WAGES AND WAGE DETERMINATION IN 2004

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In 2004 money wages continued to grow at a moderate rate within Reserve Bank limits. In May, the Australian Industrial Relations Commission raised the federal minimum wage by $19 as part of the safety net adjustment. The workplace reform agenda of the federal government continued to be largely frustrated by the Senate, but the Coalition victory in October and its Senate majority in mid-2005 led the pundits to predict more energetic workplace reform in the coming months. The Australian Council of Trade Unions pursued a number of test cases before the Commission, which challenged the desire of employers and the federal government for a flexible award system, rather than one constrained by externally imposed entitlements.

INTRODUCTION

This paper reviews Australian wage outcomes in 2004 and institutional and legislative developments which will influence future wages determination and employment conditions. The state of the macroeconomy in 2004 is reviewed before analysing wage outcomes. Institutional responses to important concerns expressed about executive remuneration in 2002 and 2003 are considered and some path-breaking wage decisions in child-care services are analysed. We then outline decisions made by the Australian Industrial Relations Commission (AIRC) and legislative changes in 2004. In addition, we note the important test case covering work and family currently before the AIRC. In the penultimate section we speculate on future industrial relations reform once the Coalition controls the Senate. Concluding comments follow.

MACROECONOMIC BACKGROUND

Recent macroeconomic outcomes and forecasts continue to play a key role in the submissions to and deliberations of the AIRC in the Living Wage Case. The Australian economy grew by 4% in the year to June 2004 with employment growing by 2.7% over the same period. Unemployment stood at 5.0% in December 2004 (AUSSTATS 2004a), but seriously underestimated total labour underutilisation given the rising underemployment that was showed in the official statistics. A rule of thumb used by the Centre of Full Employment and Equity at the University of Newcastle is to double the official unemployment rate to obtain a more accurate measure of underutilisation. Current estimates indicate that the economy is still far from full employment.

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The different wage measures (outlined below) indicate a modest growth of approximately 4% in the 12 months to September 2004. The inflation rate was just 2.3% over the same period, well within the Reserve Bank's acceptable range. This rate rose to 2.6% over the calendar year.

A number of indicators pointed to a slow down in housing construction (Reserve Bank of Australia 2004: 27), so it appeared that the two interest rate increases, each of 25 basis points at the end of 2003, had slowed the market without precipitating a price collapse. The cash rate remained at 5.25% during 2004.

The Reserve Bank (2004: 26–7) noted that although the growth of total household assets moderated during 2004, household borrowings grew at approximately 17%. The associated burden of servicing this debt was more than 9% of household disposable income in the June quarter, compared to approximately 6% in 1996. The ratio was expected to rise further because of ongoing credit growth. Although there is no evidence of financial distress at present, the past over-commitment by some house buyers, which increased the maldistribution of household indebtedness (Watts & Mitchell 2004: 161), has left many families vulnerable to moderate interest rate increases and/or job loss. The more stimulatory fiscal stance in the aftermath of the federal election may hide this vulnerability in the short term.

WAGE DETERMINATION IN 2004

This section considers the key wage outcomes in 2004 and examines institutional developments in the monitoring of executive compensation and the path-breaking wage decisions in child-care services.

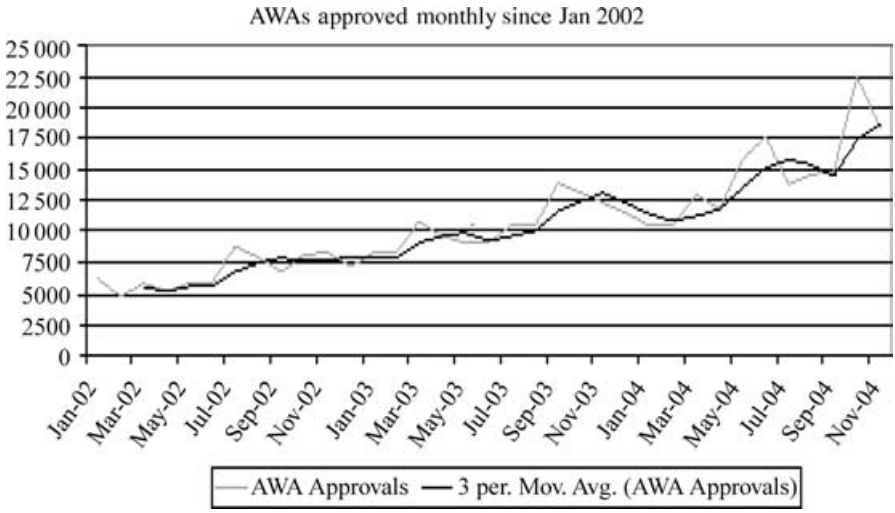
Coverage of agreements

The Australian Bureau of Statistics (ABS) publication, *Survey of Employee Earnings and Hours*, provides the most comprehensive data on the distribution of employees across different types of federal and state agreements and associated rates of pay, although the latest issue is May 2002. Then 20.5% of all employees were on awards only, representing 24.6% of private sector employees and 4.6% of public sector employees, and 38.3% of all employees were covered by collective agreements (36.1% and 2.2%, respectively) (ABS 2003a).

The number of Australian Workplace Agreements (AWAs) approved per month continued to rise—from approximately 10 000 in January 2004 to 17 291 in December 2004, including those approved by the AIRC (see Fig. 1; Office of Employment Advocate 2004). By November 2004, 380 000 workers (4% of salary and wage earners) had extant agreements (up by 42% over the year) (Garnaut 2004).

Over the 12 months to September 2004, the Department of Employment and Workplace Relations (DEWR) noted a marginal increase to 1 480 900 of workers covered by union and non-union registered wage agreements, based on 15 293 agreements (DEWR 2004; Table 5). Non-union certified agreements covered 166 000 of these workers. Table 1 shows the coverage of employees associated with different types of federally registered agreements. The highest percentages of employees covered by a union-certified agreement work in retail trade, government administration and defence and manufacturing, whereas the highest percentages

Figure 1 Monthly Australian Workplace Agreement (AWA) approvals and quarterly moving average (January 2002–December 2004).



Source: Office of the Employment Advocate 2004. (http://www.oea.gov.au/graphics.asp?showdoc=/home/statistics.asp&SubMenu=3)

of employees covered by non-union agreements were those in manufacturing, government administration and defence and personal and other services industries. AWAs were most likely to cover employees in retail, manufacturing and property and business services. Eighty-five per cent of AWAs operated in the private sector in September 2004 (OEA 2004).

Money wage growth

Since the advent of enterprise bargaining, aggregate wage data have been very difficult to interpret. Many employees have unregistered agreements and wage increases may be granted in exchange for trade-offs with respect to other conditions and there are important compositional changes occurring in the workforce (Burgess 1995). Also, comprehensive data on wage bargains made under AWAs are not available.

The Australian Centre for Industrial Relations Research and Training (ACIRRT) found that the average annual wage increase for state and federal certified agreements registered in the June quarter 2004 was 4.6% (ACIRRT 2004: 2) with the disparity between union and non-union registered agreements being 1.7 percentage points, whereas private and public sector increases were equal. DEWR records the average annualised wage increase (AAWI) per employee based on federal agreements newly certified within each quarter (see Fig. 2). There is no evidence of sustained increase in settlements with the current weighted percentage increases in the year to September 2004 (with year to 2003 figures in parentheses) being 3.95 (4.02), 4.05 (3.53), 4.21 (4.32) and 4.11 (4.11). While exhibiting some volatility, the wage increases associated with these new

Table 1 *Certified agreement and Australian Workplace Agreement (AWA) coverage by industry*

	Union certified agreements	Non-union certified agreements	Australian workplace agreements
Agriculture, forestry and fishing	4700	2500	4400
Mining	16 700	3000	20 500
Manufacturing	175 500	24 600	34 300
Electricity, gas and water supply	13 800	200	900
Construction	82 500	7900	17 200
Wholesale trade	4100	900	4900
Retail trade	317 000	14 600	46 700
Accommodation, cafes and restaurants	18 900	6700	26 500
Transport and storage	82 600	5800	8700
Communication services	34 700	10 600	20 200
Finance and insurance	80 100	19 600	7600
Property and business services	29 400	13 400	38 100
Government administration and defence	207 900	16 600	15 600
Education	80 900	4600	1400
Health and community services	110 800	11 700	13 200
Cultural and recreational services	32 400	6500	5900
Personal and other services	13 500	16 900	7300
TOTAL	1 305 500	166 100	273 400

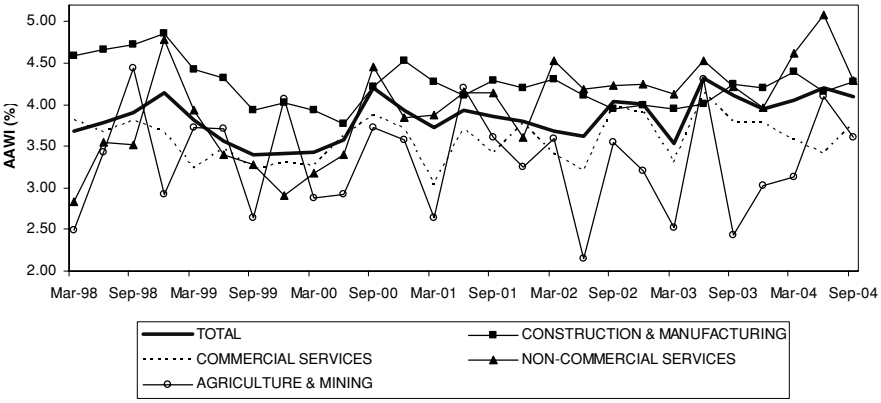
Source: Australian Workplace Agreement (AWA) Statistics, Office of Employment Advocate (2004). (http://www.oea.gov.au/graphics.asp?showdoc=/home/statistics.asp&Page=3&SubMenu=3)
Notes: Certified agreement numbers are sourced from unpublished Trends in Federal Enterprise Bargaining data and refer to employees covered. Agreements are current at 30 June 2004. AWAs are sourced from the Office of Employment Advocate (OEA) WorkDesk database, and include AWAs approved in the past 2 years to 30 September 2004.

agreements provide some indication of contemporary developments in bargaining, although they represented less than 17% of extant agreements in September 2004. The AAWIs associated with extant agreements showed a very stable picture being 3.9% for each of the four quarters to September 2004.

Full-time adult average weekly earnings grew 3.8% in the year to August 2004, as compared to 6.0% over the previous year (AUSSTATS 2004b). These figures conflate changes in hourly wages, full-time hours and compositional changes. The growth in average weekly ordinary time earnings over the same period was 3.6% (5.7% in previous year to August) (AUSSTATS 2004b). This measure excludes wage variation brought about by changes in the overtime component of hours.

In the year to September 2004, wage growth, as measured by the fixed weight labour price, formerly Wage Cost Index, grew 3.5% (ABS 2004), slowing in the previous year (3.6%).[1] The growth of public sector wages was 4.0%, whereas

Figure 2 Average annualised wage increase (AAWI) per employee of federal agreements certified within the quarter by industry group, March 1998–September 2004.



Source: DEWRSB 2004 and author's calculations.

Notes: *Manufacturing* and *construction* are equivalent to the Australian New Zealand Standard Industrial Classification (ANZSIC) industries. *Commercial services*: Wholesale; retail; accommodation, cafes, restaurants; transport; communications; electricity, gas and water; finance and insurance, property and business; cultural and recreation and personal and other. *Non-commercial services*: Education and health, government administration and defence and community services. The estimates have been rounded since June 1999. Historical estimates have been revised so that the figure may exhibit slight differences as compared to figure 1 in Watts and Mitchell 2004.) The AAWIs are calculated as a weighted sum of the AAWIs per employee per ANZSIC industry with the weights given by the corresponding employment shares.

private sector growth was 3.5%. Table 2 shows the annual percentage change in wage cost indexes by industry. The fixed weights significantly reduce wage variability.

Thus, although collecting meaningful wage data has become difficult, the evidence for the year to September is fairly consistent and shows a relatively stable rate of aggregate wage growth between 3.5 and 4.0%, with compositional changes having only small effects. Industries did not exhibit any consistent pattern of relative wage change across different data sources.

A University of Melbourne analysis of 30 Enterprise Bargaining Agreements (EBAs) and 6 AWAs found that those which were highly questionable were either non-union agreements or AWAs. Of particular concern was the low weight placed on the trading-off of quality of worklife and power in workplaces. The report noted that in 2002 and 2003, only 1% of the 100 000 AWAs which were processed had been rejected. The study was critical of the lack of transparency in the OEA's application of the no-disadvantage test (Workforce 2004, 1455: 2).

The living wage case

In November 2003, the Australian Council of Trade Unions (ACTU) filed its Living Wage Claim under the *Workplace Relations Act* (1996). The peak body

Table 2 *Annual percentage increases in ordinary time hourly rates of pay index, excluding bonuses, by industry, September 2001–2004*

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

Source: Australian Bureau of Statistics (ABS) (2004), table 6 and ABS (2003b).

requested a $26.60 per week increase in all award rates of pay with an equivalent increase in wage-related allowances (AIRC 2004, para 1). The Labor state and territory governments supported an increase of $20 per week in all minimum award rates (AIRC 2004, para 12).

The Commonwealth opposed the claim based on its (alleged) adverse economic effects, but, with the Australian Chamber of Commerce and Industry, argued for a moderate increase of up to $10 to minimum classification rates at or below the C10 classification in the Metal Industries Award ($542.20) (AIRC 2004, para 11). All important employer groups (National Farmers Federation excepted) supported a $10 per week increase citing a number of economic concerns, including slowing productivity growth, rising interest rates, the strengthening dollar and increasing on-costs (AIRC 2004, paras 3–10).

The Australian Catholic Commission for Employment Relations (ACCER) supported the ACTU claim, but regarded it as inadequate for providing a fair minimum rate of pay for award-only employees. It opposed uniform increases across all classifications, arguing that those most in need should be recipients (AIRC 2004, para 15). The ACTU's claim was also supported by the Disability Employment Action Centre (DEAC) and the National Council on Intellectual Disability. The DEAC also recommended 'the inclusion of the supported wage

clause in all awards, to eliminate discrimination in awards and agreements and to establish a safety net of fair minimum wages and conditions for workers with disabilities' (AIRC 2004, para 16).

No new substantive economic arguments were presented to the AIRC, but a number of studies and surveys were submitted as evidence, most of which were highly criticised by the Commission. As in 2003, the important issues addressed by submissions focused on labour demand impacts and the appropriateness of the wage system, rather than the tax-transfer system, in addressing the needs of the low paid. The issues are addressed below, along with the difficulties associated with the construction of a minimum wage benchmark.

Economic impact

There was a broad consensus that the Australian economy had enjoyed solid economic growth and strong job growth, which culminated in a rate of unemployment at 5.6% in December 2003. Price and money wage growth were moderate and productivity growth had increased (AIRC 2004, para 17, paras 96–100). The stronger Australian dollar had contributed to negative net exports, as well as moderating inflation through its impact on tradable goods prices, which exhibited no increase in 2003. A number of medium-term risks were identified in submissions, notably how the current housing cycle would play out; the impact on manufacturing (AIRC 2004, paras 36–7), as well as net exports, from the appreciation in the Australian dollar; the capacity to generate increased farm production; overdependence on the USA for global recovery; and the high global oil price (AIRC 2004, para 61). However, none of these risks would be directly influenced by the magnitude of the safety net increase.

There was debate in the Commission about the impact on overall earnings and private costs of the ACTU's proposed safety net increase. The Commonwealth and the Australian Chamber of Commerce and Industry (ACCI) relied on their own surveys to argue that there would be additional recipients of the increase, including employees already obtaining over-awards and some who were not award dependent (AIRC 2004, paras 114–22). The Commission expressed significant reservations about the reliability of such data (AIRC 2004, para 123).

Benchmarks for the adjustment of minimum wages

The ACTU quoted comparators that were based on bargained outcomes for informing an appropriate safety net increase (AIRC 2004, para 125). The Commonwealth argued that market-based outcomes for award-reliant workers were inappropriate because they would tend to exceed increases obtained by workers through federal agreements, particularly industries such as accommodation, cafes and restaurants and retail. The Commonwealth also alleged that the claimed increase would deter these employees from bargaining and reduce the scope for productivity improvement (AIRC 2004, para 128).

The Commonwealth explicitly argued that increased earnings inequality was inevitable and appropriate. In its 2003 Living Wage Case submission, the Commonwealth also made a virtue of growing wage inequality saying it enhanced

productivity and labour market flexibility by promoting incentive (Watts & Mitchell 2004: 166–7). The Commonwealth also noted that real earnings were growing and so low-paid workers were benefiting from economic growth, as well as income support systems (Commonwealth of Australia 2003: 85).

The Commission concluded that the most appropriate measure of wage growth was derived from the Wage Cost Index, now named the Labour Price Index (see above), whereas other wage measures, such as average weekly earnings and average weekly ordinary time earnings, were sensitive to compositional change.

Data from the ABS *Employee Earnings and Hours, Australia* survey (2003; mentioned above) show 60% of award-reliant workers worked in the accommodation, cafes and restaurants, retail trade and health and community services industries. Both the ACTU and the Commonwealth provided data and economic arguments as to the impact of past safety net wage adjustments on these industries with reference to employment growth and its composition between award-reliant employees and those covered by agreements, profitability, output growth and productivity growth (AIRC 2004, paras 133–66). The Commission was unable to discern any negative impact of wage adjustments on these industries (AIRC 2004, para 167). In particular, the Commission challenged the Commonwealth's claim based on a cross-section industry regression analysis that productivity growth was inversely related to the extent of award reliance, after reviewing an econometric critique provided by Professor Mitchell (AIRC 2004, paras 160–66).

Drawing on recent academic research and the Minimum Wages Report commissioned by the Commonwealth, the AIRC reiterated their 2003 conclusions that increases in the wages of the low paid would only have modest impacts on employment and would be confined to specific groups (AIRC 2003, para 161). In addition, the Commission was not persuaded by evidence generated by surveys of their members undertaken by the Australian Chamber of Commerce and Industry and the National Motor Industry (AIRC 2003, para 257).

At the 2003 hearing, ACCER and the Australian Council of Social Service (ACOSS) had argued that the Commission should conduct an inquiry into the needs of the low paid in order to set benchmarks for the *level* of minimum rates, and ensure that these rates, and, in particular, the federal minimum wage did not fall below the poverty line (AIRC 2004, para 263). The Commission had rejected a separate enquiry, but expressed a preference for this type of material rather than the illustrative evidence of hardship provided by the ACTU (AIRC 2003, para 222).

The Majority Report of opposition and minor party senators from the Senate Poverty Inquiry was tabled in March 2004. Recommendation 6 of the Report stated:

> That the Australian Industrial Relations Commission establish a new minimum wage benchmark based on a wage level that enables a single full-time worker to achieve an adequate standard of living relative to contemporary community standards. (quoted in AIRC 2004, para 266).

In 2003, the ACTU commissioned the Social Policy Research Centre to establish the income needs of working families. The resulting report provided

benchmarks associated with different family structures but with one earner, and compared them with the prevailing federal minimum wage and associated welfare benefits (AIRC 2004, paras. 268–73). The study was criticised for drawing on unrepresentative family types and for using living costs in Hurstville, Sydney—the most expensive Australian capital city.

The ACTU used this study to justify the $26 claim as a first step to achieving a fair minimum wage (AIRC 2004, para 277). ACOSS claimed that the AIRC could not fulfil its obligations under s. 88(A) of the *Workplace Relations Act 1996* in which

(a) wages and conditions of employment are protected by a system of enforceable awards established and maintained by the Commission; and
(b) awards act as a safety net of fair minimum wages and conditions of employment (AIRC 2004, para 278).

ACOSS argued that, in contrast to the Harvester judgement, the minimum wage should be sufficient to support a single worker, rather than her/himself and her/his family, with the social security system designed to meet the additional costs of raising children in low-income families. The Commission was reluctant to accept the benchmark (AIRC 2004, paras 283–6), probably because of the consequent constraint on its capacity to use its discretion in future Living Wage Cases.

Wage adjustment and the social security system

In its judgement, the Commission revisited the argument that changes in taxation and social welfare arrangements through income support payments and income tests were more efficient and better targeted than minimum wage increases.

Drawing on data from the National Centre for Social and Economic Modelling, ACOSS noted that the number of wage-earning households living in poverty was increasing, both in absolute terms and as a proportion of the population living in poverty (AIRC 2004, para 295). A decent minimum wage would militate against widespread poverty among wage-earning households.

However, the ACCI cited ABS data, which showed that jobless households suffered much more financial stress than households with one adult wage earner. Hence, it was important to attain high employment levels given the Commission's responsibilities under s. 88B(2)(b) (AIRC 2004, para 297).

AiG also noted the alleged inefficiency associated with the 'erosion of wage increases granted by the Commission' and the significant wedge between total cost to employers and cash-in-hand benefits to the low paid (AIRC 2004, para 299). Those matters were acknowledged in the 2003 decision. Over the previous year changes in income tax rates, increases in income support payments and the easing of income tests had made an important contribution to raising disposable incomes of low-paid workers and also countered the rise in wage and employment inequality (AIRC 2004, para 299), thereby justifying a small ($10) safety net increase.

As in its 2003 decision, the Commission acknowledged that increases in award wages poorly targeted needs of low-paid employees, as well as recognising the AiG's complaints about the wedge between employers' costs and employees' incomes. The Commission noted that increasing award wages was the only

instrument available to it to discharge its statutory obligations (AIRC 2004, para 308).

Decision

The Commission reaffirmed its 2002 view that it should try to maintain a safety net of fair minimum wages for all award-reliant employees (AIRC 2004, para 324). In its eighth safety net adjustment since the *Workplace Relations Act* (1996), the Commission (2004, para 326) granted a $19 per week increase in all award rates which raised the federal minimum wage to $467.40 per week (2004, para 330), an increase of 4.2%. The usual conditions applied which included full absorption of the award in over-awards where possible, and the phasing in of the increase no less than 12 months after the increases provided for in the May 2003 decision. The Economic Incapacity Principle was retained. In early November 2004, the ACTU foreshadowed a request to the 2005 Safety Net Case for an increase in weekly awards of a similar amount ($26.60) to that requested in 2004 for the 1.6 million award workers.

Executive pay

After the 2002 corporate scandals, increased public scrutiny of executive pay in 2003 (Watts & Mitchell 2004) culminated in the tightening of the disclosure requirements for companies in 2004. Companies must now provide notes to full financial accounts that disclose for each director and the five executives with most authority: salaries, bonuses, fees, commissions, expense allowances, perks, pensions, post-retirement benefits, termination benefits, the value of options and rights and aggregate loans of more than $100 000 (Buffini & Eyers 2004).

The directors' report must disclose for each director and the five highest paid executives: the value of options granted, exercised and lapsed; and details of their employment contract including terms, notice period and any termination benefits. The board's policy for determining pay and its relationship to company performance must also be disclosed. The Australian Stock Exchange also requires the corporate governance statement to include disclosure of remuneration policies. Under the *Accounting Standards and Corporations Act*, the maximum civil penalty is $200 000 for non-compliance. In contrast, if dishonesty is established, a $220 000 penalty or imprisonment for 5 years, or both, could apply (Buffini & Eyers 2004). The authors suggested that, not withstanding the increased accountability, shareholders could still find it hard to understand how executive pay was set or how it was linked to company performance.

Kirkwood (2004) said the new rules would not restrain corporate excess, but would provide a new dynamic to corporate remuneration because the highest common denominator would prevail, with rival companies better informed about packages offered to executives. There was also widespread belief among boards that their CEO was an above-average leader, and so should receive above-average compensation (Fels 2004). Anecdotal evidence suggested that pay and performance were more closely linked in 2004, but that in a booming market with growing profits, there was more shareholder tolerance for high levels of executive compensation.

Bolt (2004) reported the Hay Group survey which showed that executives of Australia's biggest companies won an average pay rise of 18.2% over the 2003–2004 financial year. A growth in bonuses associated with rising profits made a major contribution to the pay increase, but even base salaries rose an average of 7%, well above the figure of 3.9% annual average wage increase being earned under EBAs in the June quarter 2004 (DEWR 2004). The annual Australian Financial Review survey of executive salaries reported an average pay increase of 29% for some 200 chief executives.[2] The Australian Financial Review (2004) reported that the fixed component of executive pay had fallen from 75% of the total to between 30 and 50% over the previous 5 years.

Hours of work

Workforce (2004, 1469: 5) reported that countries with minimal regulation of working hours, namely Australia, the UK and the USA, were prone to excessive hours. The percentage of workers undertaking overtime in Australia rose from 33% in 2000 to 37% in 2003, of which one-third were not being remunerated. Professionals (53%) and advanced clerical and service workers (47%) were least likely to be paid (Workforce 2004, 1448: 2). In these countries, however, many workers were undertaking involuntary part-time work and wanted more hours.

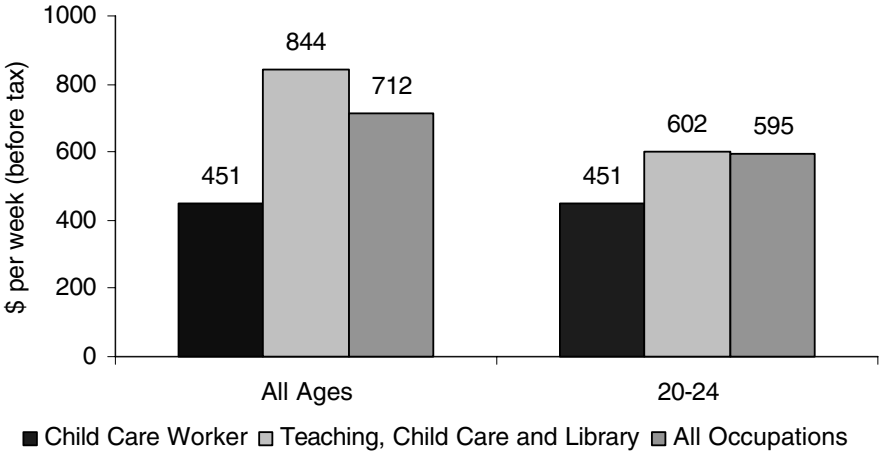
Child-care wage decisions

In 2003, representative unions pursued significant wage increases for child-care workers in a series of industrial cases. As a consequence, the federal government set up the Child Care Workforce Think Tank in April 2003, which reported in December 2003. The think tank claimed that the child-care occupation was constrained by poor training and poor pay and recommended that government increase child-care benefits to 'finance' higher child-care worker wages. The Government acknowledged that although child-care workers deserved "moderate wage increases ... [the] ... increases should be financed by parents through higher fees, and not by the Government" (Crabb 2004).

The child-care sector has undergone significant changes in recent years as corporate providers, including Brisbane-based ABC Learning, have entered the 'market' with an aggressive cost-cutting strategy which has driven many small operators out. ABC Learning recently announced a plan to absorb its main competitors to create a consolidated enterprise with approximately 33% market share. One commentator recently called ABC Learning 'a McDonald's-style, acquisition-hungry, shareholder-driven behemoth' which bullies the smaller child-care centres with threats of legal action (Birnbauer & Dowling 2004).

The increasing corporatisation of child-care services during the 1990s significantly changed the sector's wage structure. Centres that provide high-quality food and pay above award rates with separate cleaning staff have been unable to match the cost structure of ABC Learning centres. The percentage of casualised lower-cost trainee positions in the industry has increased. The director positions which formerly had an educational role have been reduced and centralised at head office locations (Mitchell 2003; Birnbauer & Dowling 2004). A recent study by two City of Bendigo child-care managers found that the 'cost cutting' driven by

Figure 3 Wages of full-time child-care workers—a comparative perspective.



Source: Australian Bureau of Statistics (ABS) Employee Earnings, Benefits and Trade Union Membership, August 2001.

the entry of the corporate players has changed occupational practices which has compromised standards of care (Bendigo Advertiser 2004; see also Birnbauer & Dowling 2004).

Staff in child-care centres have lower pay (see also Fig. 3), fewer holidays, higher administrative loads and less preparation and planning time for children's activities as compared to teachers in preschools and primary schools (Press & Hayes 2000: 44; Warrilow & Fisher 2002). Consequently, child-care operators have had great difficulty in attracting and retaining skilled staff, with annual turnover rates ranging from 33 to 40% (Commonwealth Child Care Advisory Council 2001; see also DEWR 2001). In addition, the Commonwealth Child Care Advisory Council (2001) found that 50% of graduates from child-care study do not pursue work in this field. The challenge for the industry is to increase the number of trained staff given the projected growth in demand for centre-based child care (DEWR 1998; Warrilow & Fisher 2002; Mitchell 2003).

Since 1996, the federal government has tried to reduce its overall outlays and promote market outcomes for the sector (Mitchell 2003). This reflected a view that substantial public support to community-based centres was disadvantageous to private child-care providers. By creating a 'level playing field', increased competition would (allegedly) increase consumer choice and lower unit costs (and prices). The funding cuts, however, damaged the industry. Uniting Care Australia (2000) found that child-care workers were faced with increased workloads, centres increased fees and there was evidence of both withdrawal of children from centres and/or a reduction in hours used, some centres closed because of liquidity problems, and centres were forced to make changes in their management and care structures to achieve greater efficiencies. Although the optimisation of staff–child ratios was beneficial, there were employment losses, evidence of de-skilling and a reduction in support staff, which impacted negatively on quality.

In 2003, the Australian Services Union (ASU) applied to the AIRC Full Bench to vary the Victorian Local Authorities Award 2001 covering child-care workers in community-based long-day-care centres. The union argued that the nature of work in the sector had significantly changed over the previous decade, which required higher levels of training, skill and formal qualifications and increased responsibility, but these changes were not reflected in wages and career structure. Also, the community, parents and employers had higher expectations of staff. The ASU claim involved a relativity adjustment to create a new child-care pay structure aligned with the Metal Industry Award, a general increase in line with pay equity principles, and claims for certain job-specific allowances and attraction allowances.

The resulting consent agreement (June 2003) between the ASU and Employers Associations, the Victorian Employers' Chamber of Commerce and Industry (VECCI) and the Municipal Association Victoria allowed for child-care wages to rise by up to $150.00 per week which made that group the highest paid child-care workers in Australia. The agreement also addressed gender inequality in this female-dominated industry by recognising and appropriately remunerating qualifications and skills and providing a career path for the child-care workers.

Mitchell (2003) developed the economic case for the ASU. The argument was later used in the NSW cases and appears to have been reflected in the recent AIRC decision covering the Victorian and ACT Awards (see AIRC 2005, para 135). Mitchell (2003) argued that both community-based and privately owned centres participate in the 'market' for child-care services, which is subject to significant government intervention through provision of subsidies to increase its affordability and regulation to promote service quality. This intervention suggests that quality child-care services have public good characteristics. Accordingly, the private market undervalues the contribution of early childhood education and care (ECEC) to our economy (including higher labour force participation of parents) and community well-being. This is a standard economic argument about 'positive externalities'. A share of these benefits will be appropriated locally including lower expenditure on community-based welfare services and local multiplier effects from higher incomes of parents who have maintained their employment status.

Societal benefits flowing from the ECEC provision are quality-contingent, however, and the key determinants of 'quality' child care are the skills, level and stability of staff. Mitchell (2003) argued that current wages and conditions for child-care employees diminished quality and imposed losses (public and private) on the community. The increased costs inherent in establishing high-quality child care had to be spread across service users (parents) and the wider community (given the 'externalities'). In the local government setting this could mean higher rates or reprioritisation of local expenditure. Over time, all parties should make representations to the federal government for larger funding for child care in recognition of these social benefits and the inherent 'market failure' in the sector.

On January 14, 2005, after 2 years of argument, the Full Bench of the AIRC handed down its decision in relation to two applications by the Liquor, Hospitality and Miscellaneous Union (LHMU), which sought variations in the *Child Care*

Industry (Australian Capital Territory) Award 1998 (the *ACT Award*) and the *Children's Services (Victoria) Award 1998* (the *Victorian Award*). The LHMU sought to (a) change the award title; (b) insert a new classification structure in the award with appropriate pay relativities and (c) gain additional allowances for directors and other minor changes.

The decision of the AIRC confirms that the wage tribunals are sequentially providing for a major realignment of the child-care wage structure to redress long-standing problems. The AIRC concluded (see AIRC 2005, para 366) that there had been 'a significant net addition to work requirements within the meaning of the work value principle'. The AIRC aligned the new key classification levels in the child-care awards with levels in the Metal Industry Award (see paragraph 367 in Reason for Decision). In so doing, they recognised the qualifications of Diploma and Certificate III as key classifications in the Victorian and ACT Awards.

The AIRC also stated that child-care services should be considered as part of ECEC which is linked to children's subsequent achievement, rather than being construed as 'child minding' (AIRC 2005, para 264). The AIRC recognised that as a consequence of the re-conceptualisation of children's services, community expectations of child-care workers had increased and led to changes in their training and development. The new classification structure across both ACT and Victorian awards is to be negotiated with a final hearing occurring on 31 March, 2005.

The ACTU welcomed the pay increases but suggested that cost pressures would make child care unaffordable for working parents (Maiden 2005). The employers noted that parents would be forced to pay at least $25 per child extra per week (Maiden 2005). Also, Commonwealth-funded child care would become inaccessible to many families, leading to an increase in backyard operators. Implicit in this argument is the reasoning that the public interest is served by the provision of accredited child care.

The federal government's response (Patterson & Ruddock 2005) acknowledged the important role of child-care workers, but noted that the 'child care sector has been aware of the wages claim for some time and many services have been planning for wage increases in their budgets'. The government outlined its achievements in its support of child-care services but clearly believed that user pays should rule.

INDUSTRIAL RELATIONS AND LABOUR MARKET REFORM

In 2004, the federal government was again unsuccessful in persuading the Senate to pass its legislation to exempt small businesses from unfair dismissal provisions. It also sought to extend its legislation to cover state unfair dismissal cases under its corporation powers. The High Court decision to outlaw bargaining fees in September had the unfortunate by-product of casting legal doubt on all agreements which contained provisions which did not directly pertain to the employment relationship. The federal government introduced the *Agreement Validation Bill* to overcome this loophole. The AIRC changed a number of worker entitlements after the test cases.

Unfair dismissal laws

The Workplace Relations Fair Dismissal Bill, which exempts small businesses from unfair dismissal provisions, except in relation to apprentices and trainees,

was again rejected in the Senate. In addition, the federal government planned to use its corporation powers under the Termination of Employment Bill to assume responsibility for state unfair dismissal cases where workers were employed by corporations. In March, the Senate rejected the bill which would have extended the coverage of federal legislation from 50 to 85% of all workers. The sticking point was that workers in atypical or precarious employment had no access to unfair dismissal provisions (Workforce 2004, 1438: 2).

Severance pay

In March, the AIRC doubled the maximum rate of severance pay for workers with 9–10 years service and removed the exemption to small business from paying severance pay in the redundancy test case. Small businesses with less than 15 employees were subject to different requirements (Workforce 2004, 1438: 1, 8). The AIRC rejected the ACTU claim that de facto permanent casuals with more than 12 months service should also receive severance pay because of the presence of a 25% loading. Likewise, the ACTU's claim for a severance pay loading for workers over 45 was rejected because severance pay levels already took account of years of service. The ACTU Secretary claimed that half the workers employed in small business were now entitled to severance pay.

Bargaining fees

In mid-2002, the full bench of the federal Court overturned an earlier decision in the Electrolux case, and ruled that unions and their members could take protected strike action in pursuit of enterprise agreements that included clauses outside traditional employment relationships, such as a bargaining fee (Watts 2003: 196). The Electrical Trades Union had attempted to introduce a $500 bargaining agent's fee on non-union members who were beneficiaries of an enterprise bargain at Electrolux. In 2003, the federal government amended the Workplace Relations Act to outlaw bargaining agents' fees. In August 2004, the federal government attempted to extend the ban on bargaining agents' fees to state agreements through its 'Corporations' power, by introducing the Workplace Relations Amendment (Extended Prohibition of Compulsory Union Fees) Bill 2004 (Shaw 2004; Workforce 2004, 1457: 1). This followed the decisions of the Western Australian and South Australian Commissions in March and April, respectively, to allow the imposition of a bargaining agent's fee on non-union members (DiGirolamo 2004; Workforce 2004, 1438: 1, 8, 1441: 2).

In September 2004, the High Court ruled that the union could not charge non-union Electrolux members bargaining fees to defray the costs of enterprise negotiations with employers after the AiG had appealed to the full Federal Court. The High Court also ruled that EBAs could not be certified if they contained any provisions which did not directly pertain to the employment relationship. Further, it would be unlawful to strike over any of these provisions. This meant that a range of common clauses, including union deals for contractors and rights of entry, were disallowed along with the capacity of unions to undertake black and green bans in the pursuit of broader political objectives (Workforce 2004, 1460: 1). If agreements containing payroll deduction of union dues were also

judged invalid under the decision, it would affect nearly all enterprise agreements. Law Professor, Ron McCallum, claimed that even uncontroversial parts of invalid agreements could not be enforced (Priest 2004a).

In late October, the AIRC ruled in the Ballantyne test case that EBAs could still lawfully prevent an employer from offering AWAs. A judge found that the Electrolux case ruled out only a number of provisions relating to payroll deductions of union fees and union recruitment (Priest 2004c). Predictably, the AIRC decision was challenged by employer groups and workplace lawyers who believed that it would be overturned by a court or the full bench of the AIRC.

The Minister of Workplace Relations, Mr Andrews, resolved to enshrine the High Court decision in law by introducing The Agreement Validation Bill which would validate all collective agreements and AWAs certified, approved or varied before the Electrolux decision, thereby restoring certainty to agreements (Australian Associated Press 2004).

Ironically, after the Coalition's victory in October, there was increased urgency on the part of some unions to renegotiate enterprise agreements, in advance of their expiry, so that the impact of further reform after 1 July 2005 would be delayed. Skulley (2004) reported in November that the Victorian branch of the ETU endorsed a plan to seek new 3-year enterprise agreements in place of approximately 1200 existing agreements which will expire in October 2005. The ETU Secretary argued that the new agreements would reflect existing deals.

Work and family

On 1 July, the Government introduced a $3000 maternity payment, but was subject to Democrat criticism because the payment was not associated with a leave entitlement. Consequently, female employees, particularly casuals, were likely to be forced back to work prematurely. In contrast, a 14-week government-funded paid maternity leave scheme at the federal minimum wage would address disadvantage and inequality in the workforce, as well as conferring legitimacy on working mothers (Stott & Senator 2004a,b).

Under the *Workplace Relations Act 1996* provision that allows the AIRC full bench of the AIRC to establish precedent-setting principles for award variations, the ACTU sought in the *Family Provisions Case 2004* to vary awards by incorporating provisions that assisted full-time, part-time and long-term casual employees with more than 12 months continuous service to manage their work and family responsibilities. These involved: (i) the extension of unpaid parental leave to 2 years; (ii) the right to return to part-time employment after parental leave; (iii) the right to request a variation in hours or location for caring responsibilities; and (iv) the right to take unpaid annual leave of up to 6 weeks (46/52) through a salary-averaging arrangement. In June 2004, the ACTU and employers groups reached a settlement entitling employees to use up to 10 days of personal leave per year to care for members of their immediate family or household who are sick or who require care due to an unexpected emergency.

In response to remaining ACTU claims, employers groups and the Commonwealth[3] argued that the focus of legislative changes introduced in the *Workplace Relations Act 1996* was to provide choices for employers and employees on how

they dealt with their workplace relations, including matters pertaining to balancing work and family. Greater reliance on market mechanisms through enterprise agreements would (allegedly) promote more innovative working patterns and mutually beneficial work practices. Employer groups also expressed concern at the cost imposts on business that would flow from mandated work—family benefits.

Mitchell (2004: s. 1.2) provided evidence for the ACTU and argued that employers offering family-friendly measures faced the problem of 'adverse selection', because employees who were most likely to exploit these measures would apply for jobs in those firms. Thus, the cost of assisting workers to balance work and family life would be concentrated rather than shared, deterring firms from offering these provisions. This form of market failure provides an economic justification for mandating these leave benefits.

In addition, Mitchell (2004: s. 3–8) argued that the impact of the claim on short-term costs would be small, given international evidence of low take-up rates for unpaid leave provisions. In the longer term, any cost imposts would be largely offset by the benefits flowing from lower staff turnover, increased labour supply and increased productivity. The employer groups did not cost the claim or provide an assessment of its macroeconomic impact. The AIRC decision is pending.

FUTURE WORKPLACE REFORM?

After the rejection of the More Jobs Better Pay Bill, which was introduced in parliament in 1998, parts of the bill were subsequently introduced in a piecemeal manner. Sixteen workplace relations bills have been passed since 1996, but only after the Democrats extracted major concessions from the government, and 14 have been blocked outright. The Coalition election victory in October 2004 and their Senate majority from July 2005 have lead employer groups, politicians and commentators to speculate about future industrial relations reform.

Our forecasts are:

1. Unfair dismissal provisions will no longer apply to businesses with fewer than 20 employees (Kelly 2004). The government will try to legislate for a national unfair dismissal system, which bypasses different state systems where the majority of unfair dismissal applications are currently pursued (Priest 2004b). It is likely that the small business obligation to make redundancy payouts to workers, which was imposed by the AIRC in 2004, will be removed (Priest 2004b).
2. Changes to bargaining practices will be introduced which outlaw pattern bargaining and make secret ballots compulsory when workers are voting on strike action. Tighter rules will be imposed on unions entering workplaces where they have no members. After the Cole Royal Commission into the Building and Construction Industry, a new industry watchdog, the Australian Building and Construction Commission, will be created with wide-ranging powers. This legislation was rejected by Senate in 2004 (Priest 2004b). Relief for third parties indirectly affected by strikes will be legislated (Kelly 2004). Strikes in essential services will be outlawed along with the introduction of private mediation and limited arbitration (Callus & Buchanan 2004).

3. Agreements will be extended from 3 to 5 years, which is important in sectors where projects have long lead times. Also, awards will be further simplified by reducing the number of negotiated items from 20 to 17. The approval process for AWAs by the OEA will be streamlined.
4. The AIRC will be required to take greater account of the impact on the employment opportunities of the unemployed in safety net decisions (Kelly 2004). Wage increases could be restricted to low-paid workers rather than flowing on to all award workers (Priest 2004b). The federal government has consistently argued for safety net increases to be confined to minimum classification rates at or below the C10 classification in the Metal Industries Award. This would further compress relativities and deny a group of better-paid workers access to wage increases. The federal government wishes to reduce the number of award-reliant employees, but also to move workers from collective agreements to AWAs. Priest (2004b) notes the concern of business about the increasing strength of state industrial commissions which have awarded significant wage increases to groups of workers that have deterred them from signing AWAs.
5. A national unified industrial relations system will be introduced which will marginalise the role of states in industrial relations (Callus & Buchanan 2004). Already there have been attempts by the federal government to broaden the coverage of its legislation in the areas of union bargaining fees and unfair dismissal.

CONCLUSION

During 2004, workers continued to enjoy modest wage increases, which have been augmented by changes in income tax rates and welfare entitlements. Employment continued to grow and unemployment fell. The rate of labour underutilisation remains too high which signifies the absence of a coherent full employment policy. The last 12 months have seen the playing out of a number of industrial relations matters that commenced in 2003 or earlier in the areas of unfair dismissal, union bargaining fees, severance pay and work and family initiatives.

The model of compulsory arbitration in the national interest has been replaced by the enterprise model (Callus & Buchanan 2004). Within that framework, the federal government has been adopting a legalistic approach in its attempts to weaken the powers of organised labour within the bargaining process and limit workers' entitlements, often in opposition to the AIRC. The starkest example of the latter is their long-standing attempt to marginalise the Commission's influence on wage setting, which is likely to intensify after 1 July.

Callus and Buchanan (2004) argue that, although these legislative changes provide employers with one of the most favourable labour law environments in the world, they will not resolve the work–family issues associated with the care of the young and the old, along with the problems of insufficient hours of work for some employees, and excessive hours for others. They advocate the development of new labour market standards that deliver the benefits of coordination and flexibility simultaneously. Employer organisations and the federal government believe that labour market standards inhibit flexibility in the bargaining process. The

award system is not seen as a vehicle for countering growing earnings inequality, but merely maintaining the real pre-tax wages of the lowest paid.

Notwithstanding this, path-breaking award changes occurred in the child-care services sector and an important test case covering work and family issues is currently before the AIRC.

ENDNOTES

1. The Wage Cost Index measures hourly wages net of bonuses and, in contrast to measures of average weekly ordinary time earnings (AWOTE), is independent of compositional changes, because it is based on a fixed basket of jobs, which, however, includes part-time jobs.
2. The Reserve Bank (2004: 54) quotes the Mercer Quarterly Salary Review, which reported that the annual growth in base salaries of executives rose 4.8% in the 12 months to September, one of the highest of recent years, albeit during a period of growing profits.
3. Submissions to the *Family Provisions Case 2004* are available at http://www.e-airc.gov.au/familyprovisions/

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