist, would account for all or even a large part of the differences in average wages and salaries calculated in this way.
19. ABS 2018f.

16

A union perspective on the wages crisis and how to solve it

Damian Kyloh

There is no doubt that wages in Australia are facing a crisis. When the Governor of the Reserve Bank (RBA), the institution responsible for ensuring sound money and macroeconomic stability, thinks that wage inflation is too *low*,[1] alarm bells should be ringing throughout the country. But the problem of wage stagnation is no surprise to Australian workers. For years they have been enduring the pain to which RBA Governor Dr Philip Lowe and other leading economic figures have only recently begun to pay attention. Stretching a static pay packet to meet rising energy bills, childcare costs, medical expenses and other necessities of life is an ongoing nightmare for many working-class families. Not since the Great Depression in the 1930s has wage growth been so anaemic.

Wage trends this weak are more typical of an economy in recession, with profits plummeting, unemployment rising and houses selling at bargain basement prices. But the reality is vastly different. Economic aggregates seem to be in adequate (if not stellar) shape, business profits are strong and financial markets buoyant. This makes the crisis in wages all the more perplexing, and reinforces

the suspicion that weak wages are more reflective of power imbalances between employers and workers, rather than cyclical weakness in the economy.

In short, something is wrong with this picture. Australia was once known as the land of a fair go, demonstrating healthy economic equality and social inclusion, where broader economic development translated reliably into mass prosperity. We are no longer one nation pulling together. Rather, we have become a divided country that is falling apart.

The shift in economic power from workers to employers

In recent decades, Australian labour law and practice have been steadily and incrementally restructured in ways that have fundamentally shifted the balance of economic power from workers to employers. Is it any wonder, then, that after a generation of policies aimed explicitly at reducing the power of wage-setting institutions and suppressing wages, we should now be experiencing historically weak wage growth? Just some of those changes included effectively outlawing collective bargaining at the multi-employer, industry and national levels; severely limiting the rights of union officials to enter worksites (including to monitor health and safety conditions, investigate wage theft and address other abuses); dramatically diminishing the ability of the workplace umpire (now the Fair Work Commission) to conciliate or arbitrate in the interests of a fairer balance of power between employers and workers; and curtailing the ability of unions to take strike action in all but the most limited of circumstances, and then only after a massive amount of red tape and only subject to penalties when it occurs outside these limited parameters.

According to the philosophy of economic 'rationalism', these reforms were required to encourage individual contracts, diminish the role of collective negotiations and allow market pressures to more efficiently determine wage outcomes. It was asserted that productivity would be enhanced by increasing the power of employers to set wages and employment conditions free from regulation or constraint. But this productivity argument was never convincing and was robustly rejected on both theoretical and empirical grounds.[2] If anything, increased downward wage flexibility would inhibit capital/labour substitution, and allow inefficient firms to survive. The net result was slower, not faster, national productivity growth rates.

In the past, wage floors across industries or sectors had not prevented competition, but rather redirected it away from a 'race to the bottom' (through downward bidding of wages and employment conditions), and towards competition

based on innovation, technology and marketing. In addition, economists have historically believed that 'implicit contracts' exist between employers and workers — with the latter adjusting their effort and commitment in light of how they are treated by management. It was always likely, therefore, that a long-run attack on pay and conditions would lead to slower productivity improvements.

Only proactive policy, not market forces, can boost wages

Some politicians and commentators have suggested there are no grounds for panic over pay. They argue for patience, postulating that over time economic growth will produce a tighter labour market and an automatic rebound in wage growth. This advice is not convincing.

The combination of broader economic pressures and the disempowerment of traditional wage-setting practices means that Australia's labour market is fundamentally different from the way it was 30 years ago. Nevertheless, the 'do nothing, sit tight' policy advice is premised on a belief that the relationship that existed between wage growth and labour market strength in the 1970s and 1980s remains unchanged. On that basis, current levels of unemployment, and particularly underemployment, are holding back wages. But with faster growth and more full-time jobs, employers will be forced to raise wages to fill vacant positions.

The reality of labour market functioning is far more complex. A tighter labour market is a necessary, but not sufficient, condition to boost wage growth. Sixty years ago a New Zealand economist, William Phillips, first posited an inverse relationship between the level of unemployment and wage growth.[3] Ever since, undergraduate economic students have been introduced to this 'Phillips curve' framework. But for the last 30 years these students have also been taught that the trade-off between unemployment and wage growth is not static over time.

The trade-off will vary depending on the strength of labour market institutions and other structural features of the economy. Australia in the 1970s had a fairly closed economy and relatively strong labour institutions; even an unemployment rate in the high single digits would still have been compatible with ongoing real wage growth. But with today's intensive competition, non-standard employment and workplace power imbalances, it is highly possible that even 'full employment' (at least as defined by Treasury and the RBA)[4] may not be sufficient to generate a lasting wage lift-off. In graphical terms, the Phillips curve has shifted dramatically to the left and downwards: any given rate of unemployment is now associated with a weaker pace of wage growth, by virtue of the erosion of structural and institutional supports for wages.

The OECD has provided empirical evidence supporting this conclusion. In its July 2018 *Employment Outlook*, the OECD demonstrated that the expected rate of wage growth associated with any level of unemployment is now significantly lower than in previous decades. It is apparent that while reducing unemployment and underemployment remains critical to restoring normal wage growth, this will not be sufficient to maintain real wage growth in line with productivity growth (thus maintaining the share of national income going to labour).

In practice, since the early 1990s the official unemployment rate in Australia has remained in single digits, generally hovering in the 4 to 7% range. These figures exaggerate the true tightness of the labour market as they ignore the high and expanding level of involuntary part-time work. Nevertheless, the economy has operated closer to full employment than in previous decades, without any indication that this has boosted the power of workers and allowed them to secure real wage increases in line with productivity growth.

A way forward for Australia

Australian wages are experiencing an unusual and prolonged period of weakness. The economic and social costs of wage stagnation are varied and damaging: from the stress imposed on millions of households trying to cover rising living expenses from flat and insecure incomes, to the negative impacts of weak consumer spending power on macroeconomic performance, and to the long-term productivity-dampening effects of the rupture in the traditional 'social compact' that once translated rising efficiency into improving living standards. Contrary to the misplaced confidence of some policy makers that supply and demand forces will automatically restore wage growth once labour markets tighten, there is ample evidence that a structural break has occurred in Australia's traditional wage-setting practices: the important role once played by proactive policy tools (including minimum wages, the awards system and strong collective bargaining) has been largely dissipated. To restore wage growth, we must also restore a more reasonable and fair balance of power between workers and employers. That will require a thorough revitalisation and modernisation of those wage-setting institutions.

The Australian trade union movement has identified several crucial priorities in this regard:

Restore coordinated multi-employer bargaining

A crucial issue in supporting future wage growth, and ensuring that a larger share of Australia's workforce gets to share in it, will be to strengthen collective bargaining coverage and restore 'comparative wage justice' across industries and sectors.

As Professor Joe Isaac explained, the independent tribunal used to 'settle' disputes by conciliating or arbitrating wage outcomes in an award, typically setting wages at rates similar to those paid by the better employers in the industry. Unions would then try to spread the outcome of this judgement by pressing other employers to accept the award. Meanwhile, the statutory minimum wage for each sector was adjusted regularly. This process produced a high degree of coordination in the collective bargaining system. In fact, in the 1960s and 1970s Australia had a degree of collective bargaining coordination comparable to that which existed in Germany, Belgium and Switzerland.[5] Coordination then increased significantly in the 1980s under the Prices and Incomes Accord between the Australian Council of Trade Unions (ACTU) and the Hawke government, reaching levels comparable to the Nordic countries. From the early 1990s, however, the reforms that weakened the powers of the Conciliation and Arbitration Commission and promoted enterprise bargaining (and subsequently individual contracts) dramatically eroded the scope for coordinated collective bargaining. By the mid-2000s Australia had a level of bargaining coordination on par with New Zealand — and only marginally greater than Canada, the US and the UK.[6]

To re-establish coordinated collective bargaining in Australia and achieve the positive outcomes that characterise the northern European countries, we must provide the Fair Work Commission with the powers its predecessors had prior to the 1990s. These allowed the tribunal to assist employers and trade unions by way of conciliation and, where necessary, to arbitrate wages that would then become applicable across entire sectors or industries. To make this possible, we must abolish existing restrictions on the level at which collective bargaining may occur. The Fair Work Commission should also encourage the broadest possible coverage of collective bargaining.

Provide a more level playing field in the workplace

The labour market is fundamentally different from product markets, due to the inequality that exists between the power of employer and employees in the employment relationship. Unions are a key mechanism for addressing this inequality. But in Australia, the legal and institutional protections provided to workers confronting their employers are minimal.

In Australia, unions have an extremely limited right to enter workplaces, and no right to demand special clauses in agreements that are limited only to their own members. Strikes are illegal in most circumstances, and where they are allowed unions must first clear up to seven administrative hurdles in order to attract a degree of legal immunity. It is very rare that the Fair Work Commission is able

to intervene to resolve disputes without the consent of the employer. Enterprise agreement coverage is declining and more workers are reliant on award rates and conditions, which were envisaged to be a safety net for the few, not the sole determinant of wages and conditions for the many.

A comprehensive modernisation of Australia's industrial relations law and practice is required, in order for workers to achieve meaningful countervailing power in their workplaces. International guidance on best practice regarding trade union law and practice should be sought from those northern European countries that the OECD has recently identified as producing the best labour market outcomes. Australia should abolish the restrictive anti-union laws adopted over the last 30 years that have produced higher levels of income inequality and social exclusion, especially evident in Australia and other Anglo-Saxon countries.

A living wage, not a minimum wage

Another important priority in resolving the wages crisis must be to boost the wages of the lowest-paid workers in Australia. This can be achieved by adjusting the factors taken into account when setting the minimum wage, and placing greater emphasis on the needs of the worker for a reasonable standard of living in contemporary Australian society. This would specifically take into account the cost of adequate housing for a family; electricity and energy bills that make up a disproportionate share of the family budget in low-income households; the cost of a well-balanced and nutritious diet for a family; plus the cost of clothing, education and other basic necessities. The ACTU publication, *Living Up to the Promise of Harvester: Time for a Living Wage*, provides more detail on how this can be achieved.[7]

Public sector pay

In adjusting the wages of workers in the public sector, comparisons with wage developments in the private sector have historically played a significant role. In fact, using surveys of wages and employment conditions applying to comparable occupations in the private sector is common practice in public sector wage negotiations at the federal, state and local level. However, when wages in the private sector have stagnated, or declined in real terms, these practices can exacerbate the social and economic consequences of the wage crises. Hospital workers, teachers, emergency service workers and those engaged by the state in the care industry are among the most diligent employees in the country. They are also among the worst-paid workers given the responsibilities they shoulder.

Given the chronic wages crisis it is time for public sector pay policy to lead, rather than follow, trends in the private sector. Our federal, state and local

governments need to play a leadership role by providing their employees with a much-needed boost to their real wages and thereby provide a demonstration effect to the private sector of how the benefits of economic growth can and should be more evenly distributed in our society.

Regulating insecure work

One factor contributing to the wage crisis has been the rapid expansion in non-standard forms of work and the low pay and poor conditions faced by many workers that do not have regular full-time employment.

The passivity of Australia's labour regulations in the face of new employer strategies and new business models (such as digital platforms) has facilitated an explosion of precarious and insecure work. Australia now has the third highest level of non-standard work in the OECD, and the highest level of temporary work.[8] In 2017, for the first time in recorded statistics, less than half of employed Australians filled full-time permanent paid jobs with basic entitlements (such as paid annual leave, sick leave and superannuation).[9]

The proliferation of insecure work has taken many forms including casual work, labour hire, involuntary part-time work and bogus 'independent contractors' (who are actually employees in any real sense of that word). Workers in precarious jobs have little or no job security, and are, therefore, in an even weaker position than regular employees when it comes to defending their rights and seeking a fair wage. Many are too frightened for their jobs to join a union or even complain when employers refuse to pay them the minimum wage.

Part of the problem is that firms have deliberately developed tactics to distance themselves from the workforce to avoid sharing rising profits with those who worked to achieve this enhanced enterprise prosperity. This often involves complex corporate structures and more elaborate supply chains. Under enterprise bargaining, when the workforce is dispersed through smaller workplaces, subsidiaries, franchises or dependent supply chains, a large proportion of the workforce cannot bargain with the 'real employer' who is actually making decisions about pay but rather are expected to 'negotiate' with an intermediate representative of the end user enterprise. This person will normally be the manager of the subsidiary, franchise or the labour-hire company

The introduction of legal and physical barriers between the end-user employer and the workforce has become common in many industries: in fast food and retail industries it takes the form of franchising; in the cleaning sector as contract cleaning; in mining as labour hire; in textiles, clothing and footwear as outworkers; in construction as 'subbies'; in road freight transport as owner-drivers;

in the 'platform' economy as 'gig' workers; and more recently, in the public sector, as agency workers.[10]

The basic objective in all these non-standard forms of work is to transfer economic risk from employers to workers while ensuring that workers have no claims on the expanding revenue and profits of the large domestic enterprise or multinational that is the end-user of the labour. In the event of an economic downturn non-standard workers can be more easily dismissed or have their working time reduced than regular full-time workers. Some flexibility in being able to rapidly adjust the quantity of work is desirable on economic efficiency grounds, but workers should be rewarded, not penalised, for shouldering the economic risks that would otherwise be borne by the employer or so-called entrepreneur. Penalty rates and the 'casual loading' system were instituted to provide a reward to those engaged in non-standard forms of work. These provisions have increasingly been abolished, diminished or not enforced. These trends need to be reversed urgently.

However, more far-reaching reforms are required to provide non-standard workers with the wage levels and protection they deserve. A move away from enterprise bargaining and individual contracts and towards multi-employer or industry-level collective bargaining should help rectify this situation. It will be important that in developing industry-level bargaining the concerns of non-standard workers, including workers in triangular employment relationships, are explicitly taken into account and specific provisions are included in the award or collective agreement to meet their needs for fair remuneration and employment conditions that are comparable with regular full-time workers in the industry.

We will now look in detail at restoring coordinated multi-employer bargaining. We discuss the recent empirical and international evidence below.

The benefits of industry-level collective bargaining

In the 1990s, the OECD was in the vanguard of those promoting labour market 'flexibility', and was a major proponent of enterprise-level collective bargaining.[11] But in the last few years the organisation has significantly changed its tune — in the face of rising income inequality, the backlash against globalisation and the spread of political populism.[12] In both 2017 and 2018, the OECD's *Employment Outlook* reported results of detailed empirical research on the economic impact of collective bargaining. Their research classified 35 OECD member countries into five different categories of collective bargaining systems, and then compared how those various systems performed over the period 1980 to 2015 (controlling for other factors that may have also influenced the labour market).

The results are illuminating. In three of the five groups of countries, industry- or sector-level collective bargaining plays a major role in setting wages and employment conditions, while in the two remaining categories of countries enterprise agreements or individual contracts dominate. The systems that rely on industry-level bargaining generate superior employment and unemployment outcomes to those based on enterprise bargaining or individual contacts. Moreover, industry-wide bargaining systems are significantly and systematically better at integrating youth, women and lower-skilled workers into jobs.[13] Industry-level bargaining also significantly reduces wage inequality compared to enterprise bargaining or individual contracts.

Among the countries that rely heavily on industry-level bargaining, those that allow trade unions and employers' associations to coordinate outcomes across industries or sectors generate the best labour market outcomes. According to the OECD, countries with this type of bargaining arrangement

> are shown to be associated with higher employment, lower unemployment, a better integration of vulnerable groups and less wage inequality than fully decentralised systems.[14]

Countries that had industry-level and coordinated bargaining systems in 2015 include Austria, Denmark, Germany, the Netherlands, Norway, Sweden, Belgium and Finland. In contrast, countries that are classified as having fully decentralised collective bargaining systems had the worst labour market performance. The US, UK and New Zealand are included in this category.

Interestingly, the OECD classifies Australia as having a 'largely decentralised collective bargaining [system]'.[15] The OECD explains this decision (rather than assigning it the same classification as the US or UK) because of the existence of the Fair Work Commission and modern awards. Countries in this category perform slightly better than the fully decentralised group (which includes the US and UK) in respect of employment — but worse in terms of unemployment. The group that contains Australia performs significantly worse in terms of employment and unemployment than the three groups of countries that use variations of industry-level bargaining. The group containing Australia also performs worse than all three categories with industry-level bargaining regarding integration of youth, women and low-skilled workers into employment. Wage inequality in the group containing Australia is also greater than in all three of the groups of countries that depend on industry-level collective bargaining.

The OECD has highlighted the potential for the Fair Work Commission to help achieve better coordination of collective bargaining, and thus work toward

outcomes similar to the best-performing northern European countries. Currently, this potential is hampered by restrictions placed on the Fair Work Commission to conciliate and arbitrate, and also the effective prohibition of multi-employer collective bargaining. As noted above, prior to the 1990s the Conciliation and Arbitration Commission had far greater freedom and this allowed Australia to have a functional equivalent to the highly coordinated bargaining systems that exist in northern Europe.

Other economic research has also highlighted how broader collective bargaining can help to attain stronger and fairer labour market outcomes. For example, Olivier Blanchard (former Chief Economist at the International Monetary Fund) has advocated industry-level collective bargaining measures to expand union density and high-level dialogue between unions, employers and governments. However, Blanchard rues the absence of political commitment to these measures on the part of many national governments:

> All this — a centralized bargaining structure ready to be used in case of need, representative unions, a continuous dialogue between unions and firms, active fiscal policy — go very much against the current grain … It is my main worry for the future.[16]

Here in Australia, Professor Joe Isaac (esteemed academic and former Deputy President of the Australian Conciliation and Arbitration Commission) recently urged major reforms to the current system for establishing wages and employment conditions in Australia. Isaac made a compelling case for a return to multi-employer collective bargaining, on grounds of both fairness and economic efficiency.[17] He argued that multi-employer bargaining, to establish common standards across firms in an industry or sector, will take wages 'out of competition', and force less efficient firms to become more efficient in order to survive. Isaac contends that this will boost national productivity growth.

Another prominent Australian expert advocating far-reaching changes in wage-setting and labour law is Professor Keith Hancock (also a former Deputy President of the Australian Conciliation and Arbitration Commission). Based on a detailed review of developments in the 1980s and 1990s (when he was a central actor shaping wages policy and the industrial relations system), Hancock refutes the assertion that enterprise bargaining boosted productivity performance, and also calls for the restoration of broader industry and sector bargaining structures.[18]

Another relevant study of the economic impacts of broader collective bargaining was published by the International Trade Union Confederation (ITUC) in 2013. It reviewed a wider range of economic variables than the recent OECD study summarised above, but it came to similar conclusions concerning the positive

impact of industry-level bargaining with high levels of coordination (or what the ITUC calls 'synchronization') on employment, unemployment and inequality. The report suggested that the industry-level collective bargaining systems of northern Europe have a positive impact on international trade, foreign direct investment and productivity.[19]

The World Bank has also published research refuting the notion that decentralised bargaining systems at the enterprise level or individual contracts generate better economic outcomes than more coordinated or centralised systems.[20] World Bank research has also found strong evidence that coordinated bargaining systems reduce wage inequality and, on average, achieve better economic outcomes (particularly in respect of employment). Moreover, the beneficial impact of coordination on unemployment did not result from lower wages; the authors concluded that bargaining coordination can improve both the quantity and quality of employment.[21]

Conclusions

For most of the 20th century Australia was fortunate to have a set of labour laws and institutions that were regularly updated, but that retained several core motivating principles: moderating employer power at the workplace; ensuring that on average and over time real wages moved broadly in line with national productivity; and limiting income differentials between skill levels, occupations and industries.

In the last 30 years these laudable goals have been sacrificed, purportedly in the name of international competitiveness and faster productivity growth. Ironically, these reforms have diminished, rather than augmented, productivity growth. These policy choices have also culminated in the slowest real wage growth since the Great Depression and record levels of income inequality.

The asymmetry in power between the employer and worker in Australia has reached such a level that faster economic growth and a return to full employment will be insufficient to spontaneously boost real wages. A minor tinkering with our labour laws and wage-fixing machinery would also be an inadequate response to the wages crisis. We need a comprehensive package of reforms to boost the power of workers. The reforms being advanced by the ACTU include proposals to

- repeal laws that limit the scope, content or level at which collective bargaining can take place
- reform the Fair Work Commission into a strong, fair and independent industrial umpire and give this body the power to conciliate, and where necessary arbitrate, to resolve disputes — including disputes over interests and not just existing rights

- provide a fast and efficient means to prevent and rectify wage theft, including restoring the previous rights of unions to enter enterprises when there were legitimate concerns about the implementation of worker rights
- reform laws concerning the right to strike of workers to fully align them with international standards on freedom of association and the right to collective bargaining[22]
- introduce a living wage, by placing greater emphasis on the income required to provide a decent standard of living when determining the minimum wage
- use public sector pay adjustments to substantially increase real wages, thus providing a boost to consumption expenditure and economic growth, while also providing a signal to the private sector about the scope for real wage increases
- tackle insecure work.

This last proposal would include restoring penalty rates, ensuring the implementation of 'casual loadings' and introducing additional bonuses for workers facing significant employment security risks because of their engagement in non-standard forms of employment. Other measures should include changing the definition of casual work, tackling labour hire by removing the incentive for employers, stopping false designation of ABNs and introducing limits on fixed-term contracts to align Australia with other OECD countries. There should also be an extension of recent decisions designed to facilitate the transfer of workers in some forms of non-standard work to regular full-time employment to all categories of non-standard work. Efforts should also be made to ensure that reforms to promote multi-employer, or industry-level, collective bargaining result in non-standard workers being covered by a collective agreement that contains appropriate bonuses and better conditions for those workers remaining in non-standard forms of work and thereby absorb the economic risks that should normally be borne by the end user employer.

This comprehensive reform package would go a long way towards restoring a more level playing field in the workplace and allowing workers to achieve real wage adjustments in line with national productivity improvements. Wage adjustments of this magnitude will boost domestic expenditure and economic growth while maintaining low inflation and current levels of international competitiveness. The reforms outlined above make sound economic sense while also being socially and politically responsible.

Endnotes

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4. The conventional belief of Treasury and RBA officials is that the non-accelerating inflation rate of unemployment, which is interpreted as 'full employment', is around 5%.
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9. Carney and Stanford 2018.
10. Peetz 2018.
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16. Blanchard 2006: 12.
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19. ITUC 2013.
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22. See the International Labour Organization's Freedom of Association and Right to Organise Convention 1948 (No 87) and Right to Organise and Collective Bargaining Convention 1949 (No 98). See also ILO 2013: paras 520-676.

17

A community perspective: The human and social costs of wage stagnation

John Falzon

Zones of chaos

In 2006, in celebration of his 10th anniversary as Prime Minister of Australia, John Howard gave an address at Sydney's Westin Hotel in which he outlined what he saw as the five challenges facing the nation.

Wage stagnation was not one of them. Instead, Howard focused on maintaining 'our great national unity, our social cohesion and above all our egalitarian spirit'.[1] This could be interpreted as a warning that we needed to address the root causes of inequality — but I do not think that is what Mr Howard intended.

Instead, cohesion — according to the neoliberal credo that Howard so effectively framed as being in the national interest — would be achieved by addressing what might be described as the *disease of deprivation:*

> We need to find innovative ways to break the vicious cycles of poor parenting, low levels of education, unemployment and health problems that can afflict some individuals and communities. And we need to reinforce the virtuous cycles of caring families, strong learning environments, good jobs and healthy

> lifestyles that allow others to succeed in a competitive world. We need to find ways of restoring order to zones of chaos in some homes and communities, zones of chaos that can wreck young Australian lives.[2]

Howard's *zones of chaos* metaphor is both powerful and provocative. It begins from the assumption of a righteous national or global order, which is now somehow endangered by exceptions to that order. Howard conceived of these zones of chaos as an individual or local malady. Among other consequences, this way of thinking helped prepare the way for the Northern Territory Intervention, framed in terms evocative of global military interventions justified as saving failed states from themselves. The message of colonisation and control could not have been louder, as this top-down 'remedy' for a systematically pathologised and criminalised First Nations population was ultimately rolled out with missionary fervour.

The zones of chaos discourse constructs individuals, households and entire communities as being either unwell or unlawful. Implicit in this approach is the evaluation and judgement of these individuals, homes and communities against some idealised normative economic, social, legal, moral and political framework that 'the rest of us' call Australia.

The structural causes of wage stagnation

Wage growth has slowed to post-war lows in recent years, and many employed people do not earn enough to escape poverty. There has also been a parallel stagnation of unemployment payments, which have been flat in real terms since 1994. In the neoliberal frame, the poverty and hardship that result from these problems are interpreted as a reflection of individual failure. By constructing deprivation as an individual disease, the structural and historical impact of neoliberalism is elided and displaced.

Wage stagnation, wage theft, the hyper-casualisation of work and the steady demonisation and degradation of what was once a reasonably robust social security system are all effects of the systematic dismantling of the welfare state, coupled with the decollectivisation and atomisation of the workforce.

Material deprivation is one of the most visible markers of the chaos that has been visited upon working people since the bipartisan embrace of neoliberalism in the 1990s. The chaos is real, but the 'zones' are not the territorial indices of individual deficits in education, aspiration or moral bearing. Rather, the zones are deliberately constructed states of existence that come with the devaluation of human labour and social wellbeing.

People who are locked out of the labour market are blamed for their own exclusion. The payments available to people in this situation are increasingly

inadequate, as cost of living pressures (especially for food, shelter and energy) disproportionately impact these households. Along with material hardship is the profoundly moralising message that *they have failed*: first, by being unemployed, and second, by receiving material support from the state.

People locked into low-paid, insecure jobs are similarly blamed for not doing better with their lives. Aged care workers are lectured on how higher wages come with greater aspiration. People locked out of the housing market are told they just need to work a second job if they want to buy a house. In the meantime, the people who clean Parliament House itself have not seen a pay rise in five years.

Falling back on charity

Economic insecurity is coupled with social insecurity. When wages and income support payments are inadequate, people are forced to rely on charitable assistance. For many households, charity has become the default mode of topping up wages or payments. But charity is a very poor means of delivering social security. The right to decent wages and to a decent social security system has been transformed into dependence on discretionary largesse. People are forced to rely on informal financial support from family and friends. Or they are thrown into the willing and waiting arms of predatory payday lenders, who circle the zones of chaos with a sharp eye for the profits to be made from deprivation.

As well as being class-framed as lazy and indigent, the people referred to in John Howard's discourse are also subjected to framing on the basis of gender, race and disability. Sole parents are roundly condemned for being bad role-models for their children. First Nations peoples are blamed for their own dispossession. People with disabilities are shamed for not crashing through the walls that have locked them out or locked them in.

In every case, the assumption is made that those who cannot succeed in a dog-eat-dog labour market, and who cannot get by on Australia's shrunken social welfare programmes, will fall back on the community sector: the network of agencies and charities, large and small, called upon to compensate for the dehumanising consequences of neoliberal economic and social policies. I worked for decades in that sector. The staff and volunteers who keep those organisations functioning are motivated by deep compassion, hope and solidarity. They are concretely confronted not only by human stories of exclusion, but also by the underlying structural causes of the chaos that their programmes and services at best attempt to redress and, at worst, are instrumentally co-opted to support.

In this regard, the unprecedented wage stagnation documented exhaustively in this book, together with ongoing austerity measures imposed on Australia's income

security and social welfare system, shift a direct burden onto the community sector. When millions of low-wage workers cannot meet the necessities of life through paid work alone, and when those between or without jobs cannot survive without the charity of family and strangers, then non-profit organisations and charities are constructed as the means by which government can abrogate its responsibilities. This does not 'save money', as the architects of austerity pretend: they have merely shifted the human consequences of their funding decisions off-budget. And they have transformed the costs from dollars and cents into shortened lives and widespread misery.

Those working on the ground in the community sector have learned from the people they work with that the consequences of poverty and inequality cannot be addressed without a multidimensional attack on their causes. That means, first and foremost, tackling the power imbalances in the labour market that have facilitated the growth of badly paid jobs, pervasive precarity and chronic underutilisation as normal economic outcomes. Measures like resuscitating collective bargaining, boosting the minimum wage and strengthening restrictions on insecure work and casualisation should all be understood as powerful anti-poverty tools. These crucial labour market reforms cannot eliminate poverty on their own, but they are an indispensable part of the solution. For this reason, revitalising wage growth, and otherwise lifting the quantity and quality of work, are vital to the community sector's efforts to reduce poverty and human suffering.

In short, wage stagnation needs to be analysed through the broader lens of the dismantling and reconfiguration of the welfare state, and the multifaceted effort to frame political choices as personal failures. This is especially true when we consider such exploitative schemes as the PaTH (Prepare-Trial-Hire) scheme, the Community Development Programme (CDP) and Work for the Dole as de facto means of further driving down the cost of labour — through a convergence of workfare and neopaternalism.

Constructed chaos

The chaos that workers' lives have been thrown into is organised and deliberate. Wages and conditions are stagnant, and workers are made to feel that this is a plight of their own making: not being able to pay the rent in a private housing market that has seen housing become a speculative sport rather than a human right; not being able to afford to heat their homes; not being able to afford dental care, or healthy food, or sporting or cultural activities; not even having the time to put into personal and familial relationships because they must work two or three jobs. In fact, however, this chaos is not of their own making at all.

It is quite deliberately constructed through a re-regulation of working life in the interests of the wealthy few. It has been delivered through levers in the labour market (including undermining the collective organising and bargaining capacity of organised labour), but through other channels, too — such as lowering taxes for corporations and high-wealth individuals, whilst reducing social expenditure.

This punitive framework is reinforced with wedges driven between the people who are touched by, or enveloped by, the chaos. Xenophobia sets one group of exploited workers against others. People in low-paid jobs are encouraged to blame people with no jobs. The exploited are encouraged to despise the excluded, and the excluded are encouraged to see themselves apart from the exploited. The truth, however, is that the dividing line between paid work and non-work is being blurred, as both the labour market and social security are re-regulated to reduce real incomes and strip protections and supports. The result is pervasive social and economic insecurity which affects those working, and those not working, alike. People in paid work are increasingly reliant on other forms of income assistance, because their wages are inadequate to meet the cost of living. Similarly, people who rely on income support payments also must augment these payments with other sources (such as the informal economy or charitable assistance). People excluded from employment are compelled to participate in very exploitive work schemes that are becoming a common feature of the industrial landscape. At the same time, people in insecure work are forced to redefine themselves as *not quite being employed* — deprived of the certainty that comes with a regular income and traditional entitlements (such as paid sick leave and annual leave).

Neoliberalism, contrary to its rhetorical criticisms of 'big government', is not actually about government getting 'out of the way'. Rather, it is about government decisively taking a stand against workers, and in favour of the wealthy. Neoliberalism is not the cure for the zones of chaos. It is the cause.

By imposing policies that result in an even greater redistribution of wealth towards the wealthy, neoliberalism takes rights and conditions away from working people (including residualised members of the working class — those experiencing unemployment and underemployment, discouraged workers, carers, people with disability, aged pensioners and students). It does this directly, through employer-friendly industrial relations and welfare 'reforms', as well as indirectly through cuts to (or marketisation of) essential social infrastructure, including health, housing, education and social services. It takes from those who have little and gives to those who have much.

Loïc Wacquant describes the morphing of the so-called nanny state of the Fordist-Keynesian era into what he calls the 'coercive daddy state'.[3] This framework

emphasises duties and obligations over rights, sanctions over support, and new methods for monitoring and coercing the very people who bear the brunt of inequality.

Common ground

The disorganising and fracturing of labour can only be resisted and defeated by the organised labour movement, which is at its best when it is inclusive of all the interconnected struggles against inequality. And here, too, there is a direct connection between debates over labour laws and industrial relations practices, and the ongoing work of the community sector. At this historical conjuncture we confront a fundamental challenge to organise and reframe the common ground between people in paid work and people who receive their main income from the social security system.

Australia's union movement has launched a collective project to 'Change the Rules' of the labour market — rules that currently buttress inequality instead of challenging it. Indeed, new rules are needed to address the imbalance in power relations between workers and employers. The right of entry to workplaces for unions should not be hindered. And the right to strike must be effectively restored. We need an industrial relations system that is fit for a 21st-century labour market.

But we also need to challenge the underlying structure of that labour market. So we need, as a logical complement to this project, a reconfiguration of our social security system that also acknowledges and addresses the structural causes of the chaos that has been wrought by neoliberalism — which is not just an abstract idea, but the driving force behind the real-world policies that have undermined so many lives, families and communities. We need a social security system that actually delivers income adequacy rather than threatening people with income management. We need a system that both responds to the immediate problems in the labour market, while setting about addressing the structural causes of those problems (through models such as a job guarantee system). We need a broader jobs plan — instead of putting a boot into the unemployed, cutting penalty rates and undermining the minimum wage. Finally, at the same time we need to reimagine the politics of caring, especially through a feminist analytical prism.

The intervention required to repair the zones of chaos is not, as Howard proposed, an intervention by the powerful into the lives of people and communities that bear the brunt of inequality. On the contrary, the intervention needs to be shaped, and carried out, by those who are affected by the chaos: a collective intervention into the structural causes of that disorganising chaos.

History teaches us that isolated individuals are an easy target. But when people stand together and affirm that 'you are not alone', it becomes a different proposition — which is precisely why the government attempts to delegitimise the union movement and other sections of civil society that take the side of people who suffer the soul-crushing effects of deepening inequality. All of this while neoliberalism experiences its own chaos: marked by endless financial instability, global imbalance and climatic denialism. The community sector, therefore, shares a deep commonality of purpose with those working to achieve decent work and fairer workplaces. Together we are impelled by this moment of history to simply and fearlessly declare what is happening, and then to work together for the multifaceted changes we need. For there is nothing as powerful as the truth, or as tender as solidarity.

Endnotes

1. Howard 2006.
2. Howard 2006.
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18

Young Australians and the disrupted economy

Annette Cairnduff, Kelly Fawcett and Nina Roxburgh

The new work reality

For at least the past century, the prospect of a good job that pays a fair wage has been part of Australia's promise to our young people. Australia has experienced relatively strong economic growth, high wages and relatively low unemployment for most of that period. However, in a changing economic, political and social climate, young Australians are entering an increasingly complex and unpredictable working future: a fourth industrial revolution where radical structural change is both urgent and necessary. Young workers confront a very challenging labour market: in which precarious and insecure jobs are the norm; it takes longer to gain access to full-time work; occupations and skill requirements are changing constantly; and wages for many young workers lag further behind economy-wide averages. The next generation of Australian workers needs active support — from employers, from educational institutions, and from policy — to successfully negotiate these challenges.

Work has long been acknowledged as important for the livelihood, dignity and happiness of humankind. Work helps us meet our most basic and complex needs,

providing a path towards financial security, mental and physical health, dignity and purpose in life. Prolonged periods of unemployment and underemployment have serious implications for a young person's self-esteem and general mental health as they transition to adulthood. Today 40% of young people identify as having low levels of social and emotional wellbeing.[1] Among 18-24 year-olds who are looking for work, 28% reported anxiety in the previous year and 41% said they were affected by stress.[2]

The stark reality is that today's young people are the first to be worse off than their parents on a number of key social and economic measures.[3] Inadequate investments in education, ageing populations, shrinking natural resources, fewer secure full-time jobs, and declining wages and home ownership, mean that young people today are more likely to experience poorer social and economic outcomes than the generation that preceded them.

Economic changes are transforming work through automation, globalisation and more flexible work. These changes bring both opportunities and significant challenges for young people in Australia's labour market.

Until fairly recently, in Australia, it has been reasonable to assume that a young person would secure full-time work and be financially independent by 25 years of age. But as the world of work changes, young people are spending more time in education to gain access to the increasing number of jobs that require post-school qualifications; yet at the same time the promise of secure work is becoming increasingly uncertain and the transition to full-time work is taking longer for more young people.

In The New Work Reality report, the Foundations for Young Australians (FYA) utilised 14 000 young people's journey to work to explore the transition period from full-time education to full-time work. Longitudinal microdata analysis has revealed what we can do to help accelerate the transition for young people from education to employment.

The Longitudinal Survey of Australian Youth (LSAY) tracks cohorts of young people over a 10-year period between the ages of 15 and 25 and collects thousands of data points about their education and employment situation. The study has used these data to shed unprecedented light on the factors that enable young people to gain full-time work faster, after they finish full-time education.

The report explored the transition period from full-time education to full-time work and revealed that by the age of 25, only half of young Australians have secured over 35 hours of work per week (which classifies them as full-time

employed according to the ABS definition).[4] The report also shows that on the journey to reach full-time work, an estimated 21% work full-time hours in casual employment, and 18% do so by piecing together work in multiple jobs.[5]

In Australia, nearly one in three young people are currently unemployed or underemployed.[6] This is estimated to result in 790 million lost hours of work — equating to approximately A$15.9 billion in lost GDP. The social impact of unemployment and underemployment is equally compelling: the loss of confidence, hope and self-esteem in our young people has led to mental health issues estimated to cost A$7.2 billion per annum.[7]

We urgently need informed discussions about the policies and reforms that Australia needs to set in motion to ensure young people are well prepared to successfully navigate a more complex world.

The era of technology

Smart machines and technology are increasingly performing many of the jobs of humans. The technologies that automated millions of routine transaction jobs (such as clerical work) and production jobs (such as assembly-line work) are now rapidly encroaching on more complex routine and non-routine tasks. In Australia, some 40% of current jobs are considered at high risk of automation over the next 10-15 years and, in fact, automation is predicted to impact every single job in the future, not just some.[8]

In the midst of this transformation there is a significant disconnect between how young people are being prepared for their working lives by schools, universities and TAFEs, and what employers expect young people to be able to do when they enter the workforce. In fact, nearly 60% of students are being trained in occupations where it is expected the vast majority of jobs will be radically affected by automation in the next decade or so; considering VET students specifically, this proportion rises to 71%.[9] In addition, over 50% of jobs will require significant digital literacy skills, but proficiency in these skills is actually declining over time.[10]

Working in a global economy

New technologies and how we now work have led to a new kind of flexibility. With this comes a global labour pool, where workers are no longer restricted by their geography as long as they can access a computer and an internet connection. This also means that employers are no longer restricted to hiring locally. This shift is already visible in some Australians jobs, including legal, IT, design, architecture

and business services, which are increasingly being performed remotely by foreign workers. Economists have estimated that 11% of the world's service jobs can already be performed remotely, and the growth of digital platforms can only intensify this trend.[11]

In the next 40 years, there will be 50% more young people in Australia, making us one of the youngest and most diverse populations in the OECD. This could be a potentially significant competitive advantage in the global market — but only if our learning and training systems adequately equip young workers with the right skills and mindset to navigate the changing economy.

Flexible and casual working arrangements

In Australia many entry-level roles are disappearing and many young people are struggling to find secure work. The number of young people in casual full-time employment has doubled since 1992, and almost one in five young people juggle multiple jobs in order to work the equivalent of full-time working hours.[12]

This increasingly common method for constructing a livelihood means that the ability for young people to transition to independence and 'adulthood' is stymied. This in turn is placing pressure on older Australians, a growing number of whom are supporting their adult children for longer.[13]

The traditional way of thinking about work, as a linear career based on full-time employment within a singular industry or field, is being fundamentally challenged. The experience of a young person studying or training for a first job, working their way up the ladder and then retiring after a long career in the same profession is already very unusual. Young people are predicted to navigate a complex career: holding on average 17 jobs across five different careers in the future, and therefore creating a need for lifelong learning.[14]

Amidst this uncertainty, every young Australian has to make choices that will affect their future — including what subjects to study at school, what courses to take at TAFE or university, what apprenticeships to seek and what first job they should apply for. While none of these choices are irreversible, they nevertheless collectively shape an individual's career and employment options over time.

How young Australians are faring

Young people today are more educated than any previous generation, with almost 60% of 25-year-olds holding a post-school qualification.[15] But despite overall higher education and training attainment, young people are disproportionately

represented in the casual workforce and often cannot find enough work, with almost one in three young Australians unemployed or underemployed.

On average it now takes 2.6 years to move into full-time work after completing full-time education. Precarious and insecure work means not having access to sick leave, annual leave and carer's leave. For those who have been ostensibly engaged as 'independent contractors' and not 'employees' (which is the case for much gig economy work), these workers also lack access to guaranteed superannuation payments. Research has also found that people who experience large variations in their income on a monthly basis have financial wellbeing scores well below the national average, and are categorised as just 'getting by' financially.[16]

Young people have identified four key barriers preventing a more successful transition from study to work:

- 76% of young people believe they are unable to secure full-time work because they lack relevant work experience.
- 50% believe they do not have the appropriate education to secure full-time work.
- 25% believe they lack the necessary interview and job application skills to secure full-time work.
- 70% identify there are not enough jobs available.[17]

Young workers and wages

Given the particular challenges that young workers face in locating and retaining steady work, it should not be a surprise that earnings for young people fall well below those for other age cohorts in Australia's labour market. These low earnings do not simply reflect the fact that young people are filling entry-level jobs (which would normally pay less than more senior positions). They also result from the disproportionate concentration of young people in less secure jobs, and the absence of traditional supports for better compensation.

As indicated in Table 18.1, almost 55% of young workers (under 25) are employed in casual positions, lacking access to normal entitlements (such as paid holiday and sick leave), and subject to much greater uncertainty in hours of work. That is more than twice the incidence of casual work that is experienced among paid employees in the overall labour market.

Table 18.1: Youth employment indicators, August 2018

Source: Calculations from ABS Catalogue 6202.0, Table 22, and ABS Catalogue 6333.0, Table 8.3.

** August 2017 (latest available data)*

	Age 15-24	All workers
Casual employment * (% paid employment)	54.9	25.1
Unemployment (% labour force)	11.5	5.3
Underemployment (% total employment)	20.3	8.6
Underutilisation (% labour force)	29.4	13.4

Similarly, one in three young workers are unemployed or underemployed, which is more than double the rate of older workers. The youth unemployment rate was above 11% at the most recent count — and that official number does not tell the whole story. Unemployment data do not include young workers who, due to inability to secure work, have been discouraged from staying in the workforce, nor those who are underemployed. With such an imbalance between young people seeking work, and the number of positions available, it is no surprise that their ability to negotiate better wage gains is compromised.

The severe flux and instability that characterise employment for many young Australians exacerbate the general pattern of wage stagnation that is experienced across the broader labour market. Young people are thus experiencing a dual challenge: they face daunting barriers to gain full access to normal labour market opportunities, yet wages in the overall labour market are themselves decelerating.

Preparing young people for the new work reality

While evidence shows that young people face a significant number of intersecting challenges, our research has identified the attributes and skills that can help them thrive in the future of work. In particular, we have identified four key factors that can help young people secure full-time work faster.[18]

Portable skills

By understanding the skills and capabilities that will be most portable and in demand in the new economy, young people can work to equip themselves for the future of work more effectively. Our mindset needs to shift to reflect a more

dynamic future of work where linear careers will be far less common; young people will need a portfolio of skills and capabilities, including career management skills, to navigate the more complex world of work.

A critical step is building a better understanding of the skills we need for the future of work. Our analysis of over 4.3 million job advertisements in Australia over a three-year period found that employers are increasingly demanding 'enterprise' skills. Enterprise skills are transferable skills such as problem solving, communication, teamwork, digital literacy, bilingual skills and creativity among others. In contrast, technical skills are often specific to a particular task, role or industry and can include qualifications such as licences or certifications.

In Australia, employers are more explicitly demanding greater proficiency in these enterprise skills among young workers. It is estimated that 70% of future jobs will require transferable enterprise skills; our research has found that employers are willing to pay up to an additional A$8800 in annual salary for young job seekers who can demonstrate these skills. In particular, demand for digital literacy skills have risen by 212%, for bilingual skills by 181% and for critical thinking skills by 158% in early-career job ads in the last three years alone.

Accelerating to work

Building these enterprise skills and knowing how to use them has been shown to accelerate a young person's transition from full-time education or training into full-time work by 17 months.

Three other factors accelerating a young person's transition to work include:

- 5000 hours of relevant paid employment accelerates the transition by 12 months — this may be a young person starting a part-time job at the age of 15 to start building their work-ready skills
- selecting work in a future-focused cluster of occupations accelerates the transition by 5 months
- an optimistic mindset drives faster entry to full-time work by 2 months — on average, a young person at age 18 who is happy with their career prospects begins working full-time hours two months faster than a young person who is not happy with their career prospects.

Jobs, skills and clusters

With over 1000 different recognised occupations in Australia, it can be overwhelming for young people today to know what enterprise skills they will need to develop for their future employers.

Luckily, jobs are more related to each other than we think. Many jobs involve similar skills, day-to-day tasks and work environments. By analysing millions of job advertisements, our research grouped these occupations into just seven clusters, on the basis of skills and qualifications cited in the advertisements.[19] Young people can consider this cluster pattern to identify a group of work they might enjoy and the skills they require to navigate the area of work.

The seven clusters we identified in the Australian labour market are as follows:

- **The Generators** cluster focuses on skills related to generating sales and interpersonal interaction — including positions in retail, hospitality and entertainment.
- **The Artisans** cluster includes skills related to generic manual tasks, as well as technical skills specific to construction, production, maintenance or technical customer service.
- **The Carers** cluster includes generic and technical skills related to improving the mental or physical health and wellbeing of others, including medical, care and personal support services.
- **The Technologists** cluster focuses on the skilled understanding and manipulation of digital technology, including programming and IT software development.
- **The Coordinators** cluster includes skills related to administrative tasks and behind-the-scenes process or service tasks.
- **The Informers** cluster focuses on skills related to the content required to provide education or business advisory services and teaching-related skills.
- **The Designers** cluster deploys skills and knowledge of maths, science and design to construct or engineer products or buildings.

Some clusters of work have more of the resilient jobs because the skills that are commonly requested are more resilient to automation. Of the seven job clusters, 'the Artisans' and 'the Coordinators' are likely to experience lower growth and high exposure to automation; 'the Generators' and 'the Designers' are likely to experience moderate growth and medium exposure to automation; and 'the Carers', 'the Informers', and 'the Technologists' are most likely to grow and persist into the future. Therefore the types of jobs likely to have the strongest future prospects relate to technology (technologists), caring for others (carers) and providing information and services (informers).

These jobs require strong foundation skills (literacy, numeracy and digital skills), critical reasoning and interpersonal skills, and specific sectoral-based skills.

These skills are important not only for young people about to enter the workforce, but also for workers in the existing labour force who are changing jobs in the course of adapting to a changing economy.

Instead of focusing upon a particular occupation, a young person could plan to develop a portfolio of skills that opens doors to a group or 'cluster' of jobs. On average, skills acquired from one job are portable to 13 other jobs.

Understanding the interrelated and overlapping nature of skills and jobs is necessary not just for young people, but for employers, educators, parents and policy makers as well. On the supply side, young people can consider how their existing skills would be valuable for multiple different roles. On the demand side, employers should consider the breadth of potential candidates from different occupations with similar skills. If we can shift our understanding of the complex relationship between groups of skills and clusters of jobs, we will be able to view the current debate around the so-called skills mismatch quite differently: training for one occupation and working in another occupation would not be a 'mismatch' at all if a person was developing or deploying a relevant and portable skill set.

Continuous learning

The idea that education and training ends upon graduation is clearly no longer viable. By 2030 workers will spend more hours learning on the job than ever before.[20] Young people's learning journey must begin early in their formal education, but it must then progress right through their working lives. It will be essential to build both their learning skills and capabilities, and an understanding that they will need to prepare for a lifetime of continuous learning.

Flip the script

It's time to flip the script. The future of work isn't about robots stealing our jobs or our ageing population. Australia's best future lies with a generation of young people — the best-educated and most flexible in our history — who can create a prosperous and equitable society.

Young Australians want to grasp and capitalise on opportunities in the future of work, drive our nation's economic, social and sustainable development and contribute to solving complex global challenges. The responsibility of policy is to support them in this endeavour: harnessing their passions and abilities, growing their skills and capabilities to enable them to thrive in the new economy, ensuring they are treated and compensated fairly as they embark on working lives that will be far less predictable than those of previous generations.

To ensure that young Australians are prepared and equipped for their futures, there is an urgent need for a comprehensive and intergenerational investment in Australia's young people that would encompass

- a nation-building education strategy to redesign the learning system and curriculum from preschool through higher education (and beyond)
- a new commitment to skills, training, careers education and real jobs for young Australians
- supports for better wages and working conditions for young workers, recognising their disproportionate lack of access to better-paid, more stable jobs.

If we understand the future as a public good to be stewarded rather than owned, it follows that it should be governed so that fair access to opportunities is sustained across generations. Stewarding the future should not imply a conflict of young versus old, but rather a goal in which everyone has a stake.

Our policy choices today will determine whether Australia's young people are ready to take on the challenges of the future for decades to come. These are not just challenges for individual young people. They are challenges for our whole nation.

Endnotes

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4. FYA 2018.
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19

An investor perspective

Craig Shepherd and Penny Heard

A critical issue

The wages crisis, its drivers and its long-term implications are a core issue that our firm, JCP Investment Partners, considers when making investment decisions. For active Australian equity investors in a firm with over A$5 billion in funds under management, the combined issues of weak wages growth and so-called wage theft directly impact the performance and growth prospects for listed companies.

Some characteristics of low wages growth will come and go with the cycle: it is only a decade ago that wages growth was exceptionally high, buoyed by a tight labour market and strong terms of trade.

But the revelation of widespread wage theft in the Australian labour market, and the fraught combination of structural forces, weak institutional leadership and limited legislative response are much longer-lasting. On this level, we are more than just interested observers. We believe that at their best, investment managers act as agents for our clients, predominantly the Australian workforce and government agencies. In this capacity, investment managers can be a positive force for reducing the extent of the pernicious threat of wage theft.

A range of business models, including many franchisee models, appear to exploit the underlying drivers of weak wages growth. This has presented a challenge

for investors. In the short-term their spectacular growth appears compelling, but their sustainability is ultimately a function of whether the wages crisis will reverse.

To explain why the wages crisis is important from an investor's perspective, and how we approach the topic, we will introduce some necessary background, including

- an overview of what it means to be a professional investment manager in Australian equities
- an introduction to risk and return, and why investors are likely to see heightened risk as the key implication of the current wage crisis
- an explanation of how this heightened risk provides opportunities for managers to both create profits for clients and raise awareness of the issue
- more detailed analysis of the practical impacts of the current crisis on a range of investment decisions we have made over the past two to three years.

In writing this chapter, we must recognise that our views do not reflect the community of investors — they represent one view, which is somewhat tentative and subject to revision, but ultimately a view that articulates what the authors and our firm, JCP Investment Partners, believe to be a sustainable and ultimately profitable strategy for our client's investment. JCP Investment Partners is a fundamental, research-driven Australian equities manager whose process aims to 'combine the art and science of investing'. JCP specialises in managing multiple high-conviction and tailored portfolios for clients. It is based in Melbourne and is 100% owned by employees.

How do you invest?

There is no consensus on how one invests, but we would like to draw out a relevant question here to assist with our analysis. Are investment managers dispassionate and disconnected investors or does the market, through pricing risk and allocating capital, influence the way companies are run? Are they active by omission or active by commission? Have markets encouraged wrong behaviours? What events cause investment managers to be more active?

Why is the distinction relevant? Let's first consider the dispassionate end of the spectrum. Famed investor Charlie Munger of Berkshire Hathaway noted that one of the four fundamentals of value investing was '[t]o be rational, objective and dispassionate'.[1]

Investors need to divorce themselves from the daily movements in share prices. A mix of intelligence (but not too much), lack of ideology and emotional detachment is said to be required. We would contend that it would be another

matter for society if the rest of the populace could achieve this level of intelligent emotional detachment. The detached investor view grew from the early days of modern finance, when modern portfolio theory (MPT)[2] and the efficient market hypothesis (EMT)[3] defined investing and economics in general as outcomes of rational agents that did not exist in real life. Developments in behavioural finance have since proven that the role of 'animal spirits'[4] and biases are equally important. It is through behavioural finance that we come to understand that social issues, exemplified by the wages crisis, can play a bigger role in markets than a dispassionate interpretation would have once suggested.

When markets herd, and where preferences for risks are highly non-linear, social issues — which may appear to be increasing in importance gradually — eventually reach a threshold point at which markets react more severely. By way of example, we note that the 7-Eleven scandal, which was first uncovered in 2015, brought into question the economics of franchise models. Yet a listed comparable company called Retail Food Group, which manages similar businesses, only came under pressure in the share market in 2017. Whilst the systemic issues were apparent, the market threshold for a significant reassessment of its value hadn't been met until 2017, when explicit concerns about Retail Food Group were aired.

On a more practical level, the institutional framework in Australia provides additional important context regarding circumstances discussed in this book.

Investment managers are agents for our clients, generally superannuation funds or similar government investment agencies. We have a fiduciary responsibility to manage capital in our clients' best interests. In turn, our clients generally hold on trust the funds of mum and dad investors, or public funds, and they have an equal responsibility to their clients.

We invest in listed companies governed by boards: individual board members owe a fiduciary duty to the company. In addition, under the *Corporations Act 2001*, a director, along with other officers, have a statutory duty to act 'in good faith in the best interests of the corporation'.[5] In practice, this broadly means they have a duty to act in the interests of the shareholders or members of the company as a whole.

Members of the boards must manage additional agency risks inherent in delegating the day-to-day task of running the company to professional managers (CEOs etc).

In Australia, unlike some other jurisdictions, directors are not directly responsible to employees, nor do they have any legal obligation to have regard to wider public considerations, except insofar as such responsibility would be consistent with the best outcomes for the corporation.

The relevance of this institutional framework is simple. Despite the ultimate owners of the capital being largely mum and dad investors, despite the best interests of the broader economy being served by sustainable wages growth, and despite boards wishing to compete in markets that comply with relevant standards of employment law, there is no coherent institutional imperative to reduce the exploitation of labour. Instead we must look to the market, the legislature and the executive when the system fails.

Does the market play its role when governance has failed? Perhaps. Do companies who engage in the least sustainable behaviours, which create higher-risk profiles for future earnings, face weaker share price performance? We would suggest they do, but long-time lags are ultimately required to prove such a contention.

Specifically, we could look for answers in some key moments from corporate history. The case of HIH is illuminating in this respect. In their guide for directors, the Australian Institute of Company Directors (AICD) concluded that the duties and responsibilities of directors prescribed under law were ultimately limited in their effect. Instead, the AICD observed:

> All directors would do well to heed the advice of Owen J, who conducted the Royal Commission inquiry into the collapse of the HIH insurance group:
>
> 'Did anyone stand back and ask themselves the simple question — is this right? ... Right and wrong are moral concepts, and morality does not exist in a vacuum. I think all those who participate in the direction and management of public companies, as well as their professional advisers, need to identify and examine what they regard as the basic moral underpinning of their system of values.'[6]

In its review of the HIH collapse a decade later, the Department of Treasury found it important to point to the historical performance of the HIH share price to help document the company's downfall.[7]

The market had clearly begun to price the issues that Justice Owen described well before the ultimate collapse. Similar charts, with the benefit of hindsight, are likely to be created in decades to come, describing the downfall of companies currently exploiting the wages crisis.

At the market-wide level, not simply at a stock level, history tells us that the market is already interpreting the impacts of weak wages growth. The indirect consequences of weaker consumption are being priced now. Perhaps this is an awareness of the 'paradox of thrift'.[8]

The premise of the paradox of thrift is that when people save in a way that removes money from the economy, consumption falls without an offsetting increase in investment. Weak wages growth could induce a desire to create higher

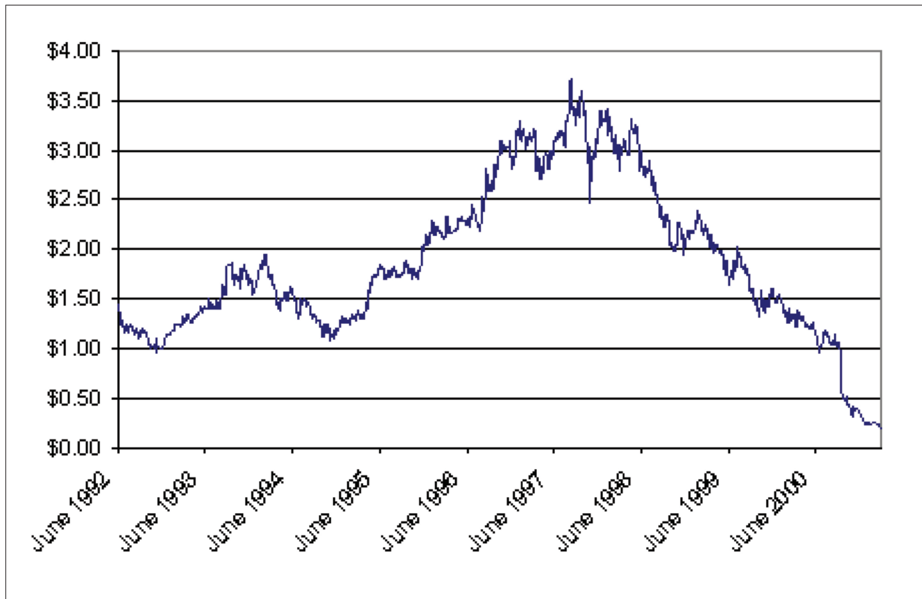

Figure 19.1: HIH share price

Source: HIH Royal Commission Final Report.

savings at the individual level. But the fall in consumption and resulting fall in production may reduce incomes further to a level at which total savings decline, even though everyone is trying to save more. That is the paradox: what is good for the individual may be bad for society as a whole.

In Australia, weak wages growth has been associated with a declining savings rate and falling levels of credit growth. At a direct level, retail sales growth, especially on a per capita basis, has stalled in recent years. A range of listed and unlisted retail companies have suffered.

Nuts and bolts of investment

We are conscious of providing a little bit more 'background' on the role and task of the investor in this section.

Investment managers are ultimately responsible to the scoreboard, to *alpha* generation (the difference between the total returns of the managed portfolio and the benchmark return of the market). Whilst not the only measure of success, and subject to significant fluctuations over short periods, alpha is the reason that investment managers exist.

How do we invest at JCP: how do we create alpha? We invest based upon expected levels of 'risk' and 'return'. We seek to identify value in listed stocks and build portfolios that carefully balance the risks around the future value of the stock, with the expected return we anticipate being achieved if we purchased the stock today. There are two axes, risk and return, and we trade each off against the other. So, when faced with two opportunities with equal expected future returns, we would always choose the stock with the lowest risk. We seek to understand the key value drivers of risk and returns across the multitude of companies and industries which form the Australian stock market. These key value drivers can vary from the simple, such as the price of oil or other commodities, through to the complex, such as the game theory at play in a competitive takeover battle. Pricing these risk and return metrics is a mixture of 'art and science'. Research of this type requires a big team of investment professionals with a range of experiences and expertise.

Investment teams of all varieties tend to have a particular style or set of principles. Added to risk and return, we include Environmental, Social and Governance (ESG) principles. JCP Investment Partners is a signatory to the UN Principles for Responsible Investment (PRI).[9]

Listed below are the core principles of PRI, which demonstrate that the wages crisis is not purely a social issue, but an investment issue.

- Principle 1: We will incorporate ESG issues into investment analysis and decision-making processes.
- Principle 2: We will be active owners and incorporate ESG issues into our ownership policies and practices.
- Principle 3: We will seek appropriate disclosure on ESG issues by the entities in which we invest.
- Principle 4: We will promote acceptance and implementation of the Principles within the investment industry.
- Principle 5: We will work together to enhance our effectiveness in implementing the Principles.
- Principle 6: We will each report on our activities and progress towards implementing the Principles.

Recall earlier that the institutional framework affords us a clear opportunity to live by Principle 2, to actively engage management and boards. We believe that the 'S' (social) part of ESG is underappreciated and have found the wages crisis a powerful way to engage with companies. That engagement has helped inform investment decisions.

Our investment process leads to our clients' capital being invested in 'long' and 'short' positions. A long position is owning shares in a company with the expectation that the price of the share will rise. A short position is selling shares in a company with the expectation that the price of the share will fall. Executing a short position requires us to sell a stock first and then buy the same stock back later. If the price we sold the stock for is higher than the price we subsequently buy the stock back at, our client profits. To sell a stock that we do not own, we must first borrow the stock from an existing owner, through a stockbroker, and pay an additional holding fee for the time it is borrowed.

Investing both from a long and short perspective allows us to generate returns for our clients by identifying which companies have the most and least sustainable business models.

How does anticipated future risk and return relate to the wages crisis? While we appreciate that the link is not immediately obvious, the connection lies in the sustainability and surety of expected earnings.

How does the wages crisis impact the sustainability and surety of future earnings?

At the extreme end of the wages crisis, where institutional constraints, excess supply and bad behaviours are relevant, the issue of sustainability is more pronounced.

Where there is a company exploiting its workers or taking advantage of a supply chain which does the same, or a company benefiting from low wage inflation propping up an otherwise unsustainable model, higher returns appear more likely in the short term, but ultimately increase the risks in the medium term.

Conversely, there is a second group of companies that appears to be disadvantaged by low wage growth and disadvantaged by competitors who commit wage theft. Some of these businesses, however, have pricing power in the face of future wage inflation. Such companies appear to offer lower returns in the short term, but are less risky in the medium term, especially if they are following the law with their own employees. Examples would include supermarkets facing competition from franchised fast food chains.

We exploit these conditions, and in turn support positive behaviours, through 'long' investments in the second group, and, where viable, short positions in the former.

Most listed companies have no direct participation in wage theft, nor are many indirectly impacted. We will return to those that are, in the section below called 'Outliers and their importance'.

For the remainder of companies, the macroeconomic impact of lower wages or reduced savings remains important and will vary from company to company. Generally, companies are impacted by lower wages either as a purchaser of labour, or through the indirect impacts of reduced consumption. The short- and long-term impacts will depend on the severity of the downturn.

This is where the 'dispassionate investor' will take over, the role of the investor to assess the changes they see today and expect in the future. Our clients reasonably expect that this 'read' on the conditions is then transformed into a very wide range of expected impacts on listed companies.

A framework to assess impacts

How long will the downturn in wages last? Our view is for a relatively short period of five to seven years, after which our long-run confidence in strong nominal wages growth dominates.

In the short run we need to assess the structural and cyclical impact of the current weak wages growth.

The long term

Turning to the persistence of the downturn, we believe that the current wages crisis is likely to reverse over the medium term. We expect higher nominal wages growth to return; we expect wage theft to diminish, and the relative share of economic activity captured by wages to stabilise. Ultimately, we expect the productivity generated by labour to be adequately rewarded as it has been over the long term. This is a 'mean-reverting' view of wages growth.

Following the current period of adjustment of wages, the global forces for reflation, combined with normalisation of interest rates, will create a strong base for wages growth. The scenario does not preclude an extended period of dislocation, especially for some asset prices. Investments in well-run, high-quality businesses with exposure to Australian household consumption are ultimately likely to retain their comparative advantage going forward, despite current conditions. Businesses such as retail supermarkets, emerging players in e-commerce, insurance companies and those building significant infrastructure will benefit in the long run. As a result, when weaker consumption in the short term puts downward pressure on the stock prices for such names, we would look to add to our portfolio positions.

Mean reversion of wages and inflation is likely because the status quo is ultimately not politically sustainable. The negative consequences of lower wages, exacerbated by high population growth and excessive leverage in the household

sector, are too large. The rise of populism and the existing institutional support for weakening wages and higher inequality are unlikely to survive a changing political backdrop. When political support for change arrives, responses will tend to be good for domestic wages.

And finally, we are of the view that in the face of the next economic crisis, whenever or wherever it is encountered, it will require a dramatically different response to that undertaken in the Global Financial Crisis (GFC). It is unlikely that we will return to increased financialisation, higher debt, less government and more leverage.

With this long-term view of the current wages crisis, we tend to find value in companies with strong protection, bigger 'moats', so to speak — especially companies that can reinvest significant capital at high rates of return. Assets advantaged by existing endowments, existing networks and sunk capital are likely to generate substantial returns when wages growth returns. Businesses currently priced highly for grinding deflationary forces that reduce wages and expand inequality may be left without the same reinvestment opportunities when nominal growth returns.

The short term

The short-term conditions are very different. Weak wages growth and increasing wage theft cannot be disentangled from current high levels of population growth. Regardless of whether causality holds, the simple fact is that our recent economic growth, and anticipated near-term growth, are dominated by volume, not value.

The pie is getting bigger, but the slices are getting smaller. This thematic, exacerbated by the wages crisis, creates a powerful investment driver in the short term.

With a growing labour force, and strong demand for housing, government services and infrastructure growth, top line employment growth can continue to surge at the same time as wages growth remains around record lows. Unlike cyclical downturns, low wage growth need not be a function of weak domestic demand.

This has been the pattern offshore, with sustained declines in the unemployment rate across G10 economies yet to deliver much in the way of wage (or inflation) pressures. The key implication is that household spending will likely be contained within the current 2.5-3% growth range over the medium term, and we see risk skewed to the downside, particularly if the combination of slowing house price appreciation and high leverage continues to reduce household savings rates.

Within this context the wages crisis becomes an opportunity in the short-term for investments in

- mass consumption — for example, companies such as Woolworths or Wesfarmers, who are relatively indifferent about the same number of shoppers with more income, or more shoppers with the same income
- outdoor advertising businesses that benefit from more individual 'eyeballs' viewing advertisements and higher dwell times, as levels of congestion on roads and public transport increase
- a range of companies that benefit from pure population growth such as hospitals (Ramsay Healthcare and Healthscope), construction companies such as Boral, and even funeral providers such as Invocare
- the combination of higher volumes and low-cost growth (low wages and low inflation), which is especially powerful in domestic insurance names such as IAG and Steadfast.

On the negative side, the fact that 'the slices are getting smaller' can create different impacts. The difference between the individual or per capita outcomes and those of the broader economy is critical. Individual income growth creates opportunities for higher levels of discretionary spending and for higher levels of savings and investment sourced from the household sector.

After paying for the essentials, income growth creates room for discretionary spending. The converse is true, and its impacts are apparent in weak retail trade. Higher income growth also helps support existing debt levels and enables younger workers to see the type of real income growth that supports families and household formation.

Where, instead, employment growth is simply servicing the numerical growth, such jobs can be concentrated in low-paid jobs, further reducing average discretionary consumption.

Within this context the wages crisis becomes an opportunity for short positions in

- discretionary retail names and listed retail real estate trusts (REIT)
- companies that service high-end car sales, or overseas travel.

The second-round effects include an anticipation that the erosion of working conditions, higher social tensions and the requirement for catch-up public investment will increase political instability. In such an environment, companies that are funded by government face higher risks, and monitoring political trends becomes more important.

More tangentially, current conditions create an advantage for owners of existing scarce assets that collect a partially fixed share of economic activity (toll roads, protected retail assets and some real estate), rather than prosper from real wealth creation through productivity or innovation.

The type of population growth that cannot generate strong wages growth is arguably the type of low-quality growth that a modern successful and progressive nation should be seeking to avoid. The negative externalities of population growth alone, in the form of environment impacts, congestion and quality of life measures not included in aggregate economic statistics are usually cause enough for hesitation by policy makers.

In the very short term we do not see changes to these trends, so concentrating on those who benefit as the pie grows is critical. Current conditions are unlikely to be politically sustainable in the long run, so over the next 12 to 18 months we will be looking for changes in the political landscape.

Outliers and their importance

It is fair to say that in addition to the tactical impacts of the wages crisis discussed in previous sections, the authors' interest in this topic has been heightened by publicised breaches from corporate Australia.

We have been particularly interested in exploring the thresholds of non-compliant behaviour that historically drives large falls in share prices, when risks presented by corporate behaviour reach threshold levels.

The 7-Eleven example was particularly eye-opening. While the company is not publicly listed, it was a regular participant in discussions between equity investors: the stock-broker analyst community. The business was outwardly innovative, clearly growing and investing.

But 7-Eleven has acknowledged since that a culture of underpayment had become normalised in its network. The lesson for our team was the critical role of corporate values and commitment to franchisee sustainability.

Since that time companies such as Domino's Pizza, Super Retail Group and Retail Food Group have reported problems of underpayment or wage theft. But each have suggested limited or no evidence of any widespread franchisee non-compliance with employee entitlement payments. In addition, we expect to see a greater level of scrutiny around the use of third parties in product delivery (for example, Deliveroo) and the treatment of 'contractors'.

In our view, the closer that companies get to serious breaches, the more the risk begins to rise, and the value of the company falls. At this stage the critical

threshold of risk has not been met for many listed companies, but Justice Owen's words ring again: investors and directors alike 'need to identify and examine what they regard as the basic moral underpinning of their system of values'.[10]

When boards and management are led by the maximisation of company value but dismiss the checks of the market or considerations of additional stakeholders, the wages crisis will continue.

With a focus on ESG principles, we suspect we are part of a growing group of investors who will demand action. Investors are now more aware of the problems in the franchising system and more aware of the abuses of migrant workers. In time we suspect large employers with great track records in industrial relations will have the confidence to highlight such performance to their stakeholders, further isolating the rogue elements.

But investors can only assess the information at hand. This underlines the importance of a range of academic, legal, legislative, community and action groups in driving change, increasing pressure and enhancing information flow. The more light that is shone on the most unsustainable components of this crisis, the more the market can send appropriate signals to help alleviate these trends.

Endnotes

1. Quoted in Griffin 2015: 7.
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3. Fama and Miller 1972.
4. Keynes 1936: 161-2.
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Part V

Finding solutions

20

Conclusion: Wages and inclusive growth

Andrew Stewart, Jim Stanford and Tess Hardy

Why does wage stagnation matter?

When we set out to produce this book, we had four broad questions in mind. What is the wages crisis? Why is it happening? Why does it matter? And what should we do about it?

The first two questions were addressed by the various chapters of this book — although given the complexity and multidimensionality of the wages crisis, there is obviously room for further research and dialogue to refine those explanations. The last question — what to do about it — is one to which we return below. But before that, it may be helpful to revisit the third question, in light of the rich and varied contributions to this collection: why does it matter that we have a wages crisis in Australia, and why should it demand the attention of policy makers and the public at large?

Most obviously, wages matter because they are how the vast majority of Australians support themselves. Compensation of employees constitutes far and away the biggest single source of personal income for Australian households. It accounts for two-thirds of all primary household income, or around A$875 billion

in 2018.[1] That is five or more times larger than any other major source of personal income, including small business income, investments and business profits. Moreover, some other forms of income (such as superannuation) depend on wage levels, and this magnifies the ultimate impact of wages on lifetime household incomes. So there is no factor more important in determining the financial wellbeing of Australian households than how much workers are being paid.

In turn, the centrality of wages and salaries to household incomes ensures that many other macroeconomic and fiscal variables depend on wage trends, as well. Consumer spending, for example, is tightly correlated with wages and salaries, again for obvious reasons. The stagnation of wages has inevitably undermined the strength of consumer spending, which makes up around one-half of total GDP. For a while, households responded to the deceleration of wages by increasing personal borrowing, prolonging previous vibrant growth in consumption. But borrowing can only continue for so long — and now, after a decade of unprecedented growth in consumer credit, Australians are among the most indebted consumers in the world.[2] As Australian households now pare back their borrowing, the slowdown in credit growth will exacerbate the impact of continued wage stagnation on consumer spending. In the five years from 2012 through 2017, real per capita household consumption grew by under 1% per year — less than a third of the pace of the mid-2000s. Such sluggishness in the biggest component of aggregate demand has been a significant drag on overall GDP growth, and hence job creation.

The impact of stagnant wages on household financial stability goes further than just subdued consumer spending. The resulting precarity in household financial stability is another, potentially more dangerous consequence of flatlining wages. Household indebtedness is most commonly measured by the ratio of debt to household disposable income. According to the Reserve Bank of Australia (RBA), that ratio reached a record 190% by mid-2018.[3] The numerator of that ratio grows with new borrowing, which has accelerated in the wake of flat wages, easy credit and rising house prices. But many observers forget that the denominator of the ratio — the income of households, the crucial determinant of their capacity to carry debt — is just as important to the debt ratio as the numerator. The deceleration of wages, coincident with the acceleration of indebtedness, has thus contributed greatly to rising financial fragility. It both compels households to borrow, while simultaneously undermining their capacity to service their resulting debts.

Stagnant wages have contributed to the growth of public indebtedness, as well. Both personal income tax revenues and GST revenues (tied to consumer spending) have been held back by the slowdown in wages. And the serial failure of wages to live up to the optimistic forecasts built into government fiscal projections

has been a significant factor behind the failure of State and Commonwealth governments to meet their budget targets in recent years.[4]

Another important consequence of very weak wage growth for financial stability is its impact in suppressing overall inflation in the economy. In turn, this constrains the actions of monetary policy authorities. The Reserve Bank presently targets a rate of consumer price inflation of 2.5% per year. This is considered to be 'optimal' inflation, enough to lubricate necessary relative price adjustments while preserving long-run confidence in the value of money. In targeting that desired rate, the RBA establishes a 'range' of plus or minus one-half percentage point, so that its immediate interest rate decisions are not unduly influenced by short-term price movements. As discussed in Chapter 2, Australian wage growth first started decelerating dramatically in 2012. From the beginning of that year through September 2018 (a total of 27 quarterly observations), year-over-year national inflation fell below the RBA's target 23 times, while rising above it just three times. In 16 of the 27 quarters, inflation even fell right below the lower bound of the broader target range (below 2.0%); it never rose above the upper bound. Indeed, average inflation over this whole period was just 1.9% — also below the lower bound of the RBA range. RBA leaders have acknowledged that very weak wage growth is perhaps the major factor in the Bank's inability to meet its inflation target.[5] Low wages are thus forcing the RBA to keep interest rates lower than normal (with consequent implications, including for savings, superannuation and continued debt growth). It could even be argued that low wage growth is contributing to an erosion of public confidence in inflation targeting itself.

Another important consequence of stagnant wages is the growth of personal income inequality in Australia. Even if all workers experienced slower wage growth to the same degree, the fact that wages have consistently lagged behind productivity growth is itself leading to increased inequality. The resulting decline in the labour share of total national output means that a larger share of GDP is now paid out in investment income and business profits. Those forms of income are disproportionately concentrated among higher-income households — since, by definition, the returns to financial wealth are disproportionately received by the wealthy! Thus the shrinking share of national output paid out in wages (as documented in Chapters 2 and 3 of this book) itself translates into greater inequality.

But in practice, not all Australian workers have experienced the effects of wage stagnation evenly. There are still some workers (employed in particularly vibrant industries or occupational categories) whose wages have continued to grow at more typical rates. Other groups have experienced outcomes even worse than the average

— and many have experienced outright declines in real earnings. The result has been an increase in income inequality, as measured by various indicators.[6]

Apart from the direct hardship experienced by Australian households whose labour income has stagnated and is lagging behind their costs of living, there is perhaps an even bigger consequence from the sustained deceleration of wages for the essential social compact that underpins our society. Australians have typically attached great importance to the principle of a 'fair go'. And Australian economic and social policy traditionally focused on ensuring that the prosperity of rapid post-war growth was broadly shared through society. In recent years, however, that traditional Australian ideal has seemed further and further divorced from reality. Facing stagnant pay packets, rising prices for essentials and pervasive insecurity, many Australians are losing confidence that they will ever share fully in the fruits of economic progress. That pessimism affects their attitudes and behaviour across a whole host of economic variables and decisions, including decisions about education, home purchases and career choices. For example, if Australian workers have no realistic expectation that rising productivity will ultimately be reflected in their standard of living, why should they care about or support measures (like automation and innovation) that could boost productivity growth in the future?

More generally, the damage from a breakdown in the implicit expectation that economic prosperity will be broadly shared could extend well beyond the economy, and eventually jeopardise the stability of our social and political institutions. The rise of divisive and xenophobic ideas in many communities, and the fragmentation and extremism which now characterise much political discourse, can at least partly be understood as consequences of the loss of confidence among Australians that they have a realistic opportunity to share in future prosperity.

For all these reasons and more, we share the conviction of the contributors to this volume that the wages crisis is one of the most urgent and important items on Australia's national policy agenda. Without proactive efforts to restore predictable wage growth, and to stabilise and rebuild workers' collective share of the economic pie, we fear an intensification of these negative economic, social and political consequences. We do not expect that 'market forces' alone can overcome wage stagnation and restore normal distributional patterns. It will require corrective action to resolve the problem. And so it is to exploring the range of possible policy responses to the wages crisis that we now turn. We start by summarising and cataloguing the proposals advanced by our various contributors in their respective chapters. Then, seizing the editorial prerogative, we advance our own agenda for a policy response to the wages crisis that we believe would be both effective and feasible.

Our contributors' solutions

One of the most consistent themes to emerge from the contributions in this book is the loss (or lack) of collective power available to Australian workers. In Chapter 7, David Peetz advocates changing the rules for bargaining and wage determination to enhance employee power. He suggests that this could be done by, among other things, simplifying bargaining procedures, removing limits on multi-employer bargaining, bringing the right to strike into line with international standards and ensuring that negotiated conditions remain in force after the expiry of enterprise agreements. But he also notes the need to go further in making changes to broader economic structures, including by reducing both the power of the financial sector and the incentives that drive antisocial behaviour by corporations.

For their part, Stephen Kinsella and John Howe agree in Chapter 3 that if the erosion in the bargaining rights of Australian workers can be reversed, the international evidence suggests that there could be a positive impact on both wage levels and economic growth. This is a theme picked up by Damian Kyloh in Chapter 16. He argues for the repeal of laws limiting the scope, content or level at which collective bargaining can take place, and in particular for the capacity to 'extend' collective agreements to cover an entire industry or sector. He also proposes making higher collective bargaining coverage an objective of the *Fair Work Act 2009* ('the Fair Work Act'), bringing Australia's laws concerning industrial action into line with international standards, and expanding the Fair Work Commission's power to conciliate and arbitrate disputes.

John Falzon, too, makes the point in Chapter 17 that new rules are needed to redress the power imbalance between workers and employers, including through the restoration of a right to strike. But he also highlights the need to challenge the underlying structure of the labour market by reconfiguring the social security system. It is only through organisation and solidarity, he suggests, that it is possible to repair the damage wrought by neoliberalism and to tackle inequality.

Collective bargaining is not the only method of setting wages. In Chapter 5, Tim Lyons advances various proposals for changing the way that minimum wages are fixed under the Fair Work Act. He suggests recasting award rates 'as a foundation, not a safety net', and changing the wage-setting criteria to put more emphasis on the needs of the low-paid and less on macroeconomic factors. A 'living wage' target of 60% of median wages should be adopted, with the Fair Work Commission given the power to make adjustments over a period of years to reach that figure — a proposal also supported by Damian Kyloh. Lyons also

contemplates allowing States or even local councils, as in the US, to set higher minimum wages than those prescribed federally.

In their discussion of the gender pay gap in Chapter 6, Sara Charlesworth and Meg Smith call for reforms to the Fair Work Act's equal remuneration provisions, including by making gender pay equity an explicit object of the legislation and adopting an equal remuneration principle grounded in the concept of gender-based undervaluation. In addition, they propose broadening the protections offered by awards and the National Employment Standards, including for casual and part-time employees, providing fairer skill and classification structures, and improving the regulation of working time. (This broader emphasis on tackling insecure work is also supported by Damian Kyloh, who advocates higher penalty rates and casual loadings, as well as an expanded right for workers to transition to regular employment.) Charlesworth and Smith highlight the importance of collaborative action in both raising awareness of and addressing the gender pay gap, using recent developments in New Zealand as an illustration of what can be achieved.

In Chapter 10, Kym Sheehan disentangles the components of executive pay and uncovers some of the underlying drivers for corporate decision making in large, listed companies. The fact that the variable pay of senior executives often hinges on achieving cost savings to boost the bottom line means that the wages and conditions of non-executive employees are in the firing line. Whether it might be feasible or appropriate to change those incentives, by seeking to regulate the structure and vesting of executive bonuses and variable pay, is clearly something that warrants further consideration.

The critical role of government in controlling or influencing wages is the main theme in two particular chapters. In Chapter 8, Troy Henderson calls for an end not just to public sector austerity and what he calls 'surplus fetishism', but to privatisation and the outsourcing of government services, the imposition of arbitrary 'efficiency dividends' and the use of public sector wages caps. More positively, he notes the possibility for public sector employment and investment to be used 'as an essential counter-cyclical macroeconomic policy tool'. Fiona Macdonald and Michael Pegg's more specific concern in Chapter 9 is with 'marketised care economies' such as the NDIS, or other areas where services are funded by government. In such contexts, they highlight the importance of bringing government to the bargaining table, and also looking at the potential for sector-level bargaining. More generally, they suggest that it is time to question the neoliberal assumption that competitive tendering and the commercialisation of social services will produce the best outcomes for people needing public support.

A further theme to emerge in the book is the impact of particular business models on wages and employee bargaining power. In Chapter 11, Josh Bornstein explores the myriad ways in which the fracturing and reconfiguration of work have played out in the public and private sectors. He argues that while these business strategies can bolster profits and deliver consumer benefits in the form of cheaper goods and services, they also have the tendency to perpetuate wage cuts, wage suppression and 'wage theft'. In particular, fissured work inhibits collective bargaining, by weakening workers' bargaining power and placing a misplaced emphasis on the direct employer (as opposed to the lead business that is calling the shots). Further, by steering away from direct employment, lead companies may effectively shield themselves from the risks and responsibilities associated with workplace relations compliance. As he has previously argued, in order to achieve fair wage outcomes for these workers it is critical that sector-wide bargaining is allowed and encouraged.[7] David Peetz, too, emphasises in his chapter the importance of preventing employers from using new forms of organisation to evade their responsibilities.

In Chapter 12, Keelia Fitzpatrick takes up the particular issue of wage theft, which she describes as 'intentional wrongdoing by the employer'. She believes that the extent of non-compliance permeating the labour market signals a profound problem with existing enforcement practices. She homes in on the civil penalty regime which applies under the Fair Work Act, arguing that it is not effective in driving compliance or deterring employers from engaging in deliberate contraventions. In her view, making wage theft a criminal offence — as the Victorian Labor Government is proposing to do if re-elected to office — is a step in the right direction.[8] Criminal sanctions would be available against employers and senior managers within a business, as well as third-party entities, such as franchisors. These criminal fines (and possible imprisonment) would be accompanied by an automatic five-year disqualification for any director convicted of a wage theft offence. In addition, Fitzpatrick applauds the way in which conventional and novel organising tactics, such as the use of snap protests, digital tools and social media, have been used to successfully build worker power. These same tools, she notes, have also been effective in amplifying pressure on non-compliant employers and prompting behaviour change.

In Chapter 19, Craig Shepherd and Penny Heard discuss the risks to investors posed by unsustainable business models and systemic non-compliance with wage laws. To enhance the regulatory role played by investors and markets, they argue that it is critical for academics, policy makers, communities and activists to sustain

pressure on companies to commit and comply with Environmental, Social and Governance principles, increase transparency and enhance information flow.

Non-compliance is also a theme that marks Chapter 13. Iain Campbell explores the ways in which an expansion in the numbers of temporary migrant workers, combined with predatory business models and widespread underpayment, have not only tempered wage growth in Australia, but also potentially led to wage decline below the legal floor. Campbell suggests that to address slow wage growth, there should not necessarily be a clamp down on the numbers of migrant workers. Rather, it is essential to plug gaps in the regulatory system, and stem the tide of systemic non-compliance in low-wage industries.

Joanna Howe in Chapter 14 looks at a subset of migrant workers, namely those on a Temporary Skill Shortage visa. Howe explains how the government's decision to freeze the salary floor for these workers over a five-year period has put downward pressure on real wages for temporary skilled migrants. The challenges facing such workers have been further exacerbated by employer non-compliance in certain industries, such as hospitality. She argues for greater public and parliamentary scrutiny of the way in which the entry-level salary threshold affects the effective regulation of skilled migrant workers and the protection of lower-paid Australian jobs.

In Chapter 15, Saul Eslake argues that there is now economic evidence to support the view that globalisation and rapid technological change have contributed to a weakening of worker bargaining power. In turn, this has contributed to the problem of persistent slow wage growth. In light of this, there is a need to reconsider the legal, regulatory and institutional settings which apply to wage bargaining in this country. Further, to address the problem presented by productivity laggards, he believes that part of the solution may lie in enhancing education and training. (The importance to young Australians of a nation-building education and skills strategy is also emphasised in Chapter 18 by Annette Cairnduff, Kelly Fawcett and Nina Roxburgh.)

Eslake cautions, however, that increasing productivity may not necessarily lead to an automatic uplift in real wages. He also sheds doubt on the capacity for a universal company tax cut to facilitate faster wage growth. Instead, he contends that a preferential tax rate for new businesses, as opposed to small ones, may be more beneficial in stimulating increased innovation, investment, job creation and wages. According to Eslake, the advantage of this proposal is that it has a more limited impact on foregone government revenue and is unlikely to create perverse incentives (which tend to afflict policies targeting small businesses).

An agenda for reform

Having summarised the proposals made by the other contributors to this book, it is now time as editors to nail our own colours to the mast and indicate how *we* believe the wages crisis should be addressed.

In thinking about this task, we have opted to focus on what might broadly be done within the existing social, economic and regulatory framework. This is essentially for reasons of pragmatism. As discussed above, the wages crisis must be tackled directly and urgently, to avoid the economic and social consequences of continued erosion in household living standards. Hence we propose below an agenda to boost wage growth that we think is immediately viable, even within current political constraints. Other, more far-reaching policy responses are also worthy of continuing research, consideration and public debate; but the proposals we advance below seem to us to be obvious, powerful and feasible. We stress, too, that our proposals are not necessarily supported by every contributor to this book, and nor is our agenda a comprehensive list of possible reforms. Nonetheless, we feel that important and sustainable improvements in wage growth could be achieved through focused, pragmatic action in some or all of the following five areas.

Ending wage suppression by government

Governments are the largest individual employers in the whole economy. And along with jobs in government-funded programmes and agencies, the broader public sector accounts for 15% or more of total employment. So the direct importance of public sector wage trends to overall macroeconomic wage trends is undeniable. Moreover, government sends a crucial signal to other employers with its own wage policies, which are high-profile and influential. The contradiction between the hand-wringing of political leaders over the disappointing trajectory of wages, and their own conscious actions to directly suppress wage growth within such a large and important segment of the labour market, is both galling and counterproductive. How can workers and employers take seriously the urgings of leading figures like Prime Minister Morrison or RBA Governor Lowe that wages should grow faster, when the government itself remains determined to freeze the wages it pays to its own workforce?[9]

We are proposing an end to public sector wage suppression as our first category of proposed reforms because it is something that governments at every level can do immediately, without any need for bigger structural or legislative changes. Governments should indicate, through their actions as well as their rhetoric, that reigniting wage growth is considered a positive and central goal of economic and

fiscal policy. Most directly, this requires governments taking their feet off the brake pedal of wage growth in their own employment practices. The restrictive caps on wage increases that have been implemented since the Global Financial Crisis (GFC) in several jurisdictions (including the Commonwealth government's Workplace Bargaining Policy) are undermining a return to more traditional wage growth, subverting principles of free collective bargaining and sending a powerful signal to the rest of the economy that the problem with wages is that they are still somehow 'too high'. Those wage caps were initially justified by governments as a response to purportedly urgent fiscal imbalances experienced in the wake of the GFC. That argument is clearly no longer valid (if it ever was) in light of improving budget balances in most States and the Commonwealth.

But the influence of government wages policies extends well beyond the realm of the public service. Compensation in large segments of broader public and non-government services also depend centrally on government funding and procurement rules, as discussed in Chapters 8 and 9. The fiscal structure established for broader public and community service provision (including in education, health care, disability services, long-term care, employment services and others) has powerful implications for wage determination in those sectors. The introduction and regulation of competitive service delivery models in many of these sectors (such as the new NDIS) must be cognisant of the need to support decent wage growth, rather than being unduly shaped by a presupposition that constraining labour costs is the priority.

Simplest of all, the federal government in particular could indicate in a myriad of other ways its overarching desire that wage growth must be rekindled. Whether it is promulgating a long-overdue increase in the Temporary Skilled Migration Income Threshold (TSMIT), or submitting arguments to the Fair Work Commission that it would welcome higher minimum wages, such action would help to establish a new common sense in Australian economic policy that lifting wages — as opposed to restraining them — is once again a central goal of policy.

Revitalising collective bargaining

Recent decades have seen a precipitous decline in the membership and industrial power of trade unions. Although the coverage of collectively negotiated agreements held up for a time despite the decline in union membership, this, too, has now started to fall. Even where unions are still able to negotiate on behalf of workers, their capacity to secure substantial wage increases has in many instances diminished.

There are no doubt a great many factors at work here. They include the loss of jobs in traditionally unionised industries, changing public attitudes to collective

action and the difficulty in organising workers in jobs that are insecure or spread across different organisations in complex business networks. Indeed, it is hard to see any genuine or lasting resurgence in the union movement, unless it is able to develop strategies that can rise to these challenges and rebuild a sense of solidarity at work. The challenges created by financialisation and neoliberal policies, under both conservative *and* Labor governments, have also played their part.

Nevertheless, as many of our contributors have noted, at least part of the explanation for the current wages crisis lies in a statutory framework for bargaining and industrial action that has either been hostile, or at best unsupportive, towards the effective exercise of collective power.

Some of the particular problems noted in Chapters 4 and 7 could be quickly addressed, even without dramatically changing the framework established by the Fair Work Act. For example, it could be made harder for employers to block genuine collective bargaining by making agreements with small and unrepresentative groups of employees, or to use the threat of termination of existing agreements to secure concessions. Limits on the permissible content of agreements could be lifted. The procedures for taking protected industrial action could be simplified, and the capacity for damaging (or, in other words, effective) action to be halted by the Fair Work Commission could be reduced. Where protracted bargaining does not result in a concluded agreement, it should be possible for the Commission to step in and arbitrate, even if there is no threat of significant harm to public safety or the broader economy.

Those would all be worthwhile reforms, and we support them. However, those incremental measures would not address a more fundamental criticism of the current system's near-exclusive orientation around *enterprise* bargaining. In theory, it is legally possible for unions to seek to negotiate sectoral or even regional agreements, with multiple employers. But they cannot require such employers to bargain in good faith, nor place pressure on them by taking protected action. And not only must every employer involved in a multi-enterprise agreement be identified in advance, all the statutory procedures applicable to a single-enterprise deal must also be followed — including separate votes of employees at every organisation. There can be no formal negotiations with representative employer organisations or industry councils.

As Damian Kyloh notes in Chapter 16, there is growing international evidence that the availability of industry or sectoral bargaining is not incompatible with strong economic performance — and indeed may be associated with better labour market outcomes than fully decentralised bargaining. But for Australia to move in that direction, several important choices would have to be made.

Simply giving workers the right to take industrial action in support of industry agreements would most immediately benefit stronger unions which have retained the capacity to exert economic pressure. But by and large, these unions are already engaged in enterprise-level bargaining. There might be some extension in bargaining coverage in their industries through a renewed system of industry bargaining, but many other sectors would be left untouched.

It is no doubt for this reason that the ACTU is also pushing to restore to the industrial umpire its former powers to conciliate and arbitrate disputes over the setting of wages and employment conditions, potentially even on an industry-wide basis. Unions without the industrial 'muscle' to secure industry-wide settlements could use the threat of compulsory arbitration in the Fair Work Commission to bring employer groups to the bargaining table — and rely on the tribunal to impose an outcome if agreement could not be reached.

It is worth remembering that under the old arbitration system, there was no legal right as such to strike, even if industrial action was in practice freely taken (at least for short periods) as a way of putting pressure on both employers and the tribunal. And while that system could in a sense be categorised as one involving industry-level bargaining, the formal outcomes generally took the form of awards, rather than agreements — and the tribunal retained an overarching discretion to reject any settlements it considered not to be in the public interest.

An important issue must therefore be confronted — how a new system of voluntary agreement making at the industry level would interact with a reinvigorated power of compulsory arbitration. Employer groups have argued, in response to the ACTU's campaign, that there appears to be no country in the world that has both a system of industry bargaining *and* industry awards.[10]

The discussion over industry bargaining raises many important and complex issues, which can doubtless be worked through with continuing research and dialogue. In the short term, however, one obvious option is to complement the existing enterprise bargaining system with a new stream of industry-level bargaining, at least in sectors where the Fair Work Commission is satisfied that there are practical constraints on the ability of employees and their employers to bargain at the enterprise level. That might be because of a lack of skills, resources, bargaining strength or previous bargaining experience in the relevant sector. Or it might reflect the fact that wages and conditions for a significant number of employees in the sector are controlled, directed or influenced by someone other than their employers (such as a funding body, or the lead or host business in the case of fragmented organisational forms, such as supply chains, franchise networks or labour hire arrangements).

Under such a system, the Commission would have an active role in supervising bargaining, with the power to involve other interested parties in conciliation conferences. It would also have the power to arbitrate an outcome if, after a defined period, no agreement resulted. The tribunal could be directed to have regard to the terms of existing enterprise agreements in the relevant sector, but also to consider the importance of providing real wage increases. As with single-enterprise agreements, the employees covered by any industry agreement or determination would need to be better off overall than under the safety net awards applicable to their jobs. But the Commission would not otherwise be constrained by those awards in resolving disputes — it could choose, for instance, to lift wages above the legal minimum if the circumstances warranted that outcome.

As it happens, the Fair Work Act already provides for something like this system, in the form of the low-paid bargaining provisions in Division 9 of Part 2-4. Limitations in both the drafting and interpretation of these provisions have in practice precluded their use.[11] But that would not prevent some of the underlying concepts being strengthened and expanded as the basis for a new bargaining stream. That said, we see no reason why industry bargaining should be limited to those who are 'low-paid' (a term of uncertain meaning that is not defined in the current legislation). And, unlike the current provisions, we believe it would be appropriate for a right to take protected industrial action to be available.[12] We would also envisage individual employers covered by an industry agreement or determination having the right to negotiate enterprise agreements of their own, though any such agreements would need to leave their employees better off overall than under the industry-level instrument.

More generally, it is important that whatever measures are taken to extend or encourage collective bargaining, they should be complemented with the active promotion by governments, tribunals, unions and business groups of a more cooperative approach to workplace relations. There has always been a tendency in Australia to default to adversarialism. Yet there is clear evidence that cooperation can deliver both improved organisational performance and benefits to employees. Recent research has revealed startlingly positive impacts from initiatives such as the Fair Work Commission's 'New Approaches' programme.[13] Even just having government and business leaders acknowledge that unions and collective bargaining are essential features of the labour market landscape, and that supporting a strong and efficient collective bargaining regime is crucial for ensuring that the gains of economic growth are broadly shared, would be a big step forward.

Strengthening minimum wage regulation

Australia is unusual amongst developed countries in having not just a single minimum wage, but a detailed floor of minimum wage entitlements set by modern awards for almost all forms of non-managerial or non-professional employment.[14] But aside from finding ways to tackle non-compliance with minimum wages (discussed in detail below), there are at least two ways in which the current system of wage regulation could be strengthened.

One is to give the Fair Work Commission the power it currently lacks to set medium-term targets that would increase the value of the lowest award wages over time. As pointed out in Chapters 4 and 5, the 'bite' of the lowest adult minimum wage has significantly declined over recent decades. There are sound arguments, in our view, for lifting it over time to a 'living wage' level at least 60% of median wages. But as the Fair Work Act stands, the Commission's expert panel is not permitted to adopt targets that would bind a future panel when conducting annual wage reviews. The tribunal has also taken the view that the present statutory objectives for wage fixing preclude it from placing primary weight on the needs of the low-paid.[15] These are matters that can and should be addressed by legislative amendments.

The other proposal concerns the persistent gender pay gap discussed in Chapter 6. There is no single solution to this problem, which is deeply rooted in social and cultural assumptions concerning the role and abilities of women. But one obvious step is to amend the Fair Work Act's 'equal remuneration' provisions to address the shortcomings exposed by attempts to use them to pursue pay equity for workers in feminised industries. We agree in particular that those provisions should specifically require the Fair Work Commission to look for and redress the undervaluation of work traditionally or predominantly performed by women, without needing to identify male benchmarks or comparators.[16]

Responding to business models that avoid or outsource employment responsibilities

We have noted the contribution to wage suppression made by business models that seek either to disguise what in functional terms are employees as 'independent contractors' or 'freelancers', or to pass the responsibility for employing workers off to another person or organisation. There is nothing new in the idea of sham contracting, or using other firms to supply the labour that a firm needs for its business. But as a number of chapters make clear, the latter type of arrangement in particular seems to have grown in use over recent decades. Lead businesses appear to have become more aggressive in avoiding unions and cutting costs by obtaining

labour indirectly. Even where workers are employed, their wages may be driven down to or below the legal minimum, as their employers compete for contracts.

We are not suggesting that there is something inherently wrong with subcontracting, or labour hire, or franchising, or the facilitation of work through digital platforms. Nor do we believe that individuals should be denied the choice to establish genuine enterprises of their own. But if society is going to create minimum standards for employment, it is vital to ensure that those standards cannot be evaded by sham arrangements which disguise employment as something else. Lead businesses must also take appropriate responsibility for breaches of employment standards that they have helped to bring about.

To that end, we see two reforms as being essential. The first is to clarify and broaden the definition of 'employee' in statutes like the Fair Work Act. Anyone who agrees to supply their personal labour should be presumed to be an employee, unless there is clear evidence that they have a genuinely independent business of their own. While some courts are already taking this approach,[17] for the avoidance of doubt it should be enshrined in legislation.[18] Besides dealing more effectively than the current law with attempts to disguise employment,[19] such a statutory definition could also be used to crack down on the use of unpaid internships or 'trial periods' to obtain free labour, at least when not appropriately connected to formal education or training.[20]

A second reform would build on an important set of changes introduced in 2017 by what was then the Turnbull Government.[21] The Fair Work Act now provides that a holding company may be held responsible for breaches of certain employment standards by one of its subsidiaries. The same applies to a franchisor, in relation to a breach by one of its franchisees, provided the franchisor has significant influence or control over the franchisee's affairs. In each case, the franchisor or holding company must have known about the contravention, or could reasonably be expected to have known that such a contravention would occur. The holding company or franchisor will not be liable if they can show they had taken reasonable steps to prevent contraventions.

In principle, we can see no reason why this should not apply to other kinds of business model as well.[22] If parent companies and franchisors can be held to account for breaches affecting workers who are not directly employed by them, then why not firms which obtain workers through labour hire agencies, or subcontractors, or affiliated companies that are not technically subsidiaries? Why not a lead business at the top of a supply chain? In each case, liability would only be imposed on hosts or lead businesses who had significant influence or control over the wages or working conditions of the relevant employees, and who knew or should have

known about the likelihood of contraventions. It is especially important, we suggest, to hold such businesses to account where they contract to obtain services at a price that can only realistically be viable if employees engaged by a subordinate business are underpaid.

Improving compliance

Effective enforcement is essential in ensuring that any gains made through reinvigorated wage-setting mechanisms are not whittled away through systemic non-compliance. Increased and sustained funding of federal regulators such as the Fair Work Ombudsman, or the Australian Taxation Office in relation to superannuation contributions, would go some way to improving enforcement efforts and enhancing compliance outcomes. But this is not enough to address the burgeoning enforcement gap. Rather, a multi-pronged strategy is required.

Making lead firms liable for contraventions in their business networks, as discussed above, is a critical first step. Another obvious method for boosting perceptions of deterrence — and perhaps the most politically expedient — is to strengthen the sanctions that are available. In particular, incapacitating those involved in the wrongdoing — via cancellation of an operating license or disqualification from holding directorships — provides an alternative method for reinforcing regulatory practice (and possibly preventing contraventions through the weeding out of shady operators). In our view, labour hire licensing regimes — which have already been rolled out in certain States – should be extended to the federal sphere, as a Senate Committee has recently recommended.[23] However, introducing such sanctions may do little to curb the problem of non-compliance if businesses continue to operate under the assumption that they are unlikely to get caught in the first place.

To shift the compliance calculus of this subset of firms, it is essential that emphasis is placed on, and resources are funnelled towards, improving detection mechanisms. In this respect, it is vital that the Fair Work Ombudsman continues to focus on proactive detection methods, such as targeted auditing and in-depth inquiries, which do not rely on workers raising complaints or acting as workplace protagonists, which tend to atomise claims and drain resources.

In terms of detection, trade unions are in a pivotal position given their ability to reduce information costs, their proximity to the workforce, their independence from employers and government, and their capacity to collectively agitate claims on behalf of a group of affected workers. Assuming that unions have the resources and inclination to perform this function, then it is critical that the legal framework facilitates performance of this role.

Another possible reform could involve allowing successful complainants to recover their legal costs in underpayment claims. That is presently prevented by the general bar on costs orders in proceedings relating to the Fair Work Act.[24] Awarding costs might encourage or enable more private legal practitioners to help workers pursue enforcement proceedings. It would also be desirable to provide a fast, informal and low-cost option for enforcement proceedings, especially those involving small sums of money. For constitutional reasons, the Fair Work Commission could not be asked to rule on breaches of employment standards, nor impose penalties. But there is no reason why it could not conciliate underpayment claims. And it should be possible to establish a Fair Work Court, or a similar body, staffed by magistrates or judges holding dual appointments in the Commission, to resolve any claims not quickly settled at conciliation.

Summing up

What we hope we have demonstrated in this book is that

- there *is* a significant problem with wage stagnation in Australia
- it has multiple causes and dimensions
- it is not likely to fix itself through the 'magic' of market forces
- the failure to tackle it is having, and will continue to have, serious economic, social and political consequences
- any policy response needs to be multi-faceted — there is no silver bullet that can restore 'normal' wages growth on its own.

Not everyone will agree with the five-part agenda for dealing with the wages crisis that we have put forward in this final chapter. Some will feel that more far-reaching changes are necessary, others that action is needed on only some (if any) of the issues we have identified. But if the analysis and proposals we and our contributors have put forward do no more than spark further public debate on this vital issue, the book will have accomplished its main objective.

Endnotes

1. Calculations from ABS 2018e.
2. According to Bank for International Settlements data, household debt in Australia exceeded 122% of national GDP by March 2018, the second highest of all industrial economies: Bank for International Settlements 2018: Table F3.1.

3. RBA 2018b: Statistical Table E2.
4. Even the then Treasurer Scott Morrison acknowledged the damage being done to his budget forecasts by sluggish wage growth: see Heath 2017.
5. RBA Governor Dr Philip Lowe has repeatedly highlighted the impact of wages on the inflation targeting system: see Hutchens 2018a; Karp 2018.
6. Different ways of measuring inequality, and their link to wage stagnation, are discussed further in Stanford 2018c.
7. Bornstein 2018.
8. See Andrews 2018.
9. The 2% ceilings imposed by many governments, including the Commonwealth, imply a freeze or reduction in real wages, assuming that consumer price inflation falls within the RBA's target range.
10. See, e.g., Smith 2018.
11. See Macdonald, Charlesworth and Brigden 2018: 213-18.
12. This appears to be an option that the Labor Opposition is actively considering: see Hannan 2018.
13. See Bray, Macneil and Stewart 2017.
14. Some awards do, in fact, cover managerial and/or professional roles as well, although more typically they are excluded.
15. *Annual Wage Review 2016-17* [2017] FWCFB 3500 at [32]-[36].
16. See further Smith and Stewart 2017.
17. See, e.g., *Fair Work Ombudsman v Quest South Perth Holdings Pty Ltd* [2015] FCAFC 37 at [178]-[186].
18. For a detailed proposal to this effect, see Roles and Stewart 2012: 279-80. Another possible reference point is the 'ABC' test now used by some American courts: see, e.g., *Dynamex Operations West, Inc v Superior Court of Los Angeles County*, Supreme Court of California, Ct.App. 2/7 B249546, 30 April 2018.
19. Another useful reform in this area would be to tighten up certain provisions in the Fair Work Act that already purport to prohibit sham contracting: see Productivity Commission 2015: 813-15.
20. See Stewart and Owens 2013; Stewart et al 2018.
21. *Fair Work Amendment (Protecting Vulnerable Workers) Act 2017* (Cth) Sch 1 Pt 2.
22. See Hardy 2017; Stewart and Hardy 2018.
23. Senate Select Committee on the Future of Work and Workers 2018: 81-3, 90-2. This is not to say that any federal regime should necessarily be drafted in the same way as State measures such as the *Labour Hire Licensing Act 2017* (Qld), the scope and effect of which are far from clear.
24. Stewart et al 2016: 174-6.

Appendix

An overview of labour regulation in Australia

Andrew Stewart

Australia has one of the most complex and unusual systems of labour regulation in the world.[1] There are many reasons for that. One is the absence of any clear demarcation in the Constitution between federal and State authority over employment matters. Another has been the use of compulsory arbitration by public tribunals to resolve labour disputes and regulate minimum wages, working hours and other employment conditions.

However, the picture has begun to simplify in recent years, thanks to a series of major reforms that started with the Keating government in the 1990s and culminated in the federal *Fair Work Act 2009* ('the Fair Work Act'). With the cooperation of the States, this legislation now operates to regulate employment conditions and labour relations for *all* private sector (that is, non-governmental) employers. The only exception is in Western Australia, although even there all companies (and most employees) are covered by the federal statute.

For the most part, the Fair Work Act operates to the exclusion of any State or Territory labour laws. However, there are important exceptions. The regulation of health and safety, workers' compensation, training and child labour, for instance, is a matter that is primarily left to the States and Territories. Hence a company that operates throughout Australia has traditionally had to comply with eight different health and safety statutes, although a recent attempt has been made to harmonise

those laws. Most States and Territories have now enacted a model Work Health and Safety Act to replace their former legislation. Discrimination or equal opportunity is another matter where federal, State and Territory laws may co-exist.

Five of the States have retained responsibility for dealing with employment conditions and disputes affecting their own public sector workers, and in some instances also local government employees. Victoria is the exception. Since 1996, it has had no 'State system' as such. Its workers, like those in the Territory public sectors, are covered by the federal Fair Work Act.

The significance of an employment relationship

Some forms of labour regulation have a broad application. Health and safety laws, for example, typically apply to anyone whose work is influenced or controlled by a business or undertaking of any kind.

That, however, is an exception. Most forms of labour regulation in Australia (and indeed in other countries) apply either exclusively or primarily to employees. The term 'employee' tends not to be formally defined. But it is understood to mean a person who agrees to perform work for someone else's organisation in a subordinate capacity. A distinction is drawn between an employee and an 'independent contractor', who contracts to provide their services to clients or customers as part of a business they are running. The line between the two is often a matter of considerable debate. Also excluded from being employees are those who volunteer their services on an unpaid basis, at least where that is done for altruistic purposes (such as to assist a charity or a sporting club).

The identification of an employment relationship also has another significance. Where rights and protections are given to an employee under a statute such as the Fair Work Act, the obligations in question are generally imposed on that person's employer — that is, the person or organisation with whom they have entered into a contract to perform work. So if, for example, a person is engaged by a labour hire agency and sent to work at a 'host' firm, it is the agency who hires and pays the worker who will usually be the employer, not the host. Similarly, even if an employee's wages and working conditions are effectively dictated by the lead business in a supply chain, or by a government agency that funds a scheme or project on which the employee is working, any employment rights they have can generally be exercised only against their immediate employer.

Minimum employment conditions

Under the Fair Work Act, all employees (including managers) are entitled to the benefit of the National Employment Standards (NES). These create minimum

entitlements in relation to various forms of leave, as well as matters such as notice of termination and redundancy (severance) pay. They also cap working hours at 38 per week, plus reasonable additional hours.

In addition, most non-managerial employees are covered by a further and more detailed set of minimum entitlements, enshrined in an instrument known as an award. Traditionally, awards were made by industrial tribunals in settlement of labour disputes, and there were thousands of such instruments. However, the award system has been reviewed and radically simplified.

Most employees are now covered (if they are covered at all) by a 'modern award' which is framed to cover specified types of work within a particular industry, sector or occupation (or, much less commonly, a particular enterprise). If a job comes within one of the classifications in an award, the employer must pay the minimum wage rate set for that classification. There are usually a number of different rates for each classification, based on the worker's levels of experience or training. Awards usually also have detailed provisions as to the range of hours employees can be expected to work, and typically impose loadings or penalty rates for overtime, shiftwork, evening or weekend work, or work on public holidays. Casual (temporary) employees are also usually entitled to a premium of 25% on their wages, instead of any entitlement to annual leave, personal leave or severance pay.

For employees who are award-free, including most managers, there is a statutory minimum wage. But for the great majority of lower-paid employees, it is an award that will set their minimum wage. And that minimum wage can and does vary according to the type of job, how much experience they have, and what sort of hours they work.

In addition to the requirements of the Fair Work Act, employers may have to comply with other labour statutes. For example, federal law generally requires employers to contribute at least 9.5% of each employee's ordinary pay into a superannuation (pension) fund on their behalf. State and Territory workers' compensation laws also oblige employers to insure their employees against work-related injuries or illnesses.

Collective bargaining

Australia has had a strong tradition of trade unionism and collective bargaining. The proportion of workers who are members of a union has fallen dramatically in recent decades. But it is still common for larger employers to negotiate collective agreements that set wages and other employment conditions. Since the early 1990s, it has become standard practice for these agreements to be registered under

labour statutes. A registered agreement displaces the operation of any award(s) that would otherwise apply, and is enforceable under the statute in the same way as an award. It applies to union members and non-members alike.

There have been many changes to the rules relating to registered agreements over the past few years. But under the system created by the Fair Work Act, enterprise agreements (as they are now known) may be made for all or part of a single enterprise, or for a group of enterprises. They can have a nominal duration of up to four years. After agreements reach their expiry date, they continue in operation, but can be more easily replaced or terminated.

Enterprise agreements can be negotiated with one or more unions, or directly with a group of employees. Either way, the final text must generally be approved by a majority of employees in some sort of vote, before being submitted to the Fair Work Commission (see below) for approval. An agreement will only be approved if it leaves each affected employee 'better off overall' than they would be under an otherwise applicable award.

An employer cannot be forced to bargain, unless a majority of employees request an agreement. Once bargaining is initiated, however, all concerned must negotiate in good faith, though there is no obligation to bargain to conclusion. Employees may take 'protected' (lawful) industrial action in support of a new single-enterprise agreement, though only after the expiry date of any existing agreement. Employers can only initiate a lockout in response to protected action by employees. Any other form of industrial action is unlawful.

Unfair employment practices

The Fair Work Act allows a dismissed employee who has served a minimum qualifying period to challenge the fairness of their dismissal. A successful unfair dismissal claim may result in reinstatement (plus back pay), or compensation of up to six months' remuneration. Higher-paid non-award employees, including many managers, are excluded from making such a claim.

The Act also contains various 'general protections' against discriminatory or otherwise wrongful treatment at work. For example, it prohibits an employer from taking adverse action against an employee or job applicant on the ground that they are a union member or non-member, or that they have, or are proposing to exercise, some sort of 'workplace right'. There are also a range of other federal, State or Territory laws that deal with discrimination on the grounds of race, gender, age, disability and so on.

The employment contract

Each employee is considered to have entered into a contract of employment, whether this is formally documented or not. To the extent that the parties have not expressly reached agreement on matters such as the duration of the hiring, or the employee's obligation to comply with instructions, courts will imply appropriate terms on these matters. In practice, detailed employment contracts tend to be written only for managerial or professional employees.

An employment contract can lawfully offer wages or benefits that are more favourable to an employee than the minimum entitlements set by the NES, an applicable modern award, an enterprise agreement or any other labour statute. But a promise to accept less than any of those entitlements is not enforceable.

Regulatory agencies

There are two main regulatory agencies under the Fair Work Act. The Fair Work Commission operates for certain purposes as a tribunal, but in other ways through administrative decisions. Its responsibilities include

- adjusting minimum wage rates
- reviewing and updating modern awards
- policing industrial action and other tactics used in negotiating enterprise agreements
- helping to resolve bargaining disputes, including (though only in limited instances) through compulsory arbitration
- scrutinising and approving enterprise agreements
- resolving disputes arising under awards, enterprise agreements or the NES, where the parties have agreed it should have that role
- determining unfair dismissal claims and helping resolve some general protections claims.

The Fair Work Ombudsman promotes compliance with modern awards, enterprise agreements and other statutory obligations. Its inspectors have the power to enter workplaces, investigate breaches and deploy a range of enforcement tools, including civil penalty litigation. It is also responsible for providing education and advice on workplace laws to employers and employees.

Other federal agencies include the Australian Building and Construction Commission and the Registered Organisations Commission. The first of these promotes compliance with rules about bargaining, industrial action and freedom

of association in the building industry. The second has responsibility for overseeing the governance of (most) trade unions and employer associations.

All States other than Victoria also have an Industrial Relations Commission or similar body to oversee the operation of what is left of the State industrial systems.

Endnotes

1. This overview is based on material originally prepared for Stewart 2018 chs 1 and 2. For a more detailed treatment, see Stewart et al 2016.

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