

RESEARCH REPORT

**ASSESSING THE IMPACT OF EMPLOYMENT LEGISLATION: THE COALITION
GOVERNMENT'S LABOUR LAW PROGRAMME 1996-2007 AND THE
CHALLENGE OF RESEARCH**

**Chris Arup, Anthony Forsyth, Peter Gahan,
Marco Michelotti, Richard Mitchell,
Carolyn Sutherland and David Taft**

**Workplace and Corporate Law Research Group
Department of Business Law and Taxation**

and

**Australian Centre for Research in Employment and Work
Department of Management**

Monash University

2009

ASSESSING THE IMPACT OF EMPLOYMENT LEGISLATION: THE COALITION GOVERNMENT'S LABOUR LAW PROGRAMME 1996-2007 AND THE CHALLENGE OF RESEARCH*

1. INTRODUCTION

Following 13 years of Labor government at the Federal level a Liberal/National Party Coalition government was elected to office in the Australian general election of 1996. This government was subsequently re-elected in 1998, 2001, and again in 2004, before finally losing power in the 2007 Federal election. Industrial relations and labour law policy were critical aspects of the Coalition's political and social platform throughout its entire period of office and in pursuance of these policies the government introduced many significant changes to employment relations legislation. These were more than changes of detail, representing fundamental shifts in the distribution of power between the parties to employment relations, and in the means of determining terms and conditions of employment.¹

Aims and Objectives of the Study

This report is designed to provide a summary and review of research published over the period 1997-2008 on the impact of the reforms to employment relations legislation which occurred during that period. The report is not a legal analysis *per se*, although the work does include some published studies carried out by labour lawyers. Rather, the main aim of the report is to assess what practical impact the Coalition's legislative programme had upon various aspects of labour market and employment relations institutions, arrangements and behaviour; an assessment, then, not of why and how the law changed in a technical sense, but of the consequences and outcomes of legal change.² The report also aims to say something

*This report is substantially modelled upon a similar project carried out by Linda Dickens and Mark Hall for the Department of Trade and Industry in the UK: see L. Dickens and M. Hall, 'Review of Research into the Impact of Employment Relations Legislation' DTI Employment Relations Research Series No. 45, DTI, London, 2005. An abbreviated version of the report is found in L. Dickens and M. Hall, 'Fairness – Up to a Point. Assessing the Impact of New Labour's Employment Legislation' (2006) 16 *Human Resource Management Journal* 338. We are grateful to the authors for allowing us to draw from their model.

¹ See generally the Special Issues of Australian academic journals covering various aspects of these changes in employment legislation: (1997) 10 *Australian Journal of Labour Law*; (2006) 16 *The Economic and Labour Relations Review*; (2006) 19 *Australian Journal of Labour Law*; (2006) 29 *The University of New South Wales Law Journal*; (2005) 56 *Australian Journal of Political Economy*.

² We have not included in this review studies that investigate the macroeconomic consequences of these legal reforms. However, a search of contents of the three leading economics journals in Australia (*The Economic Record*, *Australian Economic Papers* and *The Australian Economic Review*) discovered few studies relevant to this issue. For example there were no studies in these journals which examined the effect of labour law reforms on productivity or employment growth. There were a small number of studies that provided some evidence on the significance of these reforms for income and employment inequality. Typically such work explored institutional factors in order to account for otherwise unexplained variance in inequality, but did not directly test such explanations: see J. Borland, 'Earnings Inequality in Australia: Changes, Causes, Consequences' (1999) 75 *The Economic Record* 177. In one of the few studies to assess directly the impact of changes in regulation and regulatory institutions, Gaston and Rajaguru have reported that varying income inequality over the period under review is partly explained by declining union density and changes to the structure of minimum wages: see N. Gaston and G. Rajaguru, 'The Long-run Determinants of Australian Income Inequality' (2009) 85 *The Economic Record* 260. Another study found that over the period 1892 to 2000/2001, increasing inequality in the distribution of employment across households, and a growth in the number of jobless households were partly attributable to wage inequality and labour market reforms: see P. Dawkins, P. Gregg and R. Scutela, 'Employment Polarisation in Australia' (2005) 81 *The Economic Record* 336. For an employer commissioned report on the economic and employment effects of regulatory changes to the Australian industrial relations system, including changes made during the Liberal/National Coalition Party's period of office post 1996, see

about the nature of research in this area, and some of the disciplinary difficulties associated with it.

The main developments in the government's legislative programme are set out in a simplified form in Appendix 1. Our focus is on the Coalition's *Workplace Relations Act 1996* which replaced the previous government's *Industrial Relations Act 1988-96*. While this covers only part of the large volume of labour-related legislation introduced at Commonwealth and State governmental level in the period under review, it represents the core of the Coalition's labour law programme, and the most clearly identifiable instrument of 'national' purpose in this field. For the purposes of the review we selected several areas in which we felt the government's programme had made, or had sought to make, a serious or important change to the system or substance of employment relations. We have organised the review around these themes. The areas reviewed are as follows:

1. Non-standard work
2. Wages
3. Minimum standards
4. Dismissals
5. Enforcement
6. Agreement making
7. The Australian Industrial Relations Commission and dispute resolution
8. Trade union organisation and power
9. Industrial action

For reasons explained above, the review does not cover legislation of the States and Territories of the Commonwealth, nor does it cover other labour law subject matter such as discrimination law and occupational health and safety.³ Although important legislative developments undoubtedly occurred in some of these jurisdictions and subject areas, we have largely adhered to an examination of the *Workplace Relations Act* as the central labour relations legislation of leading national significance.⁴

Methodology

Our primary focus in the review has been upon academic research work published in the main academic journals, and some books, but we have also sought to go beyond that work to

Econtech, *The Economic Effects of Industrial Relations Reforms Since 1993*, Final Report prepared for the Australian Chamber of Commerce and Industry by Econtech Pty Ltd, Canberra, 2007; and for comment on this Report see Lyons 2007. Several economic studies have sought to identify the impacts of regulatory reforms on union power, union wage effects and the gender wage gap. These have been included in various sections of this report where appropriate.

³ One other issue which we have tended to ignore in this review is the complexity of the labour law/regulatory system itself: but see Bray and Waring 2005, and Fetter and Mitchell 2004.

⁴ Thus also excluded from our examination is the very important regulation of the building industry (see the *Building and Construction Industry Improvement Act 2005* (Cth.)). For discussion of this legislation see A. Forsyth, V. Gostencnik, I. Ross and T. Sharard, *Workplace Relations in the Building and Construction Industry*, Lexis Nexis Butterworths, Sydney, 2007. Also excluded in this coverage is the specific legislation devoted to independent contractors which did not come into effect until 2006 (see the *Independent Contractors Act 2006* (Cth.), and the *Workplace Relations Legislation Amendment (Independent Contractors) Act 2006* Cth.). For general comment on the latter legislation see J. Riley, 'A Fair Deal for the Entrepreneurial Worker? Self-Employment and Independent Contracting post Work Choices' (2006) 19 *Australian Journal of Labour Law* 246; A. Forsyth, 'The 2006 Independent Contractors Legislation: An Opportunity Missed' (2007) 35 *Federal Law Review* 329.

include research-based output from key public bodies, government departments and agencies, university-based research groups and practitioner bodies where appropriate.

Our basic literature search comprised an examination of articles published during the period 1997-2008 in two main groups. First we searched for relevant articles in the main Australian journals in the employment relations field, and some economics journals (*Asia Pacific Journal of Human Resources, Australian Bulletin of Labour, Australian Economic Papers, Australian Journal of Labour Economics, Australian Journal of Labour Law, Economic and Labour Relations Review, International Journal of Employment Studies, Journal of Industrial Relations, Labour and Industry, The Australian Economic Review, The Economic Record*). Secondly, we added to this list by selecting some leading international journals which we thought would be the most likely to contain relevant material (*British Journal of Industrial Relations, Comparative Labor Law & Policy Journal (US), European Journal of Industrial Relations (UK), Industrial and Labor Relations Review (US), Industrial Law Journal (UK), Industrial Relations (US), Industrial Relations Journal (UK), Industrial Relations/Relations Industrielles (Can.), International Journal of Comparative Labour Law and Industrial Relations (Ital.)*), and we carried out a search of the content of these journals over the same period. We also carried out searches in the main Australian university-based generalist law journals and of the refereed papers presented at Association of Industrial Relations Academics of Australia and New Zealand (AIRAANZ) conferences. A few key research volumes were also utilised.

A bibliography of relevant publications is contained in Appendix 2.⁵ This is divided into two parts. Part A contains a list of academic journal articles which were selected as potentially relevant to the project, and Part B contains a list of the other material which was used or referred to in the report's preparation. For each of the academic journal articles we drew up summary sheets, noting the key areas of law covered in the article, the nature and methodology of the research used to investigate the impact of the law and the core findings in each case. We also assessed and ranked the importance of each article to the focus of the review. Those articles we considered to be most significant are analysed in the synoptic table found in Appendix 3, which records, for each publication, the nature of the research methodology employed in the published article, the areas of impact and the measures to assess that impact, and the main outcomes of the research.

As indicated, we have also included published research undertaken or commissioned by various other bodies, including public bodies, government departments and agencies, various think-tanks, practitioner bodies and so on. Several organisations were contacted for information about research carried out by them, or on their behalf, which might be of relevance to the review. In this part of the exercise we sought to include only material which was based on empirical research methods, and we have specifically excluded from our consideration policy statements and position papers of one sort or another.

Rationales Underpinning the Coalition's Legislative Programme on Employment Relations: Fairness (Protection) and Flexibility (Business Competitiveness)

⁵ Articles and other references used incidentally in various parts of the Report, but which are not central to the core assessment of the impact of the Coalition government's labour law programme are cited in full in the footnotes, but not necessarily included in Appendix 2.

As is indicated in Appendix 1, the Coalition government introduced a steady stream of legislation dealing with industrial relations over the period 1996-2007, with the major thrust of its reforms contained in its *Workplace Relations Act 1996* and its *Workplace Relations Amendment (Work Choices) Act 2005*. For the most part the government's legislation of July 2007 was a retreat from some of its earlier policies and had little material impact before the government lost office at the November 2007 election.

Numerous arguments have been advanced about the underlying rationales for the government's legislative programme which in many respects, particularly in its 2005 form, was revolutionary by Australian labour law standards.⁶ These include the desire to weaken trade unions and restore managerial prerogative, the desire to make workers and employers responsible for making workplace arrangements which suited them rather than have such arrangements imposed by industrial tribunals, the desire for greater flexibility in employment and the elimination of inefficient and outmoded work practices, the desire to increase productivity, the desire to reduce the complexity of workplace regulation and associated costs upon employers, the desire to permit the reduction of wages and conditions in accordance with business imperatives, the desire to replace adversarial workplace relations with a more co-operative system and so on. These are, however, merely sub-arguments in the core rationale of the government's programme which was to shift what was essentially perceived as a system of labour law designed primarily to protect workers and redistribute wealth from capital to labour to a system which was also (perhaps predominantly) concerned with sustaining business competitiveness in a global economy.⁷ This core rationale is clearly observable in the parliamentary proceedings associated with the presentation of legislative bills to parliament, Prime Ministerial and Ministerial statements and government policy documents.⁸

It should not be read into this that the government's legislative programme was designed entirely to resile from any protective function in labour law. On the contrary the government continued to emphasise the importance of 'fairness' to workers in its policy statements, and its legislative terminology. Rather, the issue was to project an argument that there needed to be a better *balance* between protection/fairness for employees and the flexibility required by businesses to compete in an international market. Much of the debate was consequently centred around the tension between these twin objectives, how effective it was in terms of outcomes, and whether the weight had shifted too far from protection towards flexibility. This review attempts to assess the evidence on these questions.

The Structure of the Report

⁶ The 2005 Act was described by one expert as 'the greatest single change to Australian labour law since the introduction of compulsory conciliation and arbitration': see C. Fenwick, 'How Low Can You Go? Minimum Working Conditions Under Australia's New Labour Laws' (2006) 16 *The Economic and Labour Relations Review* 85 at p. 86.

⁷ For a similar argument about the evolution of British labour law see H. Collins, 'Regulating the Employment Relation for Competitiveness' (2001) 30 *Industrial Law Journal* 15; and the same author, *Employment Law*, Oxford University Press, Oxford, 2003.

⁸ See, by way of example, the Hon. P. Reith, Federal Minister for Industrial Relations, 'The Reform of Workplace Relations – Implementation Discussion Paper', Parliament House, Canberra, March 1996; the Hon. P. Reith, Federal Minister for Employment, Workplace Relations and Small Business, 'The Continuing Reform of Workplace Relations: Implementation of *More Jobs, Better Pay*' Parliament House, Canberra, May 1999; Australian Government, 'WorkChoices – A New Workplace Relations System', Commonwealth of Australia, 2005

Part 2 of this Report sets out the main findings from the research reviewed under each of the nine themes identified earlier in this section. Part 3 examines various factors which may provide some explanation for variations in the impact of legal regulation upon employment relations and practices within firms. Part 4 deals with the nature and scope of the research reviewed, and the methodologies employed in the research. Importantly in this section we try to say something about the relationship between legal research per se, and socio-legal research which brings together legal method and social science research techniques. Part 5 concludes with an overall assessment of the impact of the Coalition's policies taken as a whole in the context of the fairness/flexibility divide.

The Appendices to the Report contain detailed information integral to the Report as a whole. Appendix 1 provides a brief dot-point summary of the major threads of the Coalition government's employment relations programme over the 1996-2007 period. As explained earlier in this section, the account largely focuses upon successive instalments of the *Workplace Relations Act* and leaves to one side at least two other important pieces of legislation.⁹ Appendix 2 provides a bibliography of relevant publications. These are divided into two parts. Appendix 2 Part A contains a list of academic journal articles published in the period 1997-2008. Appendix 2 Part B contains a list of other work to which we have referred in the Report. Appendix 3 contains a synoptic table outlining key features (including research methodology, area of impact and measure of impact, and main outcomes) of the most important articles included in our survey.

2. OVERVIEW OF RESEARCH ON THE IMPACT OF POST-1996 EMPLOYMENT RELATIONS LEGISLATION

This part of the Report summarises the key findings of the research under the various themes identified in Part 1. It provides only a broad overview aiming to capture the most important and 'big picture' outcomes rather than detailed findings. Further detail of the outcomes in the main studies is provided in Appendix 3.

Non-standard Work

Non-standard work of various types has long been a feature of Australian labour markets and employment relations, but also has tended to be extensively regulated through the award system. Hence, access to and organization of non-standard work arrangements by Australian businesses was, historically, never merely a simple matter of employer choice. The post-1996 legislative changes altered this position considerably, providing incentives for employers to engage increasing numbers of workers under different types of non-standard work arrangements, and enabling this choice through major changes in the regulatory framework.

Commentary on the deregulation of non-standard work appeared in the legal/regulatory literature examining the impact of the post-1996 labour law changes on fixed-term work, shift work, casual and part-time employment (Forsyth 1999b; Loudon and Harley 2001; Sutherland 2007b) and also the potential impacts of the *Work Choices* amendments on the use of independent contractors (Riley 2006a).

⁹ See above n.2.

A further body of research focused on the role of agreement making as a form of regulation in this area (Department of Employment and Workplace Relations 1997-2006).¹⁰ As a consequence of the continuing shift in industrial relations from centralized tribunal-based regulation to enterprise bargaining, and the limitations imposed on the regulatory powers of the Australian Industrial Relations Commission (Forsyth 1999b), agreements largely displaced award regulation in relation to non-standard work.

Empirically it was clear that non-standard work, which had been on the rise since the early 1990s, had continued to increase sharply after the 1996 *Workplace Relations Act* was introduced. But to what extent was this associated with or influenced by the regulatory change? One important piece of research concluded that regulatory change post-1996 in relation both to awards and agreements, allied to changes in the product market, 'were responsible for the substantial growth in temporary employment' in the Australian black coal mining industry (Waring 2003).

The research on agreements indicated that a substantial proportion of all types of agreements made pursuant to the 1996 Act (with the general exception of the individualized Australian Workplace Agreements) contained provisions relating to various forms of irregular or non-standard work, and that in certain industries (e.g. retail, hospitality, agriculture, education, finance and insurance, in relation to casual and part-time employment) the proportion of agreements containing such provisions was very high. This meant, of course, that whilst employers were not necessarily always utilizing such provisions, they were arming themselves with substantial powers to utilize non-standard employment contracts when deemed necessary, and unions and other parties were conceding this right. The research also showed that of all types of non-standard work, provisions relating to casual employment, part-time employment and contract labour were most common, and that the incidence of such provisions steadily increased over the period under review (Department of Employment and Workplace Relations 1997-2006). However, at the same time as permitting greater access by employers to the use of non-standard employment, such agreements also regulated that use, sometimes in limiting ways (for example by restricting the numbers of casuals or part-time workers who might be employed, or restricting the number of hours they might work).

The relationship between the post-1996 legislative reforms and the continued rise in the incidence of non-standard employment practices seems clear enough, but has not been substantially researched. For example, there is little published work which attempts to assess the degree of the impact of the 1996 changes on the rise of non-standard work, as compared with the economic, social and labour market pressures which were already driving such practices prior to that point of time (but see Waring 2003).

A further matter of uncertainty concerned the extent to which the post-1996 reforms had impacted upon the protection-fairness/flexibility equation in the management of labour, and the tension between those two objectives. Despite popular perception of the nature of the post-1996 labour laws and their effects, the shift to more flexible human resource strategies through non-standard employment contracts was not necessarily seen as a zero-sum game in all quarters. Some researchers, noting the rise of such practices, questioned the assumption that non-standard employment necessarily had negative implications for employees, or at

¹⁰ Regular research reports on the progress of agreement making in the Federal jurisdiction were issued by the Department jointly with other government agencies, and under other Departmental names as the relevant government departments were restructured during the Coalition government's period in office. For the sake of convenience we adopt this nomenclature throughout.

least left open the possibility that it might have at least some positives for both parties (Wooden 2002; Watson et al. 2003). In an important analysis of award restructuring and enterprise bargaining in the luxury hotel industry one researcher concluded that it could not be said that regulatory change ‘produced wholly positive (or negative) outcomes for employers or employees’ and that ‘the implications of regulatory reform tend[ed] to be more nuanced than indicated by pre-existing research’ (Knox 2006).

Generally speaking, however, the research outcomes found that non-standard work was contrary to the interests of workers. While there was no direct research which undertook an examination of the regulatory change/more flexible work practices/increased efficiency/increased profitability chain, the trend to non-standard employment was very clear, and thus obvious inferences might be drawn that such practices had positive cost-saving and other financial inputs into business strategy. Against this, most of the research suggested that workers were worse off across a broad range of employment indicators as a result of their experience of non-standard engagements. This included lower pay, longer working hours, poorer job security, less access to training and poorer standard private life (Burgess and Campbell 1998; Pocock, Prosser and Bridge 2004; Campbell and Chalmers 2008). Even so there was some important research findings which questioned whether the ‘rigid legal conceptualisations’ which marked out the distinction between standard and non-standard employment provided an adequate understanding of the *actual* working life experience of workers in non-standard categories (van Wanrooy et al. 2008).

Commentary in the legal/regulatory discourse pointed to the importance of the removal of regulatory protections for non-standard workers. These included protections against dismissal and protections against wage reductions, the decline of maximum-hours regulation and so on. The research noted the perceived failure of alternative regulatory devices such as the ‘no disadvantage test’ and the ‘fairness’ test in the processing of agreements (Forsyth 1999b; Riley 2006a; Sutherland 2007a) as being important also. One major study examining the regulatory, economic and social dimensions of the increase in shift-work of 12 hour duration reported that such practices had strong negative implications for the health and safety of shift-workers, and the safety of workplaces generally (Loudoun and Harley 2001).

A body of research appeared in the wake of the radical *Work Choices* legislation of 2005-2006. This work provided considerable empirical detail on the impact of this far-reaching set of regulations. Generally speaking, however, the research noted little impact of the *Work Choices* legislation on the nature and incidence of non-standard work (van Wanrooy et al. 2007; Peetz 2007; Elton et al. 2007; Victorian Office of the Workplace Rights Advocate 2007). There was some suggestion that among the female working population *Work Choices* was having an adverse impact upon those casually employed in particular (Elton et al. 2007). It was also noted that during the post-*Work Choices* period the growth of full-time employment exceeded the growth in part-time employment. However, the research reported that this was not the result of the regulatory change in *Work Choices*, but the result of other labour market factors (Peetz 2007).

Wages

Historically, wages of Australian workers were predominantly determined by the awards of industrial tribunals acting under arbitration powers or similar methods of industrial dispute settlement. However the introduction of enterprise bargaining saw the steady decline of awards as pay-setting instruments and the corresponding rise in the importance of agreements

from the early 1990s onwards. Empirical research in the post-1996 period indicates the continuation of this trend. For example the numbers of employees deriving wage rates solely from awards declined from 23 per cent in 2000 to 19 per cent in 2006 (Department of Employment and Workplace Relations 1997-2006). On the other hand, this decline in the relevance of awards in practice did not always match employees' perceptions of how their wages were actually set (van Wanrooy et al. 2008)

Most of the research in this area tended to focus upon the quality of wage outcomes for workers. However there was also, in the later part of the period under review, a body of work on the nature and processes of a new wage-setting institution, the Australian Fair Pay Commission (AFPC), introduced as part of the *Work Choices* amendments to the *Workplace Relations Act* in 2005.

The establishment of the AFPC represented a clean break with more than a century of tradition whereby minimum wages had been fixed by industrial tribunals in processes resembling judicial proceedings. In place of formal hearings, with evidence and examination by the parties, the AFPC was empowered to fix a minimum wage, or not to amend the minimum wage, according to own discretion, and in a manner more or less of its own choosing. Much of the regulatory/legal research writing in relation to this matter dealt with the constitution of the AFPC, and how it differed in its powers, processes and functions from its predecessors (Howe et al. 2005; Wooden 2005, Waring, Burgess and de Ruyter 2007; Cowling and Mitchell 2007). Some research work drew specific comparisons between the AFPC and the UK Low Pay Commission, introduced by the British Labour Government in 1998 (May 2005; Waring, Burgess and de Ruyter 2006; Gardiner 2007). Most of this comparative work noted important differences between the British and Australian models, and made comment upon the idea of constructing a minimum wage in different industrial and social settings. Prospects for an uncomplicated 'legal transplant' from the British context to the Australian were doubted (Gardiner 2007).

Overall the research was critical of the constitution and role of the AFPC, doubting that the new institution had the capacity of maintaining minimum wages at the levels they had been held under the tribunal system (Waring, Burgess and de Ruyter 2006; Cowling and Mitchell 2007). However, not all researchers took the view that these outcomes were necessarily bad in overall economic terms (Wooden 2005).

The more general story told in the research on wages over the Coalition government's period in office was one of declining wage returns to labour taken as a whole. Much of the research pointed to wage cuts (or the potential for them) in many areas of the labour market, flowing from legislative change (van Barneveld and Arsovska 2001a, 2001b; van Barneveld 2006; Fenwick 2006; Pocock and Masterman-Smith 2006; Evesson et al.; Victorian Office of the Employment Rights Advocate 2007). Where wages remained the same or increased slightly through a folding in of overtime and penalty rates, the fact that employees were often now working longer hours through open-ended arrangements effectively amounted to a wage cut (and often quite large wage cuts) in real terms (van Barneveld and Arsovska 2001a, 2001b; Mitchell et al. 2005). There was also some indication of a greater polarization of wage rates between the top and bottom ends of the labour market (Watts and Burgess 2000; Wooden 2000). Other work noted lower wage rises in some areas of labour market ordering than in others. For example research seemed to show that union-based agreements generally provided for superior wage increases than those obtained in non-union agreements (Cairncross and Buultjens 2006), and that collective agreements generally provided for higher

pay increases than the individualized Australian Workplace Agreements (Peetz 2001; Carson, Mitchell and Watts 2001; Peetz 2004, 2007; Queensland Industrial Relations Commission 2007a).

In linking the statutory framework for industrial relations with these outcomes, several explanatory factors were identified in the literature. The development of the enterprise bargaining system itself was seen as a factor in the rise of earnings inequality between the top and bottom ends of the labour market (Wooden 2000), and the availability of Australian Workplace Agreements, non-union collective agreements and Employer Greenfield Agreements were seen as playing a vital role in the reduction of wages in the Victorian retail and hospitality sectors (Victorian Office of the Workplace Rights Advocate 2007). Other research pointed to the weakness of the 'no disadvantage test' in protecting workers in the agreement-making process (Mitchell et al. 2005; Queensland Industrial Relations Commission 2007a; Sutherland 2007a), its removal under *Work Choices*, and the inadequacy of its subsequent replacement (the fairness test) (Queensland Industrial Relations Commission 2007a). In the post-*Work Choices* period it was found that many Employer Greenfield Agreements failed to comply with the statutory minimum pay standards set out in the *Workplace Relations Act*, largely due to a lack of comprehension of those statutory provisions (Gahan 2007a, 2007b, 2007c and 2007d).

One final issue concerns the impact of the post-1996 legislation on gender wage differences. Using a diverse set of approaches, several studies indicated that one outcome of the new employment legislation was a trend towards greater gender inequality. For example, using data derived from Federal enterprise agreements one study found that women's wages were more likely to be determined by instruments producing lower wage outcomes than men (Whitehouse and Frino 2003). Similarly Peetz (2007) reported that the gender wage ratio in Australian Workplace Agreements was significantly lower than in collective agreements and awards, and that the ratio was lower in collective agreements than it was in awards. Other research confirmed that whilst Australian Workplace Agreements in some cases were associated with wage premia, for most employees they were associated with lower wage increases compared with collective agreements, and a more significant gender wage difference (Peetz and Preston 2008).

However, while the weight of evidence indicates that had been some adverse impact on women's wages relative to male wages in the post-1996 period, there was sufficient ambiguity in some of the research findings to raise doubts about the degree of this impact, and its direct link to employment legislation. For example there was some research which reported a degree of *convergence* in wage outcomes for men and women for at least parts of the post-1996 period (Preston 2003; Peetz 2007), and arguments raised in some of that work suggested that the shifts in gender wage outcomes might reflect secondary rather than direct outcomes of employment legislation (declining unionization for example), or other labour market developments entirely (Preston 2003).

Minimum Standards

Generally speaking, prior to 1996 minimum standards of employment, as laid down in awards and legislation, were non-derogable, usually being capable of variation only by agreement between the parties for a superior standard to that legally specified. This style of regulation was altered with the introduction of the *Workplace Relations Act* in 1996 which, among other things, provided for the reduction in the number of mandated

standards through a process of ‘award simplification’ and at the same time expressly facilitated the avoidance of many minimum standards (including both their exclusion or reduction) by agreement between the parties, subject to certain procedural safeguards. The 1996 changes were taken further by the *Work Choices* reforms of 2005 which, in addition to introducing for the first time a set of *legislated* minimum standards,¹¹ also made it easier for parties to negotiate (or employers to impose) sub-minima employment conditions.

One line of research to emerge in the wake of the 1996 legislation focussed on the procedural safeguards to agreement making and how effectively these had worked, or were working, to protect the integrity of minimum standards. This research is discussed under the ‘*Agreement Making*’ sub-head below. Apart from this work there was little published research on how minimum standards were affected by the new legal regime. Some early commentary, whilst noting the potential for the reduction of working standards embodied in the new laws, remained uncertain as to how great an impact the legislation would have. In general the sense was that the changes were not extreme (Pittard 1997; Hampson and Morgan 1998). Other commentary, noting the propensity to reduce the number of mandated employment standards focussed on the ‘regulatory strategy’ of the new legislation from centralised ‘command and control’ legislation to forms of ‘self-regulation’ (Marshall and Mitchell 2006). As noted earlier,¹² one empirical study of the impact of the new legislation on working hours and the length of shifts concluded that the regulatory system was ‘inadequate’ and had the potential to create ‘unsafe workplaces’ (Loudoun and Harley 2001).

Further research on minimum standards was prompted, however, by the *Work Choices* amendments of 2005. Most of this work fell into the legal/regulatory discourse, and dealt with the content and the mechanics of the establishment of the Australian Fair Pay and Conditions Standard under the *Workplace Relations Act* (Fetter 2006; van Barneveld 2006; Fenwick 2006; Owens 2006; Forsyth and Sutherland 2006a). Almost uniformly this work foreshadowed the decline of minimum standards (and thus a lowering of the ‘safety net’) both in terms of the numbers of mandated employment conditions, and in terms of their quality, as a result of the changed substantive and procedural protections in the new legislation (Fenwick 2006; Owens 2006; Fetter 2006). The subsequent attempt by the government to stiffen up the protective procedures (the ‘Fairness Test’ 2007) applying to the making of agreements was thought unlikely to make any appreciable difference to the general trend in lowering minimum standards (Sutherland 2007a).

Beyond this, however, there was limited research offering a systematic account of the *actual* effects of the legislation. Most of the available empirical evidence is found in various commissioned reports and public inquiries. One notable exception to the general type of research carried out in this area involved a comparative numerical testing of Australian employment standards over a twenty-one year period 1979-2000 (Michelotti and Nyland 2006). Drawing on a methodology applied to the US and Canada, this work involved a coding of various aspects of Australian labour law against International Labour Organisation core labour standards. This included a measure of minimum wage legislation. This measure revealed only a slight increase over the period examined. How much of this increase could be attributed to legislation introduced after 1996 is, however, not clear.

¹¹ See A. Forsyth, B. Creighton, V. Gostencnik and T. Sharard, *Transition to Forward with Fairness: Labor’s Reform Agenda*, Lawbook Co, Sydney, 2008, p. 147.

¹² See discussion under *Non-standard Work* above.

Other more recent studies examined the effects of the *Work Choices* legislation. In a series of studies commissioned by various State governments, Gahan (2007a, 2007b, 2007c, 2007d) reported the results of an analysis of all publically available Employer Greenfield Agreements. These studies suggested that the majority of these agreements reduced minimum standards through the removal of protected award conditions. Similarly, Peetz (2007) reported that a corresponding reduction in minimum standards was evident in Australian Workplace Agreement and non-union collective agreements types.

Notwithstanding this evidence (as we note in our discussion under the *Wages* sub-head above and the *Agreement Making* sub-head below), it has been difficult to reach exact conclusions beyond the general observation that the legal framework offered the opportunity for reducing standards. One of the relevant problems following *Work Choices* was the complexity of a system which offered a raft of statutory- and award-based minima which operated in respect of parts of the workforce and not in others, and from which parts could be derogated and others could not (Williamson 2006). These complexities evidently gave rise to many obvious and (at least) inadvertent omissions from agreements of legally mandated standards (Gahan 2007a, 2007b, 2007c, 2007d), an issue which went to the effectiveness of supervision and enforcement in agreement making. Both the complexity of the process of assessing the legality of agreements when measured against minimum standards, and the inadequate policies and processes of the agencies charged with these responsibilities, were noted in the literature (Mitchell et al. 2005; Peetz 2006).

Dismissals

Changes to the unfair dismissal legal regime occurred in the *Workplace Relations Act 1996*, and again with more important amendments in the *Work Choices* legislation of 2005. As Appendix 1 indicates there were also a series of other minor amendments to these provisions between these dates (in 2001 and 2004).

One line of investigation into these changes comprised a summary and legal analysis of the new laws, and, in some cases, their potential complex interaction with State systems of employment protection (Chapman 1997; McCallum 1997c; McCarry 1998a; Pittard 2002; Pittard 2006; Chapman 2006). In some instances this work passed comment on the likely effects of the revised legislation upon the effectiveness of unfair dismissal protection (Chapman 2006). In some later research, the new Labor government's *Forward with Fairness* legislation was compared with the *Work Choices* legislation and its potential impact upon different aspects of the unfair dismissal regime were discussed (Southey 2008).

Prior to the *Work Choices* amendments, the Coalition government had unsuccessfully sought to obtain a 'small business' exemption from the unfair dismissal code on many occasions (Pittard 2002; O'Neill 2008). Such an exemption was introduced into the *Workplace Relations Act 1996* as part of the *Work Choices* policy, excluding businesses with fewer than 100 employees from unfair dismissal claims, along with several other important limitations on the system. These changes generated considerable empirical research seeking to assess their impact, or likely impact, on job security (Freyens and Oslington 2005; Chase and Harvey 2006; Gahan 2006; Pocock and Masterman-Smith 2006; Peetz 2007; Elton et al. 2007).

The government's main reason for seeking to restrict the operation of the unfair dismissal laws was its view that unfair dismissal rights were a cost to business, and in particular an

inhibitor of employment growth in the small business sector. A second reason was its argument that the unfair dismissal processes were too complex and cumbersome (Robbins and Voll 2004). However, the evidence supporting these claims was largely regarded as unreliable, prompting calls in some quarters for more research (Barrett 2003). Generally the research outcomes were mixed. Some research conducted at the University of Melbourne concluded that unfair dismissal legislation imposed a significant cost on small-and medium-sized businesses, that it resulted in reduced managerial authority, that it hindered the efficient handling of performance issues and made communication with staff more difficult (Harding 2002). Other research seemed flatly to contradict most of these sorts of findings (Waring and de Ruyter 1999), or at least raised doubts about their veracity (Robbins and Voll 2004; Robbins, Murphy and Petzke 2004; Robbins and Voll 2005; Voll 2005), and particularly disputed the argument that employer concern over unfair dismissal claims was having a significant negative effect on employment rates (Freyens and Oslington 2005).

However, one consistent thread in the empirical research literature on unfair dismissal was the level of concern felt in the workforce over job security (particularly among young workers), and unsurprisingly this appeared to be exacerbated considerably by the greater freedom to dismiss that employers and managers were perceived to have acquired as a result of the *Work Choices* amendments (Pocock and Masterman-Smith 2006; Gahan 2006; Macdonald et al. 2007; Elton et al. 2007).

Later research also reported further on the impact of the employer's power to dismiss under *Work Choices*. Most findings reported that employees felt they had less power vis-a-vis their employer in general (Victorian Workplace Rights Advocate 2007), and less scope to challenge dismissal in particular (Chase and Harvey 2006; Elton et al. 2007). One study of the 'operational reasons' exclusion from unfair dismissal protection concluded that the exclusion was being interpreted in so broad a manner by the Australian Industrial Relations Commission that employers were 'largely free to restructure their operations and staffing arrangements, and implement redundancies, without the need to point to a valid reason for dismissal or to treat employees fairly and reasonably in the process leading to dismissal' (Forsyth 2007b).

Enforcement

Research in this sub-category pointed to the historical (perhaps mainly symbolic) importance of securing employer compliance with state-sanctioned minimum employment conditions for workers, and noted the decline of enforcement mechanisms and practices in the post-1996 period (Peetz 2006; Lee 2006; Fetter 2006; Queensland Industrial Relations Commission 2007a; Sutherland 2007a). Various dimensions of this decline were noted. Some research dealt with the withdrawal of powers and resources from important enforcement agencies such as the Australian Industrial Relations Commission and the Arbitration Inspectorate (Peetz 2004; Lee 2005b). Other aspects of the research noted the difficulties imposed in various pieces of legislation upon unions seeking to enforce the rights of their members, particularly the legislative limitations imposed upon the rights of union officials to enter workplaces and inspect records (Naughton 1997; Ford 2000; van Barneveld 2006; Forsyth and Sutherland 2006; Fetter 2006; Elton et al. 2007). Some case study research demonstrated the negative impact of the new 'right of entry' laws on union enforcement powers (Pyman 2004). A further notable theme was the attention paid to the lack of enforcement rights in relation to the making and content of agreements (Coulthard 1997; Stewart 1999; Fetter 2006). In general, then, the research and commentary was basically sympathetic to the view of one

commentator who concluded that the overall trend in enforcement in the post-1996 period was to disguise the degree of law breaking by employers, to seek voluntary compliance (or self-regulation: Sutherland 2007a) by employers, and not to seek remedial penalties against them (Lee 2005b, 2006).

One assumption commonly made about enforcement in the regulatory literature is that under governments with a collective ideology resources and regulatory activity protecting employees tends to increase, whereas under individualistic conservative governments both resources and regulatory activity will be reduced. Historical research has refuted this assumption in the Australian context, arguing instead that governments of each persuasion adopt specific prosecution strategies which are aligned with the 'contemporary political needs' of the particular government of the day (Goodwin and Maconochie 2008).

Notwithstanding the implications of this more grounded research, most of the work in the legal/regulatory vein, as we have noted above, tended to confirm the common theory, noting particularly the shift away from 'collectivist' forms of enforcement through unions and state agencies to 'individualised' enforcement by the workers themselves with all of the attendant difficulties and unfairness that this tends to throw up (Coulthard 1999; Peetz 2004; Fetter 2006).

However, despite this general flow of analysis, there was very little research which focussed upon the success or failure of enforcement per se. Some empirical research did indicate that, particularly after *Work Choices*, it was becoming increasingly difficult, for various reasons, to maintain minimum standards (Gahan 2006; Sutherland 2007a; Gahan 2007a, 2007b, 2007c, 2007d). There was also some interview and case study work which demonstrated the weaknesses of individualistic enforcement systems, and the difficulties that workers had in obtaining appropriate information, advice and assistance in prosecuting their claims (Queensland Industrial Relations Commission 2007a; Elton et al. 2007). Beyond this, however, there was no empirical research testing the effectiveness of the enforcement regime under the Coalition government's post-1996 industrial legislation.

Agreement Making

In addition to extensive reporting over the period on the incidence of different types of agreements and their content (Department of Employment and Workplace Relations 1997-2006; Wooden 1999; Gahan 2007a, 2007b, 2007c, 2007d) much of the literature in this area focussed on the impact of the *Workplace Relations Act 1996*, and, later, the *Work Choices* legislation of 2005 on the processes of agreement making, and how that, in turn, impacted on the balance of power between employers and employees in the making of agreements. In the legal and regulatory literature there was substantial analysis of the various types of agreements, the processes through which they were made, and how they were regulated by the relevant authorities (the Australian Industrial Relations Commission and the Office of the Employment Advocate) (Pittard 1997; Naughton 1997; McCallum 1997b; Bray and Waring 1998; McCarray 1998b; Hampson and Morgan 1998; Creighton 1999; Stewart 1999; Ross and Trew 2001; Marshall and Mitchell 2006; Cooney 2006; van Barneveld 2006; Fetter 2006; Sutherland 2007b).

In this work, the legislation governing agreement making was, among other things, found to be contrary to Australia's international obligations (Fenwick and Landau 2006) and an unwarranted interference by the state upon the perceived rights of parties to make their own

agreements (Forsyth 2001; Cooney 2006). Generally speaking though, the research, particularly following the introduction of *Work Choices*, reflected on the impact which the legislation was having on trade unions and employees. Most of this commentary drew the conclusion that protection for employees and their organizations in the agreement making processes were inadequate or at least unsatisfactory (Lee 2005a; Marshall and Mitchell 2006; Sutherland 2007b), that bargaining for certain types of agreement (particularly the individualized Australian Workplace Agreement) was largely illusory (Plowman 2002; Fetter 2006; van Wanrooy et al. 2007), and that trade unions had been weakened in their capacity to use industrial power in negotiating agreements (Bray and Waring 1998; Lambert, Gillan and Fitzgerald 2005). The new bargaining structures, particularly those enabling employers to negotiate 'individual' agreements with single employees, was seen as facilitating the raw exercise of managerial prerogative (Bray and Waring 2006), and individual case studies pointed to the assertion of managerial rights and deunionisation as key 'strategic' objectives of employers in this individualizing process (Mackinnon 1997; Timo 1998; Fetter 2002). One such study noted that the legislation militated against workers who desired to negotiate union-based collective agreements in the absence of employer co-operation (Whittard et al. 2007).

Taken as a whole, over the period under review, the most common position exposed in this large body of work was that the Coalition government's regulation on forms and processes of agreement making had effected a considerable increase in the bargaining power and authority of employers and a corresponding decline in the collective power and influence of employees and trade unions (Fells 1999b; Lee 2004; McCrystal 2006b; Forsyth and Sutherland 2006a; Sutherland 2007b; Victorian Office of the Workplace Rights Advocate 2007). Empirical data, particularly in the post *Work Choices* (2005) period, supported this outlook. Several studies found that employees generally felt that they had less freedom to negotiate with their employers and that in relation to individual agreements in particular, there was a lack of negotiation, with many employees being obliged to accept take-it-or-leave-it template agreements (Wooden 2000; Leonard 2001; Queensland Industrial Relations Commission 2007a). Many of these findings arose from studies of disadvantaged groups of workers, including low-paid women, and workers in susceptible sectors such as retail and hospitality (Elton et al. 2007; Evesson et al. 2007; Queensland Industrial Relations Commission 2007a; van Wanrooy et al. 2007; Bertone, Marshall and Zuhair 2008).

One important associated question for research concerned the effectiveness of the inbuilt regulatory control devices, such as the 'no disadvantage test' and other procedural protections, which were designed to protect the quality of agreements in the employee's interests (Merlo 2000, Waring and Lewer 2001, Mitchell et al. 2005, Marshall and Mitchell 2006). The limitations of the 'no disadvantage test', including the erosion of the award base upon which the test was measured, the ability of the authorities in certain circumstances to approve agreements which did not satisfy the test, and the sheer complexity of the test's application, were identified and explored by several scholars (Merlo 2000, Waring and Lewer 2001, Mitchell et al. 2005). Empirical work on the application of the 'no disadvantage test' lent tentative support to the hypothesis that the test had failed to protect employees from a reduction in their terms and conditions of employment (Mitchell et al. 2005). Some research indicated that there was a perception that the 'no disadvantage test' was applied by the Office of the Employment Advocate in a way more favourable to employers than equivalent regulations at State level, and that that outlook was fuelling a shift to the use of individual employment agreements (Australian Workplace Agreements) at federal level (Todd, Caspersz and Sutherland 2006). The 'no disadvantage test' was subsequently removed from the Act in

the *Work Choices* amendments of 2005, and then replaced by a similar but weaker ‘fairness test’ in 2007 (see Appendix 1). As we noted in our discussion under the *Minimum Standards* sub-head above, legal analysis of the new provision reached the conclusion that the new ‘fairness test’ would continue to leave employees exposed to reductions in their employment conditions in the process of agreement making (Sutherland 2007a). There were no empirical studies examining the efficacy of the ‘fairness test’ in protecting the level of employees’ entitlements in the process of agreement making.

Early commentary in the legal and regulatory discourse had cast some doubt on the extent to which employers would move from an award-based system to agreement making under the post-1996 legislation for various reasons, including the legal complexity of concluding such agreements, the potential administrative burden of processing individual agreements, and the limitations imposed on the content of agreements by legislation and judicial decisions alike (McCallum 1997b; Mitchell 1999; Stewart 1999; Stewart and Riley 2007) and this supposition was borne out empirically at least in relation to some industries and regions (Robbins and Voll 2002; Hodgkinson and Markey 2007). It remained the case for the period under review that industrial agreement-making through Australian Workplace Agreements remained only a small proportion of all workplace agreements formalized under the legislative scheme (Department of Employment and Workplace Relations 1997-2006). On the other hand, as the post-1996 period developed, much of the empirical research revealed considerable strategic and cost benefits motivating employers to utilize the various forms of agreements available to them. The research indicated that employers were strategically shaping their approach to agreements with a view, among other things, of reducing administrative and wages costs (Bretherton and Hall 2003; Briggs and Cooper 2006), improving employee/management relations (Wooden 1999; Gollan 2004), strengthening *direct* relations between employers and employees (van Barneveld and Nassif 2003), facilitating wages/hours flexibility (Mitchell and Fetter 2003; Gollan 2004; Briggs and Cooper 2006), deunionising the workforce (van Barneveld and Nassif 2003), and improving efficiency and productivity (Hall and van Barneveld 2000; Bretherton and Hall 2003).

Following the introduction of the *Work Choices* legislation in 2005 there was a surge in empirically-based research examining the impact of this legislation upon agreement making, and its outcomes upon employees. Much of this work was undertaken in anticipation of the 2007 Federal Election. Overall the results pointed to the continuing disadvantage to employees and the further erosion of employee and trade union power, resulting from this legislation.

In the analysis of the regulation it was found that *Work Choices* had made it easier for employers to exploit their superior bargaining power (Fetter 2006; McCrystal 2006b). Empirically, the impact of the new provisions seemed to bear out this analysis. Some research noted the increased propensity of Australian Workplace Agreements to be imposed unilaterally, often contrary to the interests of employees (van Wanrooy et al. 2007; Sutherland 2007b; Bertone, Marshall and Zuhair 2008). Other research noted the increase in the numbers of non-union agreements and the relative decline in the numbers of union-based agreements (Peetz 2007). A series of research reports on the new (under *Work Choices*) Employer Greenfields Agreements reached the conclusion that these had been associated with the stripping away of many basic rights and conditions of employees (Gahan 2007a, 2007b, 2007c, 2007d), and that the procedural and substantive provisions of the Act were largely ineffective in protecting employees against these outcomes. In particular it was noted that there was extensive loss of protected award conditions in the framing of these

agreements, and at the same time a high degree of non-compliance with the Australian Fair Pay and Conditions Standard. Other research confirmed this apparent downward spiral in the working conditions of employees especially amongst vulnerable groups in the labour market (Peetz 2007; Elton et al. 2007; Queensland Industrial Relations Commission 2007a).

The final point in this section concerns the impact of the government's legislation upon the character of agreement outcomes. One area to attract particular attention from researchers was the extent to which agreements were pursuing the development of 'high performance' workplaces based on principles of high trust and commitment as a style of workplace regulation. One empirical study of the contents of Australian Workplace Agreements found that these agreements contained little evidence of high performance human resource management practices, and that Australian Workplace Agreements favoured employer strategies of cost minimisation and/or flexibility enhancement underpinned by intensive management control (Mitchell and Fetter 2003). These conclusions accorded with an earlier study examining the content of individualised Australian Workplace Agreements in order to assess whether they embodied 'hard' human resource management strategies grounded in labour cost minimisation and numerical flexibility, or alternatively whether they expressed 'soft' management strategies based on employee participation and high commitment (Roan, Bramble and Lafferty 2001). Other case studies identified a nexus between individual contracts and enhanced managerial prerogative (Hearn Mackinnon 1997; Timo 1998). A survey of 688 employers found that the most significant motivation for the introduction of individual agreements was a desire by employers to alter working time arrangements (Gollan 2004). The management strategies expressed in collective agreements were not subjected to the same level of scrutiny as those in Australian Workplace Agreements. One study comparing different types of collective agreements with individualised agreements found little evidence of a shift towards high performance outcomes (Gahan et al. 2004).

Generally speaking then, the weight of evidence suggested that the various changes made to the law on agreements in the post-1996 period had resulted not in new workplace cultures based on co-operation and employee involvement, but on enhanced managerial prerogative and 'hard' human resource policies, particularly in the case of individualised agreements. However, this position was contested by some scholars. Some studies, based upon surveys of employees covered by Australian Workplace Agreements, found that these agreements were associated with a cluster of 'high performance' related outcomes (Wooden 1999; Gollan 2002). But at the same time there were methodological criticisms of these and earlier studies (van Barneveld and Waring 2002; Gollan and Hamberger 2003).

Another area of interest concerned the extent to which agreements were able to facilitate improved family-friendly outcomes for employees. Generally the results here were not very positive, with researchers reporting that Australian Workplace Agreements in particular were providing comparatively poor family-friendly outcomes (Whitehouse 2001; Bramble 2001), whilst a study of collective agreements concluded that union-based agreements did not indicate an emerging bargaining agenda around work-family style issues (Gahan et al. 2004).

As we noted in earlier discussion in this section of the Report, the impact of the *Work Choices* amendments on workplace outcomes (including agreement outcomes) has been subjected to considerable empirical investigation. The results of these studies reveal an overwhelming scholarly consensus on the impact of *Work Choices* on agreements in a general sense, based around two major themes, the reduction of employee rights and conditions (Pocock et al. 2006; Elton et al. 2007; Evesson et al. 2007; Gahan 2007a, 2007b,

2007c, 2007d; Queensland Industrial Relations Commission 2007a; Peetz 2007; Victorian Workplace Rights Advocate 2007), and enhanced managerial prerogative (Pocock et al. 2006; Elton et al. 2007; Evesson et al. 2007).

A study examining the impact of *Work Choices* on agreements in the retail and hospitality industries found that in a substantial proportion of cases both protected award conditions and non-protected award conditions were being excised from agreements without compensation (Evesson et al. 2007). Other research indicated that this outcome was not confined to the retail and hospitality sectors. A series of studies analysing the content of Employer Greenfield Agreements found that a significant proportion substantially diminished employee entitlements, particularly through the removal of protected award conditions (Gahan 2007a, 2007b, 2007c, 2007d). Another study reviewed data provided by the Office of the Employment Advocate to a Senate Estimates Committee in 2006 (Peetz 2007). This data revealed widespread excision of protected award conditions from Australian Workplace Agreements, with all such agreements analysed by the Employment Advocate removing at least one protected award condition, and 16 per cent removing *all* protected award conditions.

The Evesson et al. study of collective agreements in the retail and hospitality industries also found that when agreements tended to introduce extra clauses beyond the statutory minima it was principally for the purpose of formalising or expanding managerial prerogative rather than conferring additional rights upon employees.

A final related issue concerns the extent to which Australian Workplace Agreements actually facilitated the individualisation of the employment relationship. A core rationale for the introduction of such agreements was that they would enable employment relations to be individually tailored to meet the needs of both parties. A range of studies revealed that the introduction of such agreements had not produced substantive 'individualisation' of employment relationships. Rather, Australian Workplace Agreements typically comprised uniform documents without significant variation between employees (Wooden 1999; Wooden 2000; Leonard 2001; Plowman 2002; Evesson et al. 2007).

The Australian Industrial Relations Commission and Dispute Resolution

We noted in the introduction that one of the several rationales underpinning the post-1996 labour law reforms was the intent of the government to make workers and employers responsible for making workplace arrangements which suited them, rather than having them imposed by third party intervention (i.e. by a regulatory body such as the Australian Industrial Relations Commission). Accordingly much of the research in this area was interested to examine the degree to which the AIRC had been sidelined by the terms of the *Workplace Relations Act 1996*, and, on the other hand, the extent to which it had managed to adapt itself to the new regime. In keeping with these objectives the legal/regulatory literature focussed on the various changes to the AIRC's functions and powers and on the likely impact of these changes upon the Commission's centrality in dispute resolution (Coulthard 1997; Pittard 1997; Dabscheck 2001; Forsyth 2003; Stewart 2004; Sutherland 2005).

Generally this body of work took the view that changes to the powers and jurisdiction of the AIRC were intended to reduce its central role in Australian industrial dispute settlement, and that this would be its actual or likely effect in due course. This view was compounded by further restrictions on the AIRC's role introduced in the government's *Work Choices* legislation of 2005 (Forsyth 2006, 2007a; Murray 2006). Some specific case study research

noted the incapacity of the AIRC to act in specific instances (Whittard et al. 2007). However, not all of the blame for the AIRC's reduced role was attributed to the legislative framework, some commentators noting a failure to adapt by the tribunal (Dabscheck 2001).

Importantly, however, the empirical research carried out on the status and functions of the AIRC seemed to indicate that in terms of *actual* impact the legislation had not 'fatally wounded' it as a regulatory body. Rather it was noted that the Commission had retained relevance, particularly through various powers to oversee enterprise bargaining, or to deal with matters referred to it under agreements (Stewart 2004; Sutherland 2005; Forsyth 2006). Researchers reported that there was continued substantial support among all parties for continuing high levels of involvement in workplace regulation. One important empirical study found that 'significant' third party intervention occurred once disputes were referred to the AIRC, and that the parties were relaxed about the tribunal exercising its traditional powers of conciliation, and indeed that the parties would have welcomed even more interventionist action by tribunal members (Forbes-Mewett et al. 2005). A further important study by the same research group reported that the use of 'the conference and increased mediation as a mechanism to resolve industrial disputes' remained at a high level (Forbes-Mewett et al. 2003a, 2003b). The general conclusion was that far from being more or less completely sidelined as an influential agency in dispute settlement, as pictured in some commentary (Dabscheck 2001), the Commission had held its position of influence. Whilst the statutory mechanisms for initiating references to the tribunal had changed, an examination of data on matters referred to it indicated that its workload was roughly the same in 2002 as it was before the *Workplace Relations Act 1996* had come into effect (Forbes-Mewett et al. 2003a, 2003b)

As noted, one of the ways in which the AIRC was seen to have sustained a key role for itself, despite the extensive legislative restrictions on its arbitral functions, was in relation to the bargaining system. In particular, commentators noted that the AIRC had managed to carve out a role for itself, in part by adroit use of the legislative framework, in policing the negotiation of agreements to be certified under the Act, and also in relation to post-agreement dispute resolution (Forsyth 2003; Stewart 2004; Sutherland 2005). Some empirical data confirmed that a very high proportion of enterprise agreements (well over 90 per cent) in fact contained provisions referring to the AIRC for settlement disputes arising under those agreements (Sutherland 2005). Research carried out on the contents of Employer Greenfields Agreements after the introduction of the *Work Choices* legislation revealed only a moderate decline in this practice, with more than 75 per cent of agreements still preserving a role for the AIRC in settling workplace disputes (Gahan 2007a, 2007b, 2007c, 2007d).

There was some anticipation in the research that the incipient decline of the AIRC's powers would lead to a growth in the use of private alternative dispute resolution as a matter of course in industrial disputes (Van Gramberg 2002, 2006), and the literature recognised this outcome as the preferred government position (Forsyth 2007a). On the other hand some of the commentary raised doubts on the extent of use of private ADR in industrial disputes (Forsyth 2007a), and there was little empirical research on the issue, other than the Employer Greenfields Agreements studies which reported that more than 37 per cent of such agreements made provision for some (but not exclusive) use of such mechanisms (Gahan 2007a, 2007b, 2007c, 2007d). One significant 2006 study found that private ADR constituted only a minor mechanism of dispute resolution with about 12 per cent of enterprise agreements registered in 2001 containing such provisions (Van Gramberg 2006).

Industrial Action

Research and commentary on industrial action in the post-1996 period fell basically into two main groups of work. One of these examined the detail and application of the law relating to industrial action both prior to, and after the *Work Choices* amendments of 2005. The second strand of research focussed on trends in the incidence of various forms of industrial action and the causes (including legal explanations) of these trends.

As we have noted in earlier discussion of previous sub-categories in this part of the report, the employment legislation of the Liberal/National Party Coalition government 1996-2007 divides into two main periods, from 1996 to 2005, and the post-*Work Choices* period 2005-2007. The *Workplace Relations Act* as introduced in 1996 substantially reduced the circumstances in which industrial action might be legally undertaken, and these restrictions were extensively examined in the legal/regulatory literature (Creighton 1997, McCarry 1997, 1998b; Lee and Peetz 1998; Stewart 1999; Floyd 1999; Di Felice 2000). It was found in this research, for example, that under the *Workplace Relations Act* employers had access to wide-ranging, speedy and less costly remedies against industrial action, whereas unions were restricted to more costly, more time consuming and less satisfactory remedies (Lee and Peetz 1998; Di Felice 2000). In this literature there was particular attention devoted to the legality of industrial action in the pursuit of various forms of industrial agreements (Stewart 1999; McCarry 1998b; Ross and Trew 2001). Research also reported on the failure of the *Workplace Relations Act* to conform with ILO standards on the right to strike (Creighton 1997).

However, with the introduction of even more stringent provisions regulating industrial action in the *Work Choices* measures, the level of coverage increased with a new round of in-depth legal articles examining the significance and potential impact of the new laws in relation to industrial action generally (White 2005; McCrystal 2006a, 2006b; Orr and Murugesan 2007) or to consider their impact in relation to other labour relations issues (Fenwick and Landau 2006; Sutherland 2007b). Generally this literature reported that the law of industrial action was overwhelmingly disadvantageous to employees and favourable to employers. It was found to breach international standards on the right to strike (Fenwick and Landau 2006), largely to erode the right to strike in Australia (White 2005; McCrystal 2006a), to distort the balance of power in the bargaining system (McCrystal 2006b), and to weaken trade union power generally (Sutherland 2007b).

One unusual dimension in this research on industrial action was its attention to employer lockouts. A series of articles and papers on this topic examined both the legal regulation of lockouts and their incidence (Briggs 2004a, 2004b; Briggs 2007a). It was found that the use of lockouts by Australian employers had increased substantially since 2000, and that this increase was attributable to the impact of new legal provisions underpinning this form of industrial action. The analysis of the legal provisions found that under the *Workplace Relations Act 1996* (and particularly after *Work Choices*) lockouts were the least restrictively regulated among all OECD countries, presenting Australian employers, comparatively speaking, with much easier recourse to this form of action. It was also concluded that the ease with which employers might have recourse to a lockout was much greater than the access which unions and employees had to their own forms of industrial action.

On a broader plane what did the research tell us about the general trend in the incidence of industrial action and its relationship with the law regulating such activity? Research in this area generally noted a long term decline in the volume of industrial action going back to the 1990s and beyond (Cully and VandenHeuvel 1999b; Peetz 1999; Wooden 2000; Healy 2002; Peetz 2007). Contemporary levels of industrial action were noted as being extremely low, particularly on the Eastern seaboard States (Considine and Buchanan 2007). But how far this decline, or at least the *continued* decline since the advent of the restrictive laws of the post-1996 period, was *due to those laws* seems to have been the source of complexity and, in the final analysis, uncertainty. Some of the research articles linked, or associated, the decline of various forms of industrial action with the legally restrictive legislation (Peetz 1999; Wooden 2000; Healy 2002; Hodgkinson and Markey 2007; Markey and Hodgkinson 2008), particularly in the post-*Work Choices* period which experienced a 44 per cent reduction in working days lost to industrial action in its first nine months of operation (Peetz 2007). However these arguments generally were not aligned with a straightforward cause and effect model. Rather, most researchers attempting to account for the decline in the levels of industrial action viewed legal restriction as only part of the story, and perhaps only a minor part, pointing to many other possible explanations, including cultural changes in the workforce moving away from adversarialism to more co-operative relations with employers, the decline of trade union power and membership, greater employer assertiveness, increased political will to eliminate strikes, and general economic factors (Peetz 1999; Wooden 2000; Healy 2002; Perry 2004). It was also noted that the long term decline in industrial action was matched by international trends (Cully and VandenHeuvel 1999b).

Among the various factors considered as relevant in the research as an explanation for the continued (and, under the *Workplace Relations Act* perhaps heightened) decline in industrial action was the introduction of the enterprise bargaining system. In an important contribution by Hodgkinson and Perera utilising a general macroeconomic explanatory approach, the conclusion was reached that ‘the move to enterprise bargaining [had] been the main determinant of strike volumes ... rather than the particular conditions imbedded in the different legislation’, and that these institutional factors were more influential in relation to the incidence of strikes than economic factors (Hodgkinson and Perera 2004). This argument about the overall importance of the enterprise bargaining system in the decline of industrial action appears to have been noted, or endorsed, in other research (Peetz 1999; Healy 2002; Hodgkinson and Markey 2007).

It is, however, difficult to disentangle this argument from one which would seek to draw stronger connections between the restrictive industrial action laws and the continued decline of industrial action under those laws. One of the objectives of the legal restrictions on industrial action in the post-1996 period was essentially to outlaw such action except when bargaining for an enterprise agreement. This leaves open the prospect that the decline in industrial action noted in the research was (among other possibilities) due either to the restriction of instances in which industrial action could be taken without the imposition of costly sanctions, or because enterprise bargaining had delivered, and was continuing to deliver, ‘wages and conditions without the need for strategic or politically motivated conflict’ (Healy 2002). It is true, of course, that there is a level of credibility in each of these explanations, and also in the likelihood that each of them was important to some degree. These questions were not, however, specifically addressed in the research dealt with here.

Trade Union Organisation and Power

With very few exceptions, research on the likely and actual impacts of the *Workplace Relations Act* upon trade unions, both prior to and after the *Work Choices* amendments, was overwhelmingly negative in its orientation.

Virtually all of the published work in the legal/regulatory discourse focussed on the likely or actual decline of trade union organisational strength and representational capacity. It was argued that the stripping away or restriction of certain institutional rights which had hitherto (prior to 1996) been important features of the Australian labour law system, including effective recognition for registered unions, preference in employment for union members, union rights of entry, 'monopoly of organisation' provisions and so on, would reduce union membership, erode their power, and restrict their capacity to represent workers in workplace and industrial disputes. It was also expected that the new Freedom of Association provisions would impact heavily on trade union membership levels (Naughton 1997; Costa 1997; Lee and Peetz 1998; Coulthard 1999; Fells 1999b; Ford 2000; Forsyth 2000; Bray et al. 2001; Forsyth and Sutherland 2006b; Murray 2006; Bray and Waring 2006; Sutherland 2007b).

A substantial proportion of this published work was focussed on the role of enterprise bargaining (Cooper 2005, 2005; Lambert, Gillan and Fitzgerald 2005) and, in particular, of individualised bargaining, in reducing union influence. Many of the articles and papers reported that a major purpose of individualising employment relations through the introduction of Australian Workplace Agreements was specifically to reduce the role of trade unions in determining conditions of work and, probably more importantly, work organisation and practices (Fetter 2002; Plowman 2002; Peetz 2002a, 2002b; van Barneveld and Waring 2002; van Barneveld and Nassif 2003). An associated view argued that the new freedom of association provisions in the *Workplace Relations Act* had been dominantly interpreted by the courts from an individual rights perspective, with corresponding negative implications for the right to *join* trade unions (Quinn 2004).

Very little of this work, however, dealt with what the impact of the legislation *was*, as compared with what it was *likely to be*, and thus the question remained: did the anti-union nature of the *Workplace Relations Act* 1996-2007 in fact have a negative effect upon trade union organisation and power, and if so in what ways? Whilst it was the case that trade union membership had been in decline for many years, not all of this could be attributable to the impact of the Coalition government's legislation, and this was noted in the scholarly commentary (Costa 1997; Wooden 2000; Cooper 2005, 2005; Bray and Waring 2006). On the other hand, others were able to identify, sometimes using survey results and other data, direct relationships between the legislative changes in the post-1996 period (or at least the 'policy environment': van Wanrooy et al. 2008) and the continuing decline in trade union membership and density levels of organisation (Peetz 2002b; Cooper 2005, 2005; Hodgkinson and Markey 2007). There was also some empirical evidence that enterprise-based bargaining was perceived by workers as associated with declining union influence in the workplace (Bretherton and Hall 2003).

Against this block of evidence, a small study of five unions found, perhaps surprisingly, that those unions had been less affected by the *Workplace Relations Act* 1996 than might have been expected. Measured by their experiences in relation to freedom of association provisions, Australian Workplace Agreements, award simplification and industrial action, the research reported quite mixed responses, concluding that the Act had 'not been as devastating for [the] ... five trade unions as may have been forecast' (Pyman 2001). Several reasons were advanced for these outcomes, including the fact that trade unions may have been able to adapt

their strategies to the new regime (see also Pyman 2004), the fact that some of the anti-union laws had been able to be exploited by unions against employers, and the individual characteristics of the unions themselves. Another study concluded that notwithstanding a decline in union membership in the wake of the *Workplace Relations Act 1996*, the ‘old industrial relations culture’ involving ‘traditional actors and processes’ (including trade unions) remained strong, potentially disclosing important regional variations in the impact of regulatory change (Markey and Hodgkinson 2008).

Several studies undertaken by economists provided direct evidence of the impact of the legal reforms on union influence. These studies typically focussed on union wage effects as an indicator of union power. Much of this research focussed on the impact which the shift to enterprise bargaining had made to the union wage premium (Wooden 2001; Waddoups 2005, 2008). Waddoups found that over a period from 1993 union membership was generally associated with a statistically significant wage premium. However, this influence had changed over time, and these changes were attributable to the effect of legislative changes on union influence in workplaces. The decline in union influence had resulted in a lessening in the value of the union wage effect (Waddoups 2005).

One final important issue concerns the question of trade union recognition. As a result of the decline of the award system, and the corresponding rise of enterprise bargaining, the more or less automatic recognition which registered unions obtained through the compulsory arbitration system was rendered largely ineffective. The *Workplace Relations Act 1996* provided little in the way of an obligation upon employers to recognise a union and bargain with it for the purposes of reaching agreement over workplace regulation. This was found to be in contravention of ILO principles (Fenwick 2006; Whittard et al. 2007). The practical impact of the legislation in this respect was noted in one case study: that the law protected the rights of an employer’s employees to join a union, and, in the particular case, to obtain access to the worksite. But it did not compel the employer to negotiate with the union or reach agreement with it (Whittard et al. 2007). This perceived gap in the law gave rise to several articles examining the need for a statutory right of trade union recognition, and the evolution of such a right in British labour law (Forsyth 1999a; Fells 1999b; Shaw 2001; McCallum 2002).

3. EXPLORING DIFFERENTIAL IMPACTS

One important element in making an assessment of the impact of legislation concerns the *extent* to which the legislation is complied with. As we have noted in Part 2 of this Report, this is not often something which is directly addressed in the research. The extent of compliance, and how compliance may vary between different organisations, is something which may be affected by many factors. These factors include matters such as the extent to which the legislative objectives fit the strategies of companies and other institutions upon which they impact, the mechanics of securing compliance, and other contextual influences from within and outside the business organisation. In the following section we briefly review some of these factors and influences impacting upon the compliance with the Coalition’s post-1996 labour law programme.

Acceptance of Legislative Objectives

Involvement by relevant organisations and parties in the formulation of the particular piece of legislation in question clearly can be expected to affect the degree of its acceptance, the

perception of its legitimacy, and thus the extent to which it is complied with. In the case of the *Workplace Relations Act 1996*, and subsequent Coalition labour legislation, there was virtually no 'social dialogue' involving unions and labour interests, and virtually all of this legislation was strongly opposed by the trade union movement and the opposition Labor Party.

However, it does not follow that the policy objectives of the Coalition government in its labour regulation were unequivocally adopted or supported by all or even most employing organisations. In some respects the Coalition's legislative programme was designed to achieve quite radical, path breaking approaches to workplace relations in a normative sense, rather than mandating specific outcomes and standards, and these general objectives were open to be met in different ways. If the key objectives were generally to facilitate the exercise of greater employer power and managerial authority, the means whereby these objectives could be met were through the development of enterprise bargaining, the introduction of individualised agreements, the reduction in the influence of awards and compulsory arbitration, and the diminution of trade union influence. As noted above, inevitably many different factors impacted upon the degree to which, and how, employers adopted all or any of these means and objectives. These are explored further below (see the sub-head '*Factors Influencing Differential Impact*').

One important point to note, however, is that many employers' groups had been extensively involved in the process of policy formation while the Coalition parties were in opposition prior to the 1996 Federal Election, and a number of the policy ideas developed through this process made their way into Coalition policy and subsequently into the *Workplace Relations Act 1996*.¹³ As part of this process, as the research notes, some employers had already adopted some quite radical practices ahead of the 1996 legislation, particularly large employers in highly volatile markets.¹⁴ For example research on the adoption of individual employment agreements indicates that some employers, using alternative devices such as common law contracts, were ahead of the game, whereas others moved to adopt such strategies only with the support of legislation. The introduction of legislation enabling businesses to move to individual contracts inevitably led to many businesses adopting that option, but despite the government's continued promotion of the value of such arrangements¹⁵ most businesses opted to retain collective regulatory systems. Overall the government's pursuit of individualised regulation at work was not particularly successful.¹⁶

It follows that where regulatory objectives are promotional in character, but not mandatory, the outcomes are almost certain to be very mixed. Even where businesses adopt one or more radically new employment relations options in pursuit of a general policy, there are likely to

¹³ For a brief discussion of the link between the process of policy development and aspects of the Coalition government's labour legislation see Mitchell and Fetter 2003.

¹⁴ See, for example, B. Hearn Mackinnon, 'The Struggle for Managerial Prerogative: Ramifications of the CRA Weipa Dispute' in R. Fells and T. Todd (eds.), *Current Research in Industrial Relations*, AIRAANZ 1996, 287; J. Fetter, *The Strategic Use of Individual Employment Agreements: Three Case Studies*, Working Paper No. 26, Centre for Employment and Labour Relations Law, The University of Melbourne, 2002; M. Jones, S. Marshall and R. Mitchell, 'Corporate Social Responsibility and the Management of Labour in Two Australian Mining Companies' (2007) 15 *Corporate Governance: An International Review* 57.

¹⁵ The state agency responsible for regulating Australian Workplace Agreements, the Office of the Employment Advocate, was able to play a substantial role in promoting the use and benefits of such agreements, despite the potential for a perceived conflict of interest in carrying out these functions: see Mitchell et al. 2005.

¹⁶ See K. van Barneveld, 'Australian Workplace Agreements in Universities' (2009) 51 *Journal of Industrial Relations* 59.

be differential take-ups of such strategies, often varying according to different markets and different regional orientations (Knox 2006; Markey and Hodgkinson 2008). And, on the other hand, even self-regulation designed generally to commit business organisations to maintain certain standards or strategies will provide no assurance of conformity with them.¹⁷

The Requirements of Compliance and Methods of Enforcement

When the legislation contains standards or policies which are more strictly mandated, the issue of how compliance is to be achieved becomes vital. Dickens has contrasted two different models of enforcement in the context of the legal regulation of employment in the UK.¹⁸ One approach is the complaints-based 'individualised, private law model' where employers respond 'reactively' to requests or complaints activated by the claims of individuals or other organisations. The second approach requires 'proactive' response to new law through general managerial adaptation and adjustment relating to workers and organisations. In the second of these cases greater legislative impact might be expected, but this will also depend to a degree upon the influence of such factors as the size of the enterprise, the presence of trade unions in the workplace and the organisation and resources committed to an 'inspectorate' service charged with securing compliance.

In the Australian context, the *Workplace Relations Act 1996* generally imposed labour law obligations which required proactive compliance on the part of employers, such as meeting minimum standards or providing information about employment rights. There were few examples of obligations upon employers which relied upon individual activation. One example was the right to request 52 weeks additional unpaid parental leave, a new standard created by the Australian Industrial Relations Commission in 2005 for implementation through the award system.

Over the period under review, various factors impacted upon the responsiveness of the Australian labour law system to compliance and enforcement in both the 'reactive' and 'proactive' senses noted above. One clear influence was the diminished role of trade unions in enforcement as their rights of entry and bargaining capacities were diminished by legislation (Pyman 2004; Forsyth and Sutherland 2006). At the same time, as our discussion under the sub-head *Enforcement* (see Part 2) reveals there was also a perceived decline in state enforcement activity which researchers typically associated with the shift from a 'collectivised' to a more 'marketised' model. However, as we noted in that earlier discussion, that representation of the trend in the Australian enforcement model did not necessarily accurately reflect what was happening in fact, and further analysis indicates that the trend in enforcement strategies were quite mixed under the *Workplace Relations Act* and subsequent legislation

Whereas it might have been accurate to depict the state inspectorate service to have been largely ineffective prior the *Work Choices* legislation, its operations changed substantially in the later years of the Coalition government's term of office.¹⁹ The resources allocated to the

¹⁷ See Jones, Marshall and Mitchell, above n. 14.

¹⁸ See L. Dickens, 'Delivering Fairer Workplaces Through Statutory Rights? Enforcing Employment Rights in Britain', Paper delivered at the 15th World Congress of the International Industrial Relations Association, Sydney, 2009.

¹⁹ See T. Hardy, 'A Changing of the Guard: Enforcement of Workplace Relations Laws Since Work Choices and Beyond' in A. Forsyth and A. Stewart (eds.), *Fair Work: The New Workplace Laws and the Work Choices Legacy*, Federation Press, Sydney, 2009, 75 at pp. 97-98.

inspectorate increased substantially to coincide with the introduction of the *Work Choices* legislation in 2005 and its modification in 2007. The activities of the inspectorate also shifted from a reactive approach based on individual complaints to a strategy which was focussed on both reactive *and* proactive approaches. In the *Work Choices* period in particular, the inspectorate used ‘targeted campaigns’ to educate some employers in a particular industry before commencing intensive activity across the industry generally.²⁰ At the same time, the inspectorate increased the level of its prosecution activity, and the courts showed increased willingness to impose substantial penalties on employers in an effort to increase their deterrent effect. On the other hand, the incentive for employers to proactively comply with the law may have been somewhat undermined by the inspectorate’s policy of providing employers with the opportunity of complying voluntarily, without prosecution, when non-compliance was detected following an audit or employee complaint.²¹

These general improvements in the enforcement function of the inspectorate coincided, however, with other developments which tended to undermine compliance with labour laws. The *Work Choices* reforms made the regulatory system increasingly complex. It required legal judgements to be made about the extent of coverage of the national system, the application of awards and agreements and the interaction between various instruments.²² These kinds of complexities made it very difficult for employees to identify their proper entitlements and for employers accurately to determine the extent of their obligations. Official documents were also misleading. There were sometimes differences between the published versions of awards and employees’ actual legal entitlements, making it difficult for the inspectorate to enforce those entitlements.²³ Collective agreements were registered and published which contained levels of pay and conditions below the legal minima (Gahan 2007a, 2007b, 2007c and 2007d) and individual Australian Workplace Agreements were approved which were inconsistent with minimum legislative standards.²⁴ The state agencies responsible for regulating agreements were not empowered by the legislation to rectify these inconsistencies when they were detected.

Apart from the confusion inherent in the complexity of the system, there were also inadequacies in the supply of appropriate information, advice and assistance for employees enabling them to pursue their rights and entitlements (Queensland Industrial Relations Commission 2007a; Elton et al. 2007; Bertone, Marshall and Zuhair 2008). Often this required employees to make largely uninformed judgements about legal issues.²⁵

For its part, for reasons of limited resources the inspectorate was necessarily selective in the cases it elected to pursue in cases of non-compliance. Its policy was to require employees to attempt to resolve disputes with their employer directly before the Workplace Ombudsman

²⁰ See Workplace Ombudsman, *Annual Report 2007-2008*, Commonwealth of Australia, Canberra, 2008.

²¹ Official Committee Hansard [2008], *Senate Standing Committee on Education, Employment and Workplace Relations Estimates*, 21st February, 101 [Mr Nicholas Paul Wilson] <http://www.aph.gov.au/hansard/senate/committee/S10644.pdf> at 14th April 2009.

²² See C. Arup and C. Sutherland, ‘The Recovery of Wages: Legal Services and Access to Justice’ (2009) 35 *Monash University Law Review* 96. For further discussion on these kinds of complexities see the references cited in fn. 3 in this Report.

²³ Workplace Ombudsman [2008], *Submission of the Office of the Workplace Ombudsman to the Australian Industrial Relations Commission*, 6th June 2008, <http://www.airc.gov.au/awardmod/databases/general/submissions/wo_sub.pdf> at 14th April 2009

²⁴ P. McIlwain, *Evidence to Estimates Hearing, Senate Committee on Employment, Workplace Relations and Education*, Parliament of Australia, Canberra, 29th May 2006.

²⁵ See Arup and Sutherland, above n. 22.

would undertake an investigation,²⁶ and generally speaking the inspectorate adhered to a litigation policy which excluded from prosecution claims for amounts of less than \$5,000. Employees pursuing these small types of claims were required to undertake the proceedings themselves.

Factors Influencing Differential Impact

As we noted earlier, the degree to which legislation might ‘fit’ a particular business’s orientation or strategy will inevitably affect the way that the legislation is adopted within the organisation. Internal factors such as human resource strategies, embedded work practices, management style, the presence of trade unions and so on can be expected to be influential. So too can external factors such as labour and product markets, and geographical location. Business sector and enterprise size may also be important. As Dickens and Hall note in their Report it is likely to be the case that parties will bring their established patterns of behaviour and outlooks when adjusting to new law rather than simply adapting to its requirements.²⁷

There is no systematic research on these issues in Australia, although there are numbers of studies which identify and explore differential applications of the *Workplace Relations Act 1996* and subsequent legislation in businesses. This is an area which could benefit from more detailed case study and quantitative research.

Taken as a whole, the Australian research demonstrates that there are differing approaches to new legislation taken by employers in different industries, or even within industries. Some evidence shows that there may be differing approaches *within* a single business organisation under certain conditions.²⁸ The research also illustrates the importance of location, business size and the influence of trade unions.

Some of the most interesting work suggests that location can make a major difference in how legislation impacts upon business organisations (Ellem 2002). For example, the longstanding presence of a locally owned business in a relatively small country town might reduce managerial options in taking advantage of legislation that would otherwise impact adversely on the employment, or employment conditions, of local workers.²⁹ Hodgkinson and Markey, in their studies of a range of industrial relations issues in the Illawarra, noted a lack of positive response to some aspects of the Coalition’s labour law policies when compared with others, concluding that ‘If this lack of change in the Illawarra is typical...it helps explain the...Government’s frustration with the truncated reforms in the [*Workplace Relations Act*] and their attempt to counter these problems in the stronger Work Choices legislation’ (Hodgkinson and Markey 2007: see also Markey and Hodgkinson 2008).

Other research noted the importance of enterprise size and industry type, and the relevance of trade union presence, in relation to various industrial relations practices encouraged by the Coalition’s labour laws. For example some research noted that in many sectors small firms had generally not participated in workplace bargaining; medium sized firms tended to adopt a

²⁶ Workplace Ombudsman [2007], *Complaint Handling* <http://www.wo.gov.au/asp/index.asp?sis=7407&page=complaints-view&cid=5315&id=760> at 14th April 2009.

²⁷ See the introductory note to this Report, at p. 30.

²⁸ See Jones, Marshall and Mitchell, above n. 14.

²⁹ See M. Jones, S. Marshall, R. Mitchell and I. Ramsay, *Corporate Governance and Workplace Partnerships Case Studies: Research Report*, Centre for Corporate Law and Securities Regulation, and Centre for Employment and Labour Relations Law, The University of Melbourne, 2008.

more varied pattern of bargaining which depended to a large degree on whether or not they were unionised and in which sector they operated; and that it was mainly larger businesses that were involved in enterprise bargaining, usually with unions (Cairncross and Buultjens 2006; Knox 2006; Considine and Buchanan 2007).³⁰ Some studies noted important differences in the development of enterprise bargaining between the manufacturing and construction industries, and others such as hospitality which had lower unionisation rates, higher rates of casualisation and higher numbers of young employees (Cairncross and Buultjens 2006). Other studies noted that the state of the general labour market might impact upon the ability of businesses to take up particular employment practices (Peetz 2007).

In other words, despite the strong government advocacy for certain types of industrial relations outcomes, and the provision of amenable labour laws in pursuit of those outcomes, structural and other environmental factors continued to impact heavily on the degree to which these policies could be, and were, translated into practice. Whilst much of the research, as we have seen, was able to point to variations in the uptake of practices according to differing market, industry, enterprise and employee-type factors, it is less clear that it was always able to explain *why* those factors had the impact they did. Further research in this area would be helpful.

4. SCOPE AND METHODOLOGY OF RESEARCH

More than 180 journal articles were selected as potentially relevant to this review of the Liberal/National Coalition Party's employment legislation in the period 1996-2008 (see Appendix 2, Section A). These included works by labour lawyers, and by a broader range of scholars interested in labour regulation, industrial relations, and employment and work issues generally. However, when we sifted this material through with a view to identifying pieces of work which investigated the impact of the legislation on the basis of primary research data, we were only able to find 29 valuable examples (see Appendix 3). Only two of these were authored, or co-authored, by persons who would be primarily identified as labour lawyers.

This confirms what others have noted: there has been 'surprisingly little' analysis of the impact of the *Workplace Relations Act 1996*, and of the analysis which exists, '[v]ery little' is quantitative in nature (Hodgkinson and Markey 2007). Inevitably this gives rise to various questions and issues concerning the nature of research and scholarship on legal and associated questions, in legal and associated disciplines. These are considered in this Part of the Report.

The Tradition of Research in Labour Law

There have been numerous detailed critiques of the nature of labour law research and methodologies in Australia and elsewhere going back to the 1980s at least.³¹ These have

³⁰ See also generally, A. Knox, 'Better the Devil You Know? An Analysis of Employers' Bargaining Preferences in the Australian Hotel Industry' (2009) 51 *Journal of Industrial Relations* 25.

³¹ See B. Hepple and W. Brown, 'Tasks for Labour Law Research' (1981) 1 *Legal Studies* 56; W. B. Creighton, 'A Review of Labour Law Research in Australia' in S. Edlund (ed.), *Labour Law Research in Twelve Countries*, Swedish Work Environment Fund, Stockholm, 1986, 212; R. Mitchell, 'Labour Law Research in Australia: A Review of the Literature 1975-1985' (1987) 1 *Labour and Industry* 96; L. Bennett, *Making Labour Law in Australia*, Law Book Co., Sydney, 1994, pp. 3-7; L. Bennett, 'Rethinking Labour Law: Methodological Issues' in R. Mitchell (ed.), *Redefining Labour Law*, Centre for Employment and Labour Relations Law, University of Melbourne, 1995, 137; A. Frazer, 'Industrial Relations and the Sociological Study of Labour Law' (2009) 19 *Labour and Industry* 73.

generally expressed concerns about the perceived ‘narrowness’ of much work in the field, and have suggested, among other things, that an openness to the methodologies of other disciplines, a preparedness to access and utilise non-legal data, and a willingness to deal with questions which are not core legal questions as such would help strengthen research in this area. More specifically it has been claimed that ‘traditional legal research methods are derived from the practices and reasoning of the legal system and are incommensurable with the objectives of systematic social science’,³² and that ‘evaluation of the impact of law on labour relations must involve empirical methods’.³³ In short, this argument is calling for a more multi- or inter- disciplinary approach to labour law research generally.³⁴

We know that notwithstanding this debate in the literature, labour lawyers generally have adhered to their traditional approaches. There is very little interdisciplinary work, or empirical examination of the impact of labour law conducted by groups of labour lawyers and social scientists.³⁵ This is not to say that there is a complete absence of such studies,³⁶ but a search of the contents of the *Australian Journal of Labour Law* over the twenty-two year period of its existence reveals at most 10 articles which might (with some license) be labelled as ‘empirical’,³⁷ and none which could truly be said to be collaborations between lawyers and social science scholars. Only in recent years are there signs that this tendency in labour law research might be slowly changing.³⁸

We are not suggesting here that the work of labour law scholarship in its traditional form does not represent a valuable and important contribution to the field. Clearly it does, and in certain respects this work provides the foundation for much other work in the sub-discipline. Labour law scholarship of the traditional kind provides us with a record of the developing legal content in regulating work (cases and statutes), critical analysis of legal policy (why and how the state chooses to intervene in this area), examinations of the activities and practices of labour law judicial/administrative agencies and so on.

Rather, the case being made out, and following other studies, is that work in the labour law ‘tradition’ still dominates overwhelmingly to the exclusion of other approaches and methodologies. Dickens and Hall note that:

³² S. Hammond and P. Ronfeldt, ‘Legal Methods: Asking New Questions about Law and the World of Work’ in K. Whitfield and G. Strauss (eds.), *Researching the World of Work: Strategies and Methods in Studying Industrial Relations*, ILR Press, Ithaca NY, 1998, 227, at p. 227. Such arguments as these are, of course, applicable to empirical legal scholarship generally: see L. Epstein and G. King, ‘The Rules of Inference’ (2002) 69 *University of Chicago Law Review* 1, and R. Revesz, ‘A Defense of Empirical Legal Scholarship’ (2002) 69 *University of Chicago Law Review* 169.

³³ *Ibid.*, at p. 235.

³⁴ On these matters for law generally see C. McCrudden, ‘Legal Research and the Social Sciences’ (2006) 122 *Law Quarterly Review* 632; M. Siems, ‘The Taxonomy of Interdisciplinary Legal Research: Finding a Way out of the Desert’ at <http://ssrn.com/abstract=1146162>

³⁵ See Frazer, above n. 31, at p. 77.

³⁶ See the examples listed in Frazer above n. 31 at pp. 76-77.

³⁷ These include articles on occupational health and safety, unfair dismissal, anti-discrimination and family-oriented work rights, and a small number of studies comparing employment entitlements under different types of legal instruments. Several of these articles were contributed by persons from non-legal disciplines.

³⁸ For example, there are several instances over the past decade of Australian Research Council funding for projects on corporate governance and labour –management systems, intellectual property, occupational health and safety, and enforcement of labour standards, which have adopted a mixture of legal and textual analysis, and survey, case study and interview techniques.

There is generally less attention...to how the law is used: not simply whether it achieves its objectives (however defined) but how people come to accommodate and live with it; and on how it impacts on, and interacts with, various aspects of employment relations, labour markets and outcomes (such as performance and competitiveness).³⁹

One consequence of this weakness in research is the rather stultifying effect it has when it comes to participation by labour lawyers in political/social debate during important periods of labour law change. Very often, we suggest, these debates tend to be dominated by industrial relations scholars and labour economists, who are able to comment on likely socio-economic and industrial impacts of legal change based on empirical data to the exclusion of labour lawyers who are more limited to reporting on what the content and intent of the law is. Compounding the problem, so it seems, is the fact that when labour lawyers do seek to utilise empirical data, that work is 'impressionistic',⁴⁰ and unsound because it tends to be 'based upon untested behavioural assumptions and are more or less *fact-free*'.⁴¹ In other words, 'lawyers are not taught how to handle, find, interpret, prove and rebut facts'.⁴²

It should not be thought that this state of affairs is merely a problem of and for labour law and labour lawyers. What happens when social scientists deal with legal data is equally problematical, we suggest.⁴³ In their review of the British studies in this area, Dickens and Hall drew the conclusion that:

Many still investigate labour markets and workplace relations focussing on areas where legal regulation is intended, or could be expected, to play a role...without actively exploring or commenting on this aspect. Thus their research throws little light on the role of law as a factor among others shaping employment practice and outcomes.⁴⁴

This is largely true, we feel, of similar work in Australia. Social scientists, including those engaged in industrial relations scholarship, who deal as a matter of course with the extensive legal regulation in this area, tend to treat the law as unproblematic: that is, they treat the law as though it means what it seems to say, and that it works as it appears intended to work. Thus the core question which remains to be answered is this: does labour law have anything to offer social science research in employment and work other than a more detailed attention to the legislative (and judicial) rules?

One leading scholar has raised doubts whether labour lawyers have much to contribute:

³⁹ See the Dickens and Hall Report, cited in the introductory note to this Report, at p. 32.

⁴⁰ See Hammond and Ronfeldt, above n.32, at p. 233.

⁴¹ *Ibid.* The emphasis is in the original.

⁴² See P. Schuk, 'Why Don't Professors Do More Empirical Research?' (1989) 39 *Journal of Legal Education* 323 at p. 334.

⁴³ See also Hammond and Ronfeldt, above n. 32, at p. 238.

⁴⁴ See the Dickens and Hall Report, cited in the introductory note to this Report, at p. 32.

An enormous body of empirical literature now exists on the social and economic effects of labour legislation, but not much of this work is done by lawyers, and if they do participate in multi-disciplinary teams it is not always clear what their specific contribution is beyond supplying a basic level of knowledge on the content of legal rules. In most cases, sociologists and economists seem to be able to proceed without any help from lawyers at all...This suggests that labour lawyers (and other legal scholars with an interest in interdisciplinarity) need to do two things. The first is to understand better what social scientists are doing. Secondly...lawyers need to convince social scientists that their own discipline has something useful to offer. This is, if anything, a more difficult task, because legal scholars rarely think about what the methodology of their discipline is in a social science sense. Paradoxically, it may be that for lawyers to engage in interdisciplinary research, they will first have to understand their own task better.⁴⁵

It may be the case that in the UK the 'voluntarist' tradition has to some degree obscured the need for industrial relations scholars to address the legal framework and its impact in their work.⁴⁶ But plainly this is not the case in Australia with its extensive legal regulation of most aspects of industrial and employment relations, and it is clear from the studies cited in this report that those bringing social science techniques to the study of employment and work do not regard the law as unimportant. It is necessary, therefore, unless we are content to accept the rather bleak assessment outlined above, for labour lawyers to move more positively towards an effective engagement with social science research projects as a means of dealing with both aspects of the problem. It may be, as Deakin notes, that what we have to offer may be difficult to identify and justify.⁴⁷ But there may be ways forward in this project.

In an important recent paper McCrudden has argued that there are developments within legal scholarship which are 'creating opportunities for closer working ... between law and the social sciences'.⁴⁸ The author has argued that legal scholarship might serve to enrich social science research for several reasons: (i) that it might help provide conceptual clarity and specificity about social norms that occur in both the legal and social contexts; (ii) that social scientists who are not lawyers are...less likely to recognise when law is playing an important role; (iii) that legal researchers are able to see the need for a normative dimension, particularly where such research leads to policy proposals; and (iv) that the tendency within both economics and sociology is to treat law 'as a datum, as fact, unproblematic, and one-dimensional'.⁴⁹

Expanding on this last point the author continues:

If legal academic work shows anything, it shows that an applicable legal norm on anything but the most banal question is likely to be complex,

⁴⁵ See S. Deakin, 'A New Paradigm for Labour Law?' (2007) 31 *Melbourne University Law Review* 1161, at 1171-1172.

⁴⁶ See Dickens and Hall, pp. 32-33.

⁴⁷ See above n. 45.

⁴⁸ See above n. 34 at p. 642.

⁴⁹ *Ibid*, at pp. 648-649.

nuanced and contested. Law is more often in the process of becoming, than settled. Law is not a datum; it is in a constant evolution, developing in ways that are sometimes startling and endlessly inventive.⁵⁰

If there is any cogency in these arguments, the problem seems to be not that labour law has nothing to offer to multi- and inter-disciplinary projects, but rather that there is a failure in several respects in both disciplines, law and social science, to engage adequately with the other. In his recent article in *Labour and Industry*, Andrew Frazer, traversing much of this debate, suggests that the ‘sociological study of labour law’ might provide an appropriate paradigm for a renewed approach by labour lawyers and industrial relations scholars alike.⁵¹ Whatever approach is used, we would argue that the sub-discipline of labour law requires something of a rethink from a methodological perspective at least.⁵² But there are other issues which also require consideration.

The Research Assessment Exercise⁵³

Commencing in 2010 the Australian government will begin a research assessment exercise – Excellence in Research for Australia (ERA). This external evaluation of university-based research will undoubtedly affect public funding and support for research in Australia, and there will be appreciable pressure upon academics to do well in this ranking exercise.

It remains to be seen what this might mean for the ‘type’ of research undertaken, and the content of the material produced, in labour law. The overriding criterion is research excellence or quality. This will no doubt include work done in the form of doctrinal analysis of legal concepts and principles, but will certainly also include research done in a ‘law in context’ vogue, as well as research utilising interdisciplinary and empirical approaches.

Critical to the ERA assessment exercise is the issue of journal rankings, which is one of the core indicators of the scheme. To this point of time, it is doubtful that the particular status of journals has exercised more than a mild influence over the standing of particular pieces of research. In labour law, for example, most scholars would tend to judge on the quality of the piece rather than the status of the journal. The *Australian Journal of Labour Law* is the premier (and sole) labour law-specific journal in the country, but there are other labour-specific journals which also carry important contributions on labour law, such as the *Journal of Industrial Relations*, and *Labour and Industry*, and there are also generalist law reviews which publish labour law articles. Hitherto, the relative status of these journals has not been a particularly significant issue.

However, this position will change, possibly radically, with the onset of the ERA exercise. Not all contributions will be read as part of the ERA and for that reason, if for no other, journal rankings will inevitably play an important part in the assessment of relative research quality and standing. Under the influence of the ERA exercise, law journals have, for the first time in Australia, been formally ranked. This ranking is quite exhaustive, and includes all important domestic and foreign journals published in English. This reliance on journal

⁵⁰ *Ibid*, at p. 648.

⁵¹ See Frazer, above n. 31.

⁵² See also J. Teicher, ‘Industrial Relations and the Law: The New Industrial Relations (Issues)’ (2004) 15 *Labour and Industry* 114.

⁵³ See generally C. Arup, ‘Research Assessment and Legal Scholarship’ (2008) 18 *Legal Education Review* 31.

rankings might be expected to cause some problems. The *Australian Journal of Labour Law* and some relevant journals in associated disciplines at this stage appear to have been ranked quite highly.⁵⁴ However, many of the highest ranked specialist journals ('A*') are published in America or the United Kingdom, and these foreign journals, particularly in jurisdiction-specific legal studies, are not often attracted to single country analyses, especially from small jurisdictions such as Australia.⁵⁵ The exception in labour law are those journals which are devoted to international and comparative labour law research, such as the *Comparative Labor Law & Policy Journal* and the *International Journal of Comparative Labour Law and Industrial Relations*. But, again, only one of these journals is ranked highly.⁵⁶

As noted above, it is unlikely that any of this will affect the *type* of labour law research carried out. The ERA indicators suggest that interdisciplinary work will be taken seriously in the assessment exercise, and most law journals now are prepared to publish articles which include empirically-based work on the impact or application of law. But the ranking system will almost certainly affect the publication strategy of many labour lawyers, particularly early career researchers. The relative status of the journals in which legal academics publish presently has some bearing on the assessment of promotion and grant applications. However with the formalisation of rankings under the ERA, this influence of journal status on the assessment of an academic's research is likely to become more pervasive. If they are excluded from the highest ranked foreign journals by reason of jurisdiction, Australian labour law scholars will look to publish in the highest Australian ranked journals. But on the whole these are generalist law journals, or generalist labour-oriented journals, and understandably there will be limits to the amount of labour law which such journals will want to carry.

There are other potential disincentives to particular types of publishing in labour law. The small size of the Australian market means that it is difficult to secure publication for specialist monographs in labour law unless they are suitable for prescription as texts for tertiary courses. This militates against the kind of research-based books which would normally result from large(ish) empirical and interdisciplinary work. The subsidised Monographs on Australian Labour Law series⁵⁷ has done something to alleviate this position, but financial backing for such projects still continues to be a problem.

Methodology and Funding

The research reviewed for this Report demonstrates that there are valuable contributions to be made from a diverse set of approaches and methodologies some of which depart from the conventions of traditional legal scholarship. While broadening conventional legal analysis to

⁵⁴ For example, the *Australian Journal of Labour Law*, the *Journal of Industrial Relations*, and *Labour History* have been ranked 'A' (the second tier), *Labour and Industry* 'B', and the *Australian Bulletin of Labour* and the *International Journal of Employment Studies* 'C'.

⁵⁵ There are exceptions such as Jill Murray's article on the Work Choices legislation, and Joellen Riley's article on employment contracts in NSW, both published in the *Industrial Law Journal* (UK). Over a 20 year period (1988-2008), and discounting the work which was European Community-based, international or genuinely comparative, the *Industrial Law Journal*, in a total of more than 220 articles, published only seven pieces which were foreign-system based, three on Canada, two on Australia, one from the US and one based on an Italian statute but written by a British labour lawyer. Over the same period the *Australian Journal of Labour Law* published nine pieces which were based on a foreign system. Eight of these were on aspects of labour law in New Zealand.

⁵⁶ The *Comparative Labor Law & Policy Journal* is ranked at the level 'A'. The *International Journal of Comparative Labour Law and Industrial Relations* is ranked 'C'.

⁵⁷ Federation Press, Sydney.

include empirical research methods may not resolve all issues in debate, it may at least provide a more objective and systematic basis upon which to assess claims made for law, and at the same time create replicable results.

Methodological options include both qualitative and quantitative approaches, and studies which examine impact at both macro- and micro-levels. In some cases, studies may benefit from a research design that embraces mixed methods combining two or more approaches. The choice of method will be dictated by the research questions and epistemological ambitions of the researcher. Importantly for the present discussion, we suggest that studies seeking to evaluate the impact of law call for the use of a more diverse set of methodologies, often requiring triangulation across both qualitative and quantitative data.

Quantitative studies allow for testing hypotheses generated by theoretical models of the likely impacts of law (e.g. what impact the *Work Choices* legislation had on the wages and employment conditions of low-skilled workers), as well as arguments that derive from traditional commentary about the likely effects of legislative reforms or that assess the legislation against criteria which are derived from statutory objectives (e.g. whether or not a reform meets its objectives of meeting fairness or flexibility). It may also be critical for data to be gathered from multiple sources and at different levels (e.g. at individual, organisational and labour market levels). Quantitative data that is longitudinal in nature (i.e. where specific variables of interest can be remeasured at different points in time) may also be critical in assessing the extent to which the relative effect of any legal reform can be calculated with confidence.

Longitudinal work also enables us to discover ‘how perceptions of legislation may change as it becomes embedded and settles down as part of the accepted landscape’.⁵⁸ New legal rules may (and perhaps generally do), for example, generate a degree of uncertainty about how they should be interpreted and complied with. In such contexts firms and unions may alter early responses as they adapt or learn how a particular reform applies (as noted in section 3 of this Report). Moreover, longitudinal studies permit researchers to assess cause-and-effect claims, which cannot be assessed accurately using cross-sectional data because of the difficulty of separating out more general trends and the possible impact of other contributing factors.⁵⁹

This is not to say that longitudinal studies must be *quantitative* in approach. Studies may gather *qualitative* data from individuals over a period of time, such as the Pocock et al. (2008) study on low paid women workers. Researchers in other legal fields have also demonstrated the value of longer-run qualitative historical studies in providing a basis upon which to assess the relative importance of different factors in determining the evolution of legal rules.⁶⁰

⁵⁸ See the Dickens and Hall Report, cited in the introductory note to this Report, at p. 34.

⁵⁹ We noted, for example, in Part 2 of this Report – *Non-standard Work* – that there was no clear distinction made in the research about the extent to which the regulatory reforms post-1996 had contributed to the rise of non-standard employment as compared with other economic and social factors.

⁶⁰ See, for example, K. Pistor, Y. Keinan, J. Kleinheisterkamp and M. West, ‘The Evolution of Corporate Law: A Cross-Country Comparison’ (2003) 23 *University of Pennsylvania Journal of International Economic Law* 791; J. Armour, S. Deakin, P. Lele and M. Siems, ‘How Do Legal Rules Evolve? Evidence from a Cross-Country Comparison of Shareholder, Creditor and Worker Protection’ (2009) 57 *The American Journal of Comparative Law* 579.

Case study research may also be an important approach used by researchers to gain an understanding of the effects of legislative reforms. To begin with, case study research provides the opportunity to explore reasons behind the patterns revealed in larger scale quantitative studies. In particular, they allow the researcher to explore the mechanisms through which such patterns emerge, and the range of factors which might strengthen or moderate the impact of specific legislative reform. For example a few studies covered in this review have used content analysis of workplace agreements to assess the impact of the post-1996 legislative reforms on workplace outcomes. Whilst these studies have revealed differing patterns based on such factors as firm size and industry, beyond indicating an association between the two sets of variables they typically do not provide a direct test of the underlying explanations for the observed patterns. These may, of course, be consistent with more than one possible explanation. Case study research can provide a useful way of filling this gap in knowledge. For example Briggs and Cooper's study (2006) provides a more nuanced investigation of employers' motivations in using non-union agreements which in several respects challenges the broadly assumed position evident in many more general studies. Similarly Pyman's (2001) case study research was able to highlight industry differences in union responses to the *Workplace Relations Act 1996*, and identify divergences in union perceptions of its implications for union strategy.

As Frazer has noted, case studies may help us further in understanding the 'relationship between state-originated legal rules and the norms actually operating within organisations'.⁶¹ He gives as an instance of this kind of work the differing approaches of organisations following the introduction of the *Work Choices* legislation:

When the legislation was announced...some employers quickly took advantage of it. Yet most were reported as holding back, and sometimes it seems this was because the norms of the employing organisation were inconsonant with the new legal rules and the vision they represented. ...No doubt there were many factors motivating individual and group decisions, but in each case some were weightier than others. In any event, the legislation did not translate completely into social norm, and it is important to know why. We have little more than anecdote for seeing how and why this happened, but closer analysis of the processes by which paths were *not* taken – and the motivations of the people who did not take them – would aid immeasurably our understanding of the relationship between law and the organisation of work.⁶²

Case study analysis is also particularly well suited to assessing the uneven application of 'laws on the books' and the role which administrative institutions play in influencing how laws are applied. For example, Elton et al.'s (2007) study of the impact of *Work Choices* on women in low paid sectors uses case studies to investigate the problems individual workers face in obtaining information and assistance in prosecuting claims against employers for failing to meet mandated minimum standards of employment.⁶³

⁶¹ See Frazer, above n. 31 at p.77.

⁶² *Ibid* at p. 89.

⁶³ And for a study by labour lawyers on this issue see C. Arup and C. Sutherland, 'The Recovery of Wages: Legal Services and Access to Justice' (2009) 35 *Monash University Law Review* 96.

In their review of research in the British context, Dickens and Hall note that many of the methodologies needed to evaluate the impact of legislative programmes require more careful study design and greater amounts of data, and are hence likely also to require more resources than traditional approaches employed by legal researchers. There may also be difficulties with obtaining access to information in the first place.⁶⁴ Of course, the public availability of various sets of data means that the utilisation of some empirical sources remains open to labour lawyers, but as the debate on ‘legal origins’ and the evolution of labour law rules demonstrates these may be misleading or open to doubt.⁶⁵ In Australia the Monthly Labour Force and other surveys administered by the Australian Bureau of Statistics provides useful basic data, but, again, there are problems with these sources of information insofar as they typically do not provide evidence on the range of variables required to assess the impact of legislation upon workers or workplaces.

In the UK the Workplace Industrial Relations Survey, and its successor, the Workplace Employment Relations Survey, have provided an important large-scale data set for research use. However the equivalent Australian Workplace Industrial Relations Surveys undertaken in 1990 and 1995 were discontinued following the election of the Liberal/National Party government in 1996, and have not since been revived.

Inevitably these matters concerning the scale of research projects and the kinds of methodologies required to undertake them properly give rise to the question of commissioned research and funding. As we noted earlier in this Report⁶⁶ the Australian Research Council (ARC) has been a source for some relevant interdisciplinary projects, and projects on the impact of legislation.⁶⁷ However, the ARC’s privacy policy makes it impossible to discover systematically what kinds of projects are being funded and which are not, and not all research acknowledges the support of ARC funding even where it exists. There are of course private funding bodies but it is difficult to ascertain what role these have in supporting research of this kind.

That brings us, finally, to the matter of commissioned research. There is no doubt that commissioned research plays an important role in facilitating work on the impact of legislation and the implementation of legislative rules. For example, both the Mitchell and Fetter (2003) and Mitchell et al. (2005) pieces on employment agreements were derived from Reports commissioned by the Workplace Innovation Unit of the Victorian Government, and all of the Gahan Reports (2007) on Greenfields Agreements following the *Work Choices* legislation were also commissioned by State governments. Both Forsyth Reports on Economic Dismissals (2007) were commissioned by the Victorian Office of the Workplace Rights Advocate, another State-government based organisation. However, most of this work came in the anticipation of a Federal election in which labour law would be a highly contentious area of policy. Prior to this commissioned work dealing with the impact of labour legislation was not extensive.

⁶⁴ See the Dickens and Hall Report, at p. 35.

⁶⁵ For example see the discussion of the Botero et al. index for evaluating the extent of labour law protection across different countries in D. Pozen, ‘The Regulation of Labour and the Relevance of Legal Origin’ (2007) 27 *Comparative Labor Law and Policy Journal* 43; B. Ahlring and S. Deakin, ‘Labour Regulation, Corporate Governance, and Legal Origin: A Case of Institutional Complementarity?’ (2007) 4 *Law and Society Review* 865.

⁶⁶ See above n. 38 and associated text.

⁶⁷ For example the van Wanrooy et al. *Australia@Work* project was jointly funded by the ARC and UnionsNSW.

It also must be noted that commissioned research comes with serious baggage. Those commissioning the work usually have a major role in deciding what questions and issues are investigated, and perhaps even how the work is to be carried out. Moreover as noted by Dickens and Hall, '[w]here research is required to inform or support policy initiatives the time-scales for conducting the research are very short'.⁶⁸ And if they don't like the results, those commissioning the research usually have the right to withhold publication. Whilst scholars often negotiate the right to publish freely from the material, inevitably such work is subject to suspicion for lack of impartiality and so on. Much of the commissioned post-*Work Choices* research was viewed in this way by the government in office.

5. ASSESSING THE POST-1996 LEGISLATIVE REFORMS

Over the course of the twentieth century, Australian labour law was dominated by the institutions and functions of the arbitration system and award-based regulation. Although governments over time took differing approaches in how the system should operate, and the extent to which parties should be able to operate beyond the influence of the system, by and large arbitration attracted bi-partisan support from Labor and non-Labor governments. From the early 1980s onwards, however, this bi-partisan support began to unravel. As the successive Labor governments of the 1980s and early 1990s began to open up the Australian economy to international competition, growing pressure from both business groups and trade unions for reforms to the arbitration system emerged, initiating what now appears in hindsight to be an ongoing period of legislative and regulatory instability in Australian labour law and industrial relations.

This commenced with a period of productivity bargaining and award restructuring in the late 1980s and early 1990s, but more serious systemic change came with the introduction of a legal framework for enterprise-based bargaining in 1993. This process of fundamental reform was then continued by the Liberal/National Party Coalition government throughout the period covered in this review (1996-2007). Viewed historically in this way, the legislative agenda pursued by the Coalition government after 1996 may be seen as consolidating, at least to a degree, a process of reform already commenced by the Keating Labor government, synthesising new market-oriented legal norms and regulatory strategies with the traditional Laborist values associated with the arbitration system.

Although there is some debate over the extent to which the legislative reforms in the post-1996 period constituted a radical new phase in labour law regulation,⁶⁹ there is little doubt that the intention of these reforms was to effect a significant shift in the underlying purposes of labour law regulation, and in the criteria which should be used to evaluate the success or otherwise of the labour law system. In the introduction to this Report (Part 1) we noted the numerous rationales which were used to support the Coalition government's labour law programme. It was suggested that in essence the overall programme could be assessed in terms of the balance between the objectives of maintaining a protective platform of rights and entitlements for employees (security and fairness) on the one hand, and the flexible and efficient use of labour systems and human resources on the other. Thus the key question is whether, and if so to what extent, this balance was maintained, or whether the promotion of

⁶⁸ Dicken and Hall, Report, at p. 35.

⁶⁹ See for example A. Stewart, 'Work Choices in Overview: Big Bang or Slow Burn?' (2006) 16 *Economic and Labour Relations Review* 25. See also, S. Cooney, P. Gahan, S. Marshall, R. Mitchell and A. Stewart, *Legal Origins and the Evolution of Australian Labour Law, 1996-2010*, Research Report, Workplace and Corporate Law Research Group, Department of Business Law and Taxation, Monash University, 2009.

flexibility/efficiency-oriented goals were largely achieved at the expense of the law's protective function.

As our review of the relevant literature shows, most researchers engaged in an examination of the Coalition government's labour law programme in the post-1996 period were concerned with assessing the extent to which those reforms had undermined traditional labour law values.⁷⁰ This obviously colours the outcomes of the research substantially since there was correspondingly little research undertaken on the benefits to business organisations of the flexibilities and efficiencies obtained through the legislation.⁷¹ Drawing on the research carried out, it seems well established that overall the legislation delivered to employers greater managerial authority within organisations, and the flexibility to use this authority for commercial purposes in a less legally constrained manner. For example the research showed that the incidence of non-standard employment increased gradually over the post-1996 period; there was increasing downward pressure on wages, particularly through the introduction of provisions in workplace agreements, and the associated folding in of penalty and overtime premiums. Increased flexibility was also evident in relation to dismissal and working-hours arrangements, and this was reflected in the growing concern among employees over job security, particularly after the *Work Choices* amendments. Survey evidence following *Work Choices* indicates that employees generally felt they had less power in the workplace and less capacity to challenge dismissal decisions.

The shift in power to employers is also reflected in the research findings relating to the role of third parties (i.e. trade unions and industrial tribunals). The research supports the proposition that the legislation of successive Coalition governments in the post-1996 period eroded the role of the Australian Industrial Relations Commission in regulating industrial relations matters, without, for a mixture of reasons, managing either to remove or entirely eradicate its influence. However, the interpretive commentary was less unambiguous in relation to the suggested impact of the legislation on trade unions and collective bargaining. The 1996 *Workplace Relations Act* and the *Work Choices* legislation of 2005 both served to weaken unions and the role of awards and collective agreement making. While non-union and individual agreements remained a relatively niche form in agreement making, the *Work Choices* reforms were shown to have had a significant positive effect on the number and workforce coverage of these types of agreements compared with agreements between employers and trade unions.

In summary, then, the evidence suggests a clear and substantial expansion of managerial prerogative and workplace control coinciding with the post-1996 labour law programme, with an accompanying increasing scope for the introduction of work practices which promoted (employer oriented) flexibility in workplace systems and organisation. However, the empirical work is somewhat more mixed in terms of both the magnitude of these effects and the extent to which this expansion of employer power can be attributed to changes in labour legislation. It is likely that much of the growth in flexibility also reflects the impact of a range

⁷⁰ There has also been a major debate over the effect of the Liberal/National Country Part Coalition government's labour market reforms on general macroeconomic outcomes. However, as we noted in the introduction to this Report we have not attempted to cover that debate in this Review. On the whole there are surprisingly few econometric studies which seek to estimate the impact of the Coalition's labour law reforms after 1996 on economic aggregates such as productivity, employment or economic growth: see further fn 2 above.

⁷¹ But for some partial reference to these issues see Bent (1998), Bowden (2000), and Nelson and Holland (2001).

of pressures on businesses which have intensified in recent decades. These trends have, in turn, produced successive waves of downsizing and re-organisation as workplaces adopt new ways of cutting costs and maintaining competitiveness. In the context of these pressures legal change may not always be a prelude to, but may sometimes in fact *follow* changed labour-management practices, at the same time enabling the spread of those changed practices more widely. Of course, in certain circumstances legal change is a vital ingredient in bringing about workplace reform, but it is not always clear when and to what extent this is so.

If we assume at least some causal connection between the post-1996 labour legislation and the growth of employer power, are we able at the same time, on the basis of the evidence provided, to assess whether, and if so to what extent, such employer gains were achieved at the expense of maintaining a balance between fairness (or the protective function of labour law) and flexibility? Certainly the evidence reported here suggests that the growth in flexibility has been achieved at the expense of employees in several respects, i.e. at the cost to workers of less employment security, reduced wages, longer working hours, less access to training, and less control generally over working lives and family life. It is true, of course that in certain ways new arrangements in flexibilities and rewards do provide positive outcomes for employees, but these do not seem in the Australian case to have been generalised outcomes for workers as a whole over the period under review. An important indicator, perhaps, of how far the wheel has turned, is the frequency with which enjoyment of fundamental workplace protective measures – annual leave, public holidays, flexible working hours and so on - are made subject to various business imperatives. As Dickens and Hall point out in their UK Report, this emphasises not the responsibilities of businesses but the minimising of the degree to which employee rights may interfere with economic efficiency.⁷²

The extent to which the negative outcomes for employees are a direct consequence of the Liberal/National Party government's legislative reforms is, as we have noted, difficult to ascertain, and cannot be determined by reference to the work reviewed for this Report. There are likely to have been other important factors at work over the same period. But the issue remains a critical one, and the need for work which supports reasoned evaluation of the impact of legislation cannot be overlooked. For the moment though, given the complexity of developments and the interaction of legal and socio-economic factors,⁷³ at best we can conclude that the legislative programme of the Coalition government after 1996 undoubtedly contributed to the shifting balance of power and interests away from workers and their institutions and towards employers throughout the 1996-2007 period, and beyond.

⁷² See their Report, p. 39.

⁷³ For a brief general discussion of this kind of interaction in the context of labour law see S. Deakin and F. Wilkinson, *The Law of the Labour Market*, Oxford University Press, Oxford, 2005, pp. 26-35.

APPENDIX 1 – MAJOR DEVELOPMENTS IN EMPLOYMENT RELATIONS LEGISLATION (*WORKPLACE RELATIONS ACT*), 1997 TO 2007

Workplace Relations and Other Legislation Amendment Act 1996 (Cth.) (effective 1 January 1997)

- Substantially amended and re-named the *Industrial Relations Act 1988* (Cth) as the *Workplace Relations Act 1996* (Cth.)
- Introduced individual statutory agreements (Australian Workplace Agreement) to be processed by a new agency (Office of the employment Advocate)
- Limited the content of awards to 20 allowable award matters
- Reduced the arbitral powers of the Australian Industrial Relations Commission
- Greater limitations on the right to bring actions for unfair dismissal
- Enforcement functions transferred from the Industrial Relations Court of Australia to the Federal Court of Australia
- New regime introduced for the regulation of union rights to enter workplaces
- Right not to join a trade union enshrined in the legislation
- New statutory remedies introduced against unlawful industrial action

Workplace Relations Amendment (Termination of Employment) Act 2001 (Cth.) (effective 22 and 30 August 2001)

- Procedural changes to unfair dismissal regulation, and some substantive measures (e.g. greater capacity for AIRC to order costs against applicants, and requiring AIRC to consider special circumstances of small businesses in unfair dismissal claims)

Workplace Relations Amendment (Registration and Accountability of Organisations) Act 2002 (Cth.) (effective 12 May 2003); and ***Workplace Relations Legislation Amendment (Registration and Accountability of Organisations) (Consequential Provisions) Act 2002 (Cth.)*** (effective 12 December 2002 and 12 May 2003)

- Technical and substantive measures to promote democratic control and accountability in federally registered trade unions and employer organisations; increased accountability in several areas, e.g. new statutory duties for office-holders

Workplace Relations Legislation Amendment (Genuine Bargaining) Act 2002 (Cth.) (effective 6 December 2002 and 7 February 2003)

- Introduced restrictions on ‘pattern bargaining’, by increasing guidance to AIRC on whether parties were ‘genuinely negotiating’ and giving AIRC greater capacity to suspend or terminate bargaining periods

Prohibition of Compulsory Union Fees Act 2003 (Cth.) (effective 11 April and 9 May 2003)

- Prohibited union ‘bargaining’ or ‘service fees’ in certified agreements

Workplace Relations Amendment (Fair Termination) Act 2003 (Cth.) (effective 16 October and 27 November 2003)

- Restored the exclusion, from unfair dismissal claims, of casual employees with less than 12 months’ service (this exclusion was previously contained in regulations which were struck down in a Federal Court decision in 2001)

Workplace Relations Amendment (Improved Protection for Victorian Workers) Act 2003 (Cth.) (effective 17 December 2003 and 1 January 2004)

- Empowered the AIRC to make common rule awards having effect in Victoria
- Augmented the minimum wage, leave entitlements, notice of termination and right to be paid for overtime of Victorian employees
- Regulated the conditions of contract outworkers in Victoria, providing that they are paid no less than they would have earned had they been employees

Workplace Relations Amendment (Improved Remedies for Unprotected Action) 2004 (Cth.) (effective 11 March and 30 April 2004)

- Empowered the AIRC to make interim orders in respect of an application under s 127 for an order stopping industrial action

Workplace Relations Amendment (Agreement Validation) Act 2004 (Cth.) (effective 15 December 2004)

- Overcame effects of High Court's *Electrolux* decision, by validating certified agreements containing provisions that would otherwise have resulted in invalidation of the agreement

Workplace Relations Amendment (Work Choices) Act 2005 (Cth.) (effective 27 March 2006)

- Substantially amended and re-numbered the *Workplace Relations Act 1996* (Cth.)
- Introduced a new national workplace relations system which ousted State systems
- Removed the 'no disadvantage test' for workplace agreements, but provided that 'protected award conditions' could only be removed by the express terms of an agreement
- Workplace agreements completely and irrevocably displaced awards, and Australian Workplace Agreements displaced collective agreements
- A new form of agreement, the 'employer greenfields agreement', was introduced allowing employers unilaterally to set the employment conditions applying to a new business project or undertaking
- Introduced prohibited content rules for workplace agreements
- Further reduced allowable award matters and introduced 'not allowable' matters
- Removed the power of the Australian Industrial Relations Commission to make new awards, and limited its power to vary awards
- Abolished the Australian Industrial Relations Commission's general power to settle disputes through conciliation and arbitration, including the power to establish model award provisions through 'test cases'
- Transferred the function of setting the minimum wage from the Australian Industrial Relations Commission to the Australian Fair Pay Commission
- Increased the powers of workplace inspectors and the penalties for non-compliance with workplace relations laws
- Introduced further controls on union rights of entry into workplaces, and imposed new limitations on the remedies available for breach of association provisions (e.g. limiting the ability of unions to obtain injunctions)
- Changed the regulations relating to unions (e.g. permitting State-based unions to become registered under the Federal legislation)

- Introduced new exclusions to unfair dismissal laws for employers with fewer than 100 employees, for employees serving an automatic sixth month qualifying period, and employees who were dismissed for operational reasons

Workplace Relations Amendment (Stronger Safety Net) Act 2007 (Cth.) (effective 1 July 2007)

- Introduced a 'fairness test' for workplace agreements (retrospectively applied to agreements lodged on or after 7 May 2007)
- Changed name of the Office of the Employment Advocate to the Workplace Authority and re-established the Office of Workplace Services as an independent statutory agency renamed the Workplace Ombudsman

APPENDIX 2 – BIBLIOGRAPHY

Section A

(Academic journal articles 1997-2008 selected as potentially relevant)

- Baird, M. and Charlesworth, S. (2007) 'After the Baby: A Qualitative Study of Working-Time Arrangements Following Maternity Leave', *Labour & Industry*, 17(3): 97-118.
- Barrett, R. (2003) 'Small Business and Unfair Dismissal', *Journal of Industrial Relations*, 45(1): 87-93.
- Birmingham, A. (1997) 'A Guide to the Workplace Relations Act 1996', *Australian Bulletin of Labour*, 23(1): 33-47.
- Bowden, B. (2000) 'A Collective Catastrophe: Productivity Maximisation and Workplace Bargaining in the Australian Coal Industry', *Journal of Industrial Relations*, 42(3): 364-382.
- Bray, M. and Waring, P. (1998) 'The Rhetoric and Reality of Bargaining Structures Under the Howard Government', *Labour & Industry*, 9(2): 61-79.
- Bray, M. And Waring, P. (2005) "'Complexity" and "Congruence" in Australian Labour Regulation', *Journal of Industrial Relations*, 47(1): 1-15.
- Bray, M., Waring, P., MacDonald, D. and LeQueux, S. (2001) 'The "Representation Gap" in Australia', *Labour & Industry*, 12(2): 1-31.
- Bray, M. and Waring, P. (2006) 'The Rise of Managerial Prerogative Under the Howard Government', *Australian Bulletin of Labour*, 32(1): 45-61.
- Briggs, C. (2004a) 'The Return of the Lockout in Australia: A Profile of Lockouts Since the Decentralisation of Bargaining', *Australian Bulletin of Labour*, 30(2): 101-112.
- Briggs, C. (2006) 'The Changing Contours of Labour Disputes and Conflict Resolution in Australia: Towards a Post-Arbitral Measurement Framework', *Australian Bulletin of Labour*, 32(4): 345-364.
- Briggs, C. (2007a) 'Lockout Law in Australia: The Case for Reform', *Journal of Industrial Relations*, 49(2): 167-185.
- Briggs, C. (2007b) 'Statutory Union Recognition in North America and the UK: Lessons for Australia?', *Economic and Labour Relations Review*, 17(2): 77-97.
- Briggs, C. and Cooper, R. (2006) 'Between Individualism and Collectivism?: Why Employers Choose Non-Union Collective Agreements', *Labour & Industry*, 17(2): 1-23.
- Brooks, B. (2006) 'The Reform of Labour Laws: An International Comparison', *University of New South Wales Law Journal*, 29(1): 22-46.

- Burgess, J. and Baird, M. (2003) 'Employment Entitlements: Development, Access, Flexibility and Protection', *Australian Bulletin of Labour*, 29(1): 1-13.
- Burgess, J. and Campbell, I. (1998) 'The Nature and Dimensions of Precarious Employment in Australia', *Labour & Industry*, 8(3): 5-21.
- Burgess, J., Strachan, G. and Sullivan, A. (2005) 'The Interaction Between Agreement Making and EEO Programs in Australian Retailing', *International Journal of Employment Studies*, 13(1): 1-25.
- Cairncross, G. and Buultjens, J. (2006) 'Enterprise Bargaining Under the Workplace Relations Act 1996 in Construction and Hospitality Small Businesses: A Comparative Study', *Journal of Industrial Relations*, 48(4): 475-488.
- Campbell, I. (2001) 'Casual Employees and the Training Deficit: Exploring Employer Calculations and Choices', *International Journal of Employment Studies*, 9(1): 61-101.
- Campbell, I. (2007) 'Long Working hours in Australia: Working-Time Regulation and Employer Pressures', *Economic and Labour Relations Review*, 17(2): 37-68.
- Campbell, I. and Chalmers, J. (2008) 'Job Quality and Part-Time Work in the Retail Industry: An Australian Case Study', *International Journal of Human Resource Management*, 19(3): 487-500.
- Chapman, A. (1997) 'Termination of Employment Under the Workplace Relations Act 1996 (Cth)', *Australian Journal of Labour Law*, 10(1): 89-111.
- Chapman, A. (2003) 'The Declining Influence of ILO Standards in Shaping Australian Statutory Provisions on Unfair Dismissal', *Monash University Law Review*, 29(1): 104-136.
- Chapman, A. (2006) 'Unfair Dismissal Law and Work Choices: From Safety Net Standard to Legal Privilege', *Economic and Labour Relations Review*, 16(2): 237-264.
- Chin, D. (1997) 'Exhuming the Individual Employment Contract: A Case of Labour Law Exceptionalism', *Australian Journal of Labour Law*, 10(3): 257-279.
- Cooney, S. (2006) 'Command and Control in the Workplace: Agreement-Making Under Work Choices', *Economic and Labour Relations Review*, 16(2): 147-164.
- Cooney, S., Howe, J. and Murray, J. (2006) 'Time and Money Under Work Choices: Understanding the New Workplace Relations Act as a Scheme of Regulation', *University of New South Wales Law Journal*, 29(1): 215-246.
- Costa, M. (1997) 'Union Strategy Post the Workplace Relations Act 1996', *Australian Bulletin of Labour*, 23(1): 48-58.
- Cowling, S. and Mitchell, W. (2007) 'Taking the Low Road: Minimum Wage Determination Under Work Choices', *Journal of Industrial Relations*, 49(5): 741-756.

- Creighton, B. (1997) 'The Workplace Relations Act in International Perspective', *Australian Journal of Labour Law* 10(1): 31-49.
- Creighton, B. (1999) 'Transformation of Labor and Future of Labor Law in Europe: An Australian Perspective', *Comparative Labor Law & Policy Journal*, 20(4): 635-680.
- Cully, M. and Vandenheuvel, A. (1999a) 'Employee Relations in Australia – An Inter-industry Comparison', *Australian Bulletin of Labour*, 25(2): 89-97.
- Dabscheck, B. (2001) 'The Slow and Agonising Death of the Australian Experiment with Conciliation and Arbitration', *Journal of Industrial Relations*, 43(3): 277-293.
- Dabscheck, B. (2006) 'The Contract Regulation Club', *Economic and Labour Relations Review*, 16(2): 3-24.
- Dawkins, P. (1997) 'The Tortoise Makes a Forward Move: The Economic Effects of the Workplace Relations Act', *Australian Bulletin of Labour*, 23(1): 59-68.
- Denniss, R. (2004) 'Paid Annual Leave in Australia: An Analysis of Actual and Desired Entitlements', *Labour & Industry*, 15(1): 1-16.
- Di Felice, V. (2000) 'Stopping or Preventing Industrial Action in Australia', *Melbourne University Law Review*, 24(2): 310-348.
- Ellem, B. (2002) 'Power, Place and Scale: Union Recognition in the Pilbara, 1999-2002', *Labour and Industry*, 13(2): 67-89.
- Fells, R. (1999a) 'Settlement Process or Tactical Opportunity? Mediation in Industrial Relations', *Journal of Industrial Relations*, 41(4): 594-611.
- Fells, R. (1999b) 'Competitive Negotiation and the Question of Union Negotiating Rights', *Labour & Industry*, 9(3): 99-122.
- Fenwick, C. (2006) 'How Low Can You Go? Minimum Working Conditions Under Australia's New Labour Laws', *Economic and Labour Relations Review*, 16(2): 85-126.
- Fenwick, C. and Landau, I. (2006) 'Work Choices in International Perspective', *Australian Journal of Labour Law*, 19(2): 127-143.
- Fetter, J. (2006) 'Work Choices and Australian Workplace Agreements', *Australian Journal of Labour Law*, 19(2): 210-241.
- Fetter, J. and Mitchell, R. (2004) 'The Legal Complexity of Workplace Regulation and Its Impact upon Functional Flexibility in Australian Workplaces', *Australian Journal of Labour Law*, 17(3): 276-305.
- Fieldes, D. (2008) "'We've Got This New Legislation": A Review Article of Australia@Work and Other 2007 Reports on WorkChoices', *Economic and Labour Relations Review*, 18(1): 143-155.

- Floyd, L. W. (1999) 'Weipa and the Wharves: Australian Strike Law and its Effect on Trade Union Power', *University of Tasmania Law Review*, 18(1): 65-125.
- Forbes-Mewett, H., Griffin, G. and McKenzie, D. (2003a) 'The Australian Industrial Relations Commission: Adapting or Dying?', *International Journal of Employment Studies*, 11(2): 1-23.
- Forbes-Mewett, H., Griffin, G., Griffin, J. and McKenzie, D. (2005) 'The Role and Usage of Conciliation and Mediation in Dispute Resolution in the Australian Industrial Relations Commission', *Australian Bulletin of Labour*, 31(2): 171-189.
- Ford, W. J. (1997) 'Rearranging Workplace Relations: Revolution or Evolution?', *University of Western Australia Law Review*, 27(1): 86-115.
- Ford, W. J. (2000) 'Being There: Changing Union Rights of Entry Under Federal Industrial Law', *Australian Journal of Labour Law*, 13(1): 1-27.
- Forsyth, A. (1999a) 'Proposals for Statutory Union Recognition Rights in Britain and Implications for Australia', *Australian Journal of Labour Law*, 12(1): 32-42.
- Forsyth, A. (1999b) 'The European Framework Agreement on Fixed-Term Work: An Australian Perspective', *International Journal of Comparative Labour Law and Industrial Relations*, 15(2): 161-170.
- Forsyth, A. (2000) 'Trade Union Regulation and the Accountability of Union Office-Holders: Examining the Corporate Model', *Australian Journal of Labour Law*, 13(1): 28-49.
- Forsyth, A. (2006) 'Arbitration Extinguished: the Impact of the Work Choices Legislation on the Australian Industrial Relations Commission', *Australian Bulletin of Labour*, 32(1): 27-44.
- Forsyth, A. (2007a) 'Dispute Resolution Under WorkChoices: The First Year', *Labour & Industry*, 18(1): 21-46.
- Forsyth, A. and Sutherland, C. (2006a) 'Collective Labour Relations Under Siege: The Work Choices Legislation and Collective Bargaining', *Australian Journal of Labour Law*, 19(2): 183-197.
- Forsyth, A. and Sutherland, C. (2006b) 'From "Uncharted Seas" to "Stormy Waters": How Will Trade Unions Fare Under the Work Choices Legislation?', *Economic and Labour Relations Review*, 16(2): 215-236.
- Freyens, B. And Oslington, P. (2005) 'The Likely Employment Impact of Removing Unfair Dismissal Protection', *Journal of Australian Political Economy* 56: 56-65.
- Fudge, J. (2006) 'Precarious Employment in Australian and Canada: The Road to Labour Law Reform', *Australian Journal of Labour Law*, 19(2): 105-126.
- Gardiner, M. (2007) 'Come Spring: The Australian Fair Pay Commission as Legal Transplant', *Australian Journal of Labour Law*, 20(2): 159-188.

- Gaze, B. (2005) 'Quality Part-Time Work: Can Law Provide a Framework?', *Labour & Industry*, 15(3): 89-111.
- Gollan, P. J. (2004) 'Australian Workplace Agreements: An Employer Response', *Journal of Industrial Relations*, 46(1): 116-124.
- Gollan, P. J. and Hamberger, J. (2003) 'Australian Workplace Agreements and High Performance Workplaces: A Critique of Mitchell and Fetter', *Journal of Industrial Relations*, 45(4): 521-527.
- Grimshaw, D., Whitehouse, G. and Zetlin, D. (2001) 'Changing Pay Systems, Occupational Concentration and the Gender Pay Gap: Evidence from Australia and the UK', *Industrial Relations Journal*, 32(3): 209-229.
- Guthrie, R. (2002) 'The Dismissal of Workers Covered by Return to Work Provisions Under Workers Compensation Laws', *Journal of Industrial Relations*, 44(4): 545-561.
- Hall, R. (2006) 'Australian Industrial Relations in 2005 – The WorkChoices Revolution', *Journal of Industrial Relations*, 48(3): 291-303.
- Hampson, I. and Morgan, D. L. (1998) 'Continuity and Change in Australian Industrial Relations', *Industrial Relations/Relationes Industrielles*, 53(3): 564-591.
- Hancock, K. (2000) 'Trends in Australian Industrial Regulation', *Australian Bulletin of Labour*, 26(2): 83-96.
- Harris, J. (2006) 'Federal Collective Bargaining after Electrolux', *Federal Law Review*, 34(1): 45-73.
- Hawke, A. (1998) 'An Indigenous Worker's Guide to the Workplace Relations Act: An Alternative View', *Journal of Industrial Relations*, 40(2): 304-309.
- Healy, J. (2002) 'Peace at Last? Recent Trends in Australia's Industrial Action', *Australian Bulletin of Labour*, 28(2): 80-87.
- Healy, J. (2004) 'The Australian Strike Rate and Industrial Relations: A Brief Reply to Perry', *Australian Bulletin of Labour*, 30(2): 149-154.
- Hendy, J. and Walton, M. (1997) 'An Individual Right to Union Representation in International Law', *Industrial Law Journal*, 26(3): 205-223.
- Hodgkinson, A. and Markey, R. (2007) 'Industrial Relations Change in the Illawarra Region of NSW: An Insight into Responses to the Workplace Relations Act', *Australian Bulletin of Labour*, 33(1):32-59.
- Hodgkinson, A. and Perera, N. (2004) 'Strike Activity Under Enterprise Bargaining: Economics or Politics?', *Australian Journal of Labour Economics*, 7(4): 439-457.

- Howe, J., Mitchell, R., Murray, J., O'Donnell, A. and Patmore, G. (2005) 'The Coalition's Proposed Industrial Relations Changes: An Interim Assessment', *Australian Bulletin of Labour*, 31(3): 189-209.
- Hunt, I. (2001) 'Right against Right: Are Current Legal Constraints on Trade Unions Justified?', *Labour & Industry*, 11(3): 55-72.
- Hunter, B. (1997) 'An Indigenous Worker's Guide to the Workplace Relations Act', *Journal of Industrial Relations*, 39(4): 439-456.
- Hunter, B. (1998) 'Realism Revisited: A Reply to Hawke's Alternative View', *Journal of Industrial Relations*, 40(2): 310-313.
- Isaac, J. (2007) 'Reforming Australian Industrial Relations?', *Journal of Industrial Relations*, 49(3): 410-435.
- Jefferson, T. and Preston, A. (2007) 'WorkChoices and Family Friendly Working Hours: An Assessment of Data Sources', *Labour & Industry*, 18(1): 47-67.
- Knox, A. (2006) 'The Differential Effects of Regulatory Reform: Evidence from the Australian Luxury Hotel Industry', *Journal of Industrial Relations*, 48(4): 453-474.
- Lambert, R., Gillan, M. and Fitzgerald, S. (2005) 'Electrolux in Australia: Deregulation, Industry Restructuring and the Dynamics of Bargaining', *Journal of Industrial Relations*, 47(3): 261-275.
- Lee, M. (2005a) 'Crafting Remedies for Bad Faith Bargaining, Coercion and Duress: "Relative Ethical Flexibility" in the Twenty-first Century', *Australian Journal of Labour Law*, 18(1): 26-52.
- Lee, M. (2006) 'Regulating Enforcement of Workers' Entitlements in Australia: The New Dimension of Individualisation', *Labour & Industry*, 17(1): 41-60.
- Lee, M. and Peetz, D. (1998) 'Trade Unions and the *Workplace Relations Act*', *Labour & Industry*, 9(2): 5-22.
- Loudon, R. and Harley, B. (2001) 'Industrial Relations Decentralisation and the Growth of 12 Hour Shifts in Australia', *Journal of Industrial Relations*, 43(4): 402-421.
- Lyons, M. (2007), ' "Lies, Damned Lies and Statistics": The Business Coalition for Workplace Reform Campaign of 2007', *Labour and Industry*, 18(1):119-136.
- Markey, R. (2004) 'The State of Representative Participation in Australia: Where to Next?', *International Journal of Comparative Labour Law and Industrial Relations*, 20(4): 533-561.
- Markey, R. and Hodgkinson, A. (2008) 'The Impact of the *Workplace Relations Act* on Regional Patterns of Industrial Relations: The Illawarra Region of Australia, 1996-2004', *Journal of Industrial Relations*, 50(5):752-778.

- Marshall, S. and Mitchell, R. (2006) 'Enterprise Bargaining, Managerial Prerogative and the Protection of Workers' Rights: An Argument on the Role of Law and Regulatory Strategy in Australia Under the *Workplace Relations Act 1996 (Cth)*', *International Journal of Comparative Labour Law and Industrial Relations*, 22(3): 299-327.
- May, R. (2005) 'The British Low Pay Commission and the Proposed Australian Fair Pay Commission', *Journal of Australian Political Economy*, 56: 92-104.
- McCallum, R. (1997a) 'Crafting a New Collective Labour Law for Australia', *Journal of Industrial Relations*, 39(3): 405-422.
- McCallum, R. C. (1997b) 'Australian Workplace Agreements: An Analysis', *Australian Journal of Labour Law*, 10(1): 50-61.
- McCallum, R. (1998a) 'A Priority of Rights: Freedom of Association and the Waterfront Dispute', *Australian Bulletin of Labour*, 24(3): 207-221.
- McCallum, R. (1998b) 'Collective Labour Law, Citizenship and the Future', *Melbourne University Law Review*, 22(1): 42-61.
- McCallum, R. (2002) 'Trade Union Recognition and Australia's Neo-Liberal Voluntary Bargaining Laws', *Industrial Relations/Relationes Industrielles*, 57(2): 225-251.
- McCallum, R. (2006a) 'Justice at Work: Industrial Citizenship and the Corporatization of Australian Labour Law', *Journal of Industrial Relations*, 48(2): 131-153.
- McCallum, R. (2006b) 'The New Work Choices Laws: Once Again Australia Borrows Foreign Labour Law Concepts', *Australian Journal of Labour Law*, 19(2): 98-104.
- McCallum, R. (2007a) 'Australian Labour Law after the Work Choices Avalanche: Developing an Employment Law for our Children', *Journal of Industrial Relations*, 49(3): 436-454.
- McCallum, R. (2007b) 'Convergences and/or Divergences of Labor Law Systems: The View from Australia', *Comparative Labor Law & Policy Journal*, 28(3): 455-467.
- McCarry, G. (1997) 'Industrial Action Under the Workplace Relations Act 1996 (Cth)', *Australian Journal of Labour Law*, 10(1): 133-157.
- McCarry, G. (1998a) 'Relationships Between the Federal and NSW Industrial Relations System', *Australian Journal of Labour Law*, 11(2): 69-94.
- McCrystal, S. (2006a) 'Smothering the Right to Strike: Work Choices and Industrial Action', *Australian Journal of Labour Law*, 19(2): 198-209.
- McCrystal, S. (2006b) 'Shifting the Balance of Power in Collective Bargaining: Australian Law, Industrial Action and Work Choices', *Economic and Labour Relations Review*, 16(2): 193-214.

- McDonald, P., Bailey, J., Oliver, D. and Pini, B. (2007) 'Compounding Vulnerability? Young Workers' Employment Concerns and the Anticipated Impact of the WorkChoices Act', *Australian Bulletin of Labour*, 33(1): 60-88.
- McGrath-Champ, S. (2002) 'Back to the Map? Enterprise Agreements in Rural, Regional and Urban Australia', *Labour and Industry*, 13(2): 117-143.
- McGrath-Champ, S. (2003) 'Employee Benefits in Enterprise Agreements: An Overview', *Australian Bulletin of Labour*, 29(1): 46-61.
- Merlo, O. (2000) 'Flexibility and Stretching Rights: The No Disadvantage Test In Enterprise Bargaining', *Australian Journal of Labour Law*, 13(2): 207-235.
- Michelotti, M. and Nyland, C. (2006) 'Measuring Regulatory Changes in Employment Protection: Labour Standards in Australia 1979 to 2000', *International Journal of Comparative Labour Law and Industrial Relations*, 22(1): 39-80.
- Mitchell, R. (1998) 'Juridification and Labour Law: A Legal Response to the Flexibility Debate in Australia', *International Journal of Comparative Labour Law and Industrial Relations*, 14(2): 113-136.
- Mitchell, R., Campbell, R., Barnes, A., Bicknell, E., Creighton, K., Fetter, J. and Korman, S. (2005) 'What's Going on with the "No Disadvantage Test"? An Analysis of Outcomes and Processes Under the Workplace Relations Act 1996', *Journal of Industrial Relations*, 47(4): 393-423.
- Mitchell, R. and Fetter, J. (2003) 'Human Resource Management and Individualisation in Australian Labour Law', *Journal of Industrial Relations*, 45(3): 292-325.
- Mitchell, R., Naughton, R. and Sorensen, R. (1997) 'The Law and Employee Participation: Evidence from the Federal Enterprise Agreements Process', *Journal of Industrial Relations*, 39(2): 196-217.
- Munro, P. (2006) 'Changes to the Australian Industrial Relations System: Reforms or Shattered Icons? An Insider's Assessment of the Probable Impact on Employers, Employees and Unions', *University of New South Wales Law Journal*, 29(1): 128-165.
- Murray, J. (2006) 'Work Choices and the Radical Revision of the Public Realm of Australian Statutory Labour Law', *Industrial Law Journal*, 35(4): 343-366.
- Naughton, R. (1997) 'Sailing into Uncharted Seas: The Role of Unions Under the Workplace Relations Act 1996 (Cth)', *Australian Journal of Labour Law*, 10(1): 112-132.
- Nelson, L. and Holland, P. 'Assessing the Impact of Twelve-Hour Shifts: An Evaluation by Ten Companies and Union Officials', *Labour and Industry*, 12(2): 97-113.
- O'Brien, J. and O'Donnell, M. (1999) 'Government, Management and Unions: The Public Service Under the Workplace Relations Act', *Journal of Industrial Relations*, 41(3): 446-467.

- Orr, G. (2001) 'Agency Shops in Australia? Compulsory Bargaining Fees, Union (In)Security and the Rights of Free-Riders', *Australian Journal of Labour Law*, 14(1): 1-35.
- Orr, G. and Murugesan, S. (2007) 'Mandatory Secret Ballots before Employee Industrial Action', *Australian Journal of Labour Law*, 20(3): 272-294.
- Owens, R. (2002) 'Decent Work for the Contingent Workforce in the New Economy', *Australian Journal of Labour Law*, 15(3): 209-234.
- Owens, R. (2006) 'Working Precariously: The Safety Net After Work Choices', *Australian Journal of Labour Law*, 19(2): 161-182.
- Patmore, G. (2006) 'A Voice for Whom? Employee Representation and Labour Legislation in Australia', *University of New South Wales Law Journal*, 29(1): 8-21.
- Peetz, D. (1998) 'The Safety Net, Bargaining and the Role of the Australian Industrial Relations Commission', *Journal of Industrial Relations*, 40(4): 532-553.
- Peetz, D. (1999) 'Nearly the Year of Living Dangerously: In the Emerging Worlds of Australian Industrial Relations', *Asia Pacific Journal of Human Resources*, 37(2): 3-23.
- Peetz, D. (2002a) 'Decollectivist Strategies in Oceania', *Industrial Relations/Relationes Industrielles*, 57(2): 252-281.
- Peetz, D. (2002b) 'Individual Contracts, Bargaining and Union Membership', *Australian Bulletin of Labour*, 28(1): 39-52.
- Peetz, D. (2005) 'Trend Analysis of Union Membership', *Australian Journal of Labour Economics*, 8(1): 1-24
- Pencavel, J. (1999) 'The Appropriate Design of Collective Bargaining Systems: Learning from the Experience of Britain, Australia, and New Zealand', *Comparative Labor Law & Policy Journal*, 20(3): 447-479.
- Perry, L. (2004) 'Comment on the Decline in Strikes in Australia', *Australian Bulletin of Labour*, 30(2): 134-148.
- Perry, L. J. and Wilson, P. J. (2005) 'The Decline of Seasonality in Australian Quarterly Aggregate Strike Statistics: 1983-2003', *Australian Journal of Labour Economics*, 8(1): 43-71.
- Pittard, M. (1997) 'Collective Employment Relationships: Reforms to Arbitrated Awards and Certified Agreements', *Australian Journal of Labour Law*, 10(1): 62-88.
- Pittard, M (2002) 'Unfair Dismissal Laws: The Problem of Application to Small Business', *Australian Journal of Labour Law*, 15(2): 154-169.
- Pittard, M. (2006) 'Back to the Future: Unjust Termination of Employment Under the Work Choices Legislation', *Australian Journal of Labour Law*, 19(3): 225-262.

- Pocock, B., Buchanan, J. and Campbell, I. (2004) 'Meeting the Challenge of Casual Work in Australia: Evidence, Past Treatment and Future Policy', *Australian Bulletin of Labour*, 30(1): 16-32.
- Pocock, B., Elton, J., Preston, A., Charlesworth, S., MacDonald, F., Baird, M., Cooper, R. and Ellem, B. (2008) 'The Impact of "Work Choices" on Women in Low Paid Employment in Australia: A Qualitative Analysis', *Journal of Industrial Relations*, 50(3): 475-488.
- Preston, A. (2003) 'Gender Earnings and Part-Time Pay in Australia, 1990-1998', *British Journal of Industrial Relations*, 41(3): 417-433.
- Preston, A. and Crockett, G. (1999) 'State of Pay: Female Relative Earnings in Australia', *Labour & Industry*, 10(2): 129-146.
- Pyman, A. (2001) 'Workplace Relations and Other Legislation Amendment Act 1996 (Cwlth): Experiences of Five Australian Trade Unions', *Journal of Industrial Relations*, 43(3): 340-347.
- Pyman, A., Cooper, B., Teicher, J. and Holland, P. (2006) 'A Comparison of the Effectiveness of Employee Voice Arrangements in Australia', *Industrial Relations Journal*, 37(5): 543-559.
- Quinn, D. (2004) 'To Be or Not To Be a Member – Is That the Only Question? Freedom of Association Under the Workplace Relations Act', *Australian Journal of Labour Law*, 17(1): 1-34.
- Riley, J. (2003) 'Protection for Employment Entitlements: a Legal Perspective', *Australian Bulletin of Labour*, 29(1): 31-45.
- Riley, J. (2006a) 'A Fair Deal for the Entrepreneurial Worker? Self-employment and Independent Contracting Post Work Choices', *Australian Journal of Labour Law*, 19(3): 246-262.
- Riley, J. (2006b) 'The Evolution of the Contract of Employment Post Work Choices', *University of New South Wales Law Journal*, 29(1): 166-180.
- Rimmer, M. (1997) 'The Workplace Relations Act 1996: An Historical Perspective', *Australian Bulletin of Labour*, 23(1): 69-81.
- Roan, A., Bramble, T. and Lafferty, G. (2001) 'Australian Workplace Agreements in Practice: The Hard and Soft Dimensions', *Journal of Industrial Relations*, 43(4): 387-401.
- Robbins, W. and Voll, G. (2005) 'The Case for Unfair Dismissal Reform: A Review of the Evidence', *Australian Bulletin of Labour*, 31(3): 237-254.
- Saunders, P. (2006) 'Unleashing (Labour) Market Forces: The Social Policy Implications of Industrial Relations Reform', *University of New South Wales Law Journal*, 29(1): 80-90.
- Sebbens, T. D. (2003) "'Wake, O Wake" – Transmission of Business Provisions in Outsourcing and Privatisation', *Australian Journal of Labour Law*, 16(1): 133-171.

- Shaw, J. (2001) 'Observations on Trade Union Recognition in Britain and Australia', *University of New South Wales Law Journal*, 24(1): 214-227.
- Sheldon, P. and Junor, A. (2006) 'Australian HRM and the *Workplace Relations Amendment (Work Choices) Act 2005*', *Asia Pacific Journal of Human Resources*, 44(2): 153-170.
- Sheldon, P. and Kohn, N. (2008) 'AWAs and Individual Bargaining in the Era of WorkChoices: A Critical Evaluation using Negotiation Theory', *Economic and Labour Relations Review*, 18(1): 115-142.
- Sloan, J. (1997) 'The Workplace Relations Act 1996: An Overview', *Australian Bulletin of Labour*, 23(1): 28-32.
- Southey, K. (2008) 'Forward with Unfair Dismissal Claims', *Labour and Industry*, 19(1-2):25-48.
- Stewart, A. (2004) 'The AIRC's Evolving Role in Policing Bargaining', *Australian Journal of Labour Law*, 17(3): 245-275.
- Stewart, A. (2006) 'Work Choices in Overview: Big Bang or Slow Burn?', *Economic and Labour Relations Review*, 16(2): 25-61.
- Stewart, A. and Riley, J. (2007) 'Working Around Work Choices: Collective Bargaining and the Common Law', *Melbourne University Law Review*, 31(3): 903-937.
- Strachan, G. and Burgess, J. (2000) 'The Incompatibility of Decentralized Bargaining and Equal Employment Opportunity in Australia', *British Journal of Industrial Relations*, 38(3): 361-381.
- Sutherland, C. (2005) 'By Invitation Only: The Role of the AIRC in Private Arbitration', *Australian Journal of Labour Law*, 18(1): 53-70.
- Sutherland, C. (2007a) 'All Stitched Up? The 2007 Amendments to the Safety Net', *Australian Journal of Labour Law*, 20(2): 245-271.
- Tham, J. (2007) 'Towards an Understanding of Standard Employment Relationships Under Australian Labour Law', *Australian Journal of Labour Law*, 20(2): 123-158.
- Thorpe, M. and McDonald, J. (1998) 'Freedom of Association and Union Membership', *Labour & Industry*, 9(2): 23-42.
- Timo, N. (1998) 'Precarious Employment and Individual Contracts in an Australian Mining Company', *Labour & Industry*, 9(1): 53-68.
- Todd, P., Caspersz, D. and Sutherland, M. (2006) 'Employers' Choices in Workplace Regulation: Individual Agreement', *Journal of Industrial Relations*, 48(4): 507-521.
- van Barneveld, K. (2006) 'Australian Workplace Agreements Under Work Choices', *Economic and Labour Relations Review*, 16(2): 165-192.

- van Barneveld, K. and Arsovska, B. (2001a) 'AWAs, Changing the Structure of Wages?', *Labour & Industry*, 12(1): 87-108.
- van Barneveld, K. and Nassif, R. (2003) 'Motivations for the Introduction of Australian Workplace Agreements', *Labour & Industry*, 14(2): 21-37.
- van Barneveld, K. and Waring, P. (2002) 'AWAs: A Review of the Literature and Debates', *Australian Bulletin of Labour*, 28(2): 104-119.
- Waddoups, C. J. (2005) 'Trade Union Decline and Union Wage Effects in Australia', *Industrial Relations*, 44(4): 607-624.
- Waddoups, C. J. (2008) 'Unions, Wages and Employer Size in Australia', *Industrial Relations*, 47(1): 136-144.
- Walton, M. (2006) 'The New South Wales Industrial Relations System: 1998 to the Workplace Relations Amendment (Work Choices) Act 2005', *University of New South Wales Law Journal*, 29(1): 47-79.
- Waring, P. (2003) 'The Nature and Consequences of Temporary and Contract Employment in the Australian Black Coal Mining Industry', *Labour and Industry*, 14(2): 83-96.
- Waring, P., Burgess, J. and de Ruyter, A. (2006) 'The Australian Fair Pay Commission: Rationale, Operation, Antecedents and Implications', *Economic and Labour Relations Review*, 16(2): 127-146.
- Waring, P. and De Ruyter, A. (1999) 'Dismissing the Unfair Dismissal Myth', *Australian Bulletin of Labour*, 25(3): 251-274.
- Waring, P. and Lewer, J. (2001) 'The No-Disadvantage Test: Failing Workers', *Labour & Industry*, 12(1): 65-86.
- Watson, I. (2005) 'Contented Workers in Inferior Jobs? Reassessing Casual Employment in Australia', *Journal of Industrial Relations*, 47(4): 371-392.
- Watts, M. J. and Burgess, J. (2000) 'The Polarisation of Earnings and Hours in Australia Under a Decentralised Industrial Relations System: The Lessons for Economic Policy', *International Journal of Employment Studies*, 8(1): 27-58.
- Weller, S. (1999) 'Clothing Outwork: Union Strategy, Labour Regulation and Labour Market Restructuring', *Journal of Industrial Relations*, 41(2):203-227.
- Winley, V. (1997) 'Workplace Relations Act 1996: Implications for Business', *Australian Bulletin of Labour*, 23(1): 82-90.
- White, C. (2005) 'WorkChoices: Removing the Choice to Strike', *Journal of Australian Political Economy* 56: 66-80.

Whitehouse, G. (2001) 'Industrial Agreements and Work/Family Provisions: Trends and Prospects Under "Enterprise Bargaining"', 12(1): 109-129.

Whitehouse, G. and Frino, B. (2003) 'Women, Wages and Industrial Agreements', *Australian Journal of Labour Economics*, 6(4): 579-596.

Whittard, J., Bray, M., Larkin, R., Lewer, J. and Groen, E. (2007) 'Collective Bargaining Rights Under the *Workplace Relations Act*: The Boeing Dispute', *Labour & Industry*, 18(1): 1-19.

Williamson, S. and Baird, M. (2007) 'Family Provisions and WorkChoices: Testing Times', *Australian Journal of Labour Law*, 20(1): 53-74.

Wooden, M. (1999) 'Individual Agreement-Making in Australian Workplaces: Incidence, Trends and Features', *Journal of Industrial Relations*, 41(3): 417-445.

Wooden, M. (2001) 'Union Wage Effects in the Presence of Enterprise Bargaining', *The Economic Record*, 77 (236): 1-18.

Wooden, M. (2005) 'Minimum Wage Setting and the Australian Fair Pay Commission', *Journal of Australian Political Economy*, 56: 81-91.

Section B

(Other material which was used or referred to in the Report's preparation)

Ahlering, B. and Deakin, S. (2007) 'Labour Regulation, Corporate Governance and Legal Origin: A Case of Institutional Complementarity?', *Law & Society Review*, 41(4): 865-908.

Arup, C. (2008) 'Research Assessment and Legal Scholarship', *Legal Education Review*, 18(1-2): 31-54.

Arup, C. and Sutherland, C. (2009) 'The Recovery of Wages: Legal Services and Access to Justice', *Monash University Law Review*, 35(1): 96-117.

Armour, J., Deakin, S., Lele, P. and Siems, M. (2007) 'How Do Legal Rules Evolve? Evidence from a Cross-Country Comparison of Shareholder, Creditor and Worker Protection', *The American Journal of Comparative Law*, 57(3): 579-630.

Baird, M., Cooper, R. and Oliver, D. (2007) *Down and Out with WorkChoices: The Impact of WorkChoices on the Work and Lives of Women in Low Paid Employment*, Report for New South Wales Office of Industrial Relations, Sydney.

Baird, M., Page, A. and Whelan, J. (2007) *Maternity and Parental Leave in Australia – Before and After WorkChoices*, Proceedings of Association of Industrial Relations Academics of Australia and New Zealand Conference 2007, 7-9 February 2007, Auckland.

Bennett, L. (1994) *Making Labour Law in Australia*, Sydney: Law Book Company.

Bennett, L. (1995) 'Rethinking Labour Law: Methodological Issues', in Mitchell, R. (ed.), *Redefining Labour Law*, pp. 137-149, Centre for Employment and Labour Relations Law, University of Melbourne.

Bent, S. (1998) 'The Psychological Effects of Extended Working Hours', in K. Heiler (ed.), *The 12 Hour Workday: Emerging Issues*, Working Paper No 51, Australian Centre for Industrial Relations Research and Teaching, University of Sydney, Sydney.

Bertone, S., Marshall, S. and Zuhair, S. (2008) *What Impact has Workchoices had on the Wages, Working Conditions, Working Lives and Well-Being Of Victorian Non-Union Members?*, Proceedings of Association of Industrial Relations Academics of Australia and New Zealand Conference 2008, 6-8 February 2008, Melbourne.

Borland, J. (1999) 'Earnings Inequality in Australia: Changes, Causes, Consequences', *The Economic Record*, 75(227): 177-202.

Borland, J. and Woodbridge, G. (1999) 'Wage Regulation, Low-Wage Workers and Employment', in Richardson, S. (ed.), *Reshaping the Labour Market: Regulation, Efficiency and Equality in Australia*, pp. 86-121, Cambridge: Cambridge University Press.

Bramble, T. (2001) “*Family Friendly*” *Working Arrangements and the Howard Government Industrial Relations Agenda*, Proceedings of Association of Industrial Relations Academics of Australia and New Zealand Conference 2001, 31 January – 3 February 2001, Wollongong.

Bretherton, T. and Hall, R. (2003) *Australian Centre for Industrial Relations Research and Teaching/ABL Agreement Making Survey – Analysis of Results*, Working Paper No 85, Australian Centre for Industrial Relations Research and Teaching, University of Sydney, Sydney.

Briggs, C. (2004b) *Lockout Law in Australia: Into the Mainstream?*, Working Paper No 95, Australian Centre for Industrial Relations Research and Teaching, University of Sydney, Sydney.

Brown, W. (2005) ‘Third Party Labour Market Intervention in Open Economies’, in Isaac, J. and Lansbury, R. D. (eds), *Labour Market Deregulation: Rewriting the Rules*, pp. 191-203, Sydney: Federation Press.

Carson, E., Mitchell, W. and Watts, M. (2001) *The Impact of New Forms of Wage Setting on Wage Outcomes in Australia*, Working Paper No 01-02, Centre of Full Employment and Equity, University of Newcastle, Newcastle.

Charlesworth, S. and Macdonald, F. (2007) *Going Too Far: WorkChoices & the Experience of 30 Victorian Workers in Minimum Wage Sectors*, Report for Industrial Relations Victoria, RMIT University, Melbourne.

Chase, T. and Harvey, D. (2006) *The Effects of Unfair Dismissal Changes on Young Women Workers*, Proceedings of Our Work Our Lives: National Conference on Women and Industrial Relations, Queensland Working Women’s Service and Griffith Business School, Griffith University, 14 July 2006, Brisbane.

Collins, H. (2001) ‘Regulating the Employment Relationship for Competitiveness’, *Industrial Law Journal*, 30(1): 17-48.

Collins, H. (2003) *Employment Law*, Oxford: Oxford University Press.

Cole, M., Callus, R. and van Barneveld, K. (2001) *What’s in an Agreement? An Approach to Understanding AWAs*, Proceedings of The AWA Experience – Evaluating the Evidence Conference, Australian Centre for Industrial Relations Research and Teaching, University of Sydney, 7 September 2001, Sydney.

Considine, G. and Buchanan, J. (2007) *Workplace Industrial Relations on the Eve of WorkChoices*, Workplace Research Centre, University of Sydney, Report for Industrial Relations Victoria, NSW Office of Industrial Relations and Queensland Department of Employment and Industrial Relations, Sydney.

Cooney, S., Gahan, P., Marshall, S., Mitchell, R. and Stewart, A. (2009) *Legal Origins and the Evolution of Australian Labour Law, 1996-2010*, Research Report, Workplace and Corporate Law Research Group, Department of Business and Taxation, Monash University.

Cooper, R. (2005) 'Life in the Old Dog Yet? "Deregulation" and Trade Unionism in Australia', in Isaac, J. and Lansbury, R. D. (eds), *Labour Market Deregulation: Rewriting the Rules*, pp. 93-106, Sydney: Federation Press.

Cooper, R. (2005) *Australian Unionism in a Decollectivised Environment*, Proceedings of Association of Industrial Relations Academics of Australia and New Zealand Conference 2005, 9-11 February 2005, Sydney.

Coulthard, A. (1999) 'The Decollectivisation of Australian Industrial Relations: Trade Union Exclusion Under the *Workplace Relations Act 1996* (Cth)', in Deery, S. and Mitchell, R. (eds), *Employment Relations: Individualisation and Union Exclusion*, pp. 48-68, Sydney: Federation Press.

Creighton, W. B. (1986) 'A Review of Labour Law Research in Australia', in Edlund, S. (ed.), *Labour Law Research in Twelve Countries*, pp. 242-265, Stockholm: Swedish Work Environment Fund.

Crosby, M. (2002) 'Down with the Dictator: The Role of Trade Unions in the Future', in Callus, R. and Lansbury, R. D. (eds), *Working Futures: The Changing Nature of Work and Employment Relations in Australia*, pp. 151-131, Sydney: Federation Press.

Cully, M. and VandenHeuvel, A. (1999b) *Employee Relations in Australia – Have They Improved?*, Working Paper No 150, National Institute of Labour Studies, Flinders University, Adelaide.

Dabscheck, B. (1998) 'Australian Labour Law Reform: Consequences and Prospects', in Nolan, D. R. (ed.), *The Australasian Labour Law Reforms: Australia & New Zealand At The End of the Twentieth Century*, pp. 227-241, Sydney: Federation Press.

Dawkins, P., Gregg, P. and Scutela, R. (2005) 'Employment Polarisation in Australia', *The Economic Record*, 81(225): 336-350.

Deakin, S. (2007) 'A New Paradigm for Labour Law' *Melbourne University Law Review*, 31(3): 1161-1185.

Deakin, S. and Wilkinson, F. (2005) *The Law of the Labour Market*, Oxford: Oxford University Press.

Deery, S. and Mitchell, R. (1999) 'The Emergence of Individualisation and Union Exclusion as an Employment Relations Strategy', in Deery, S. and Mitchell, R. (eds), *Employment Relations: Individualisation and Union Exclusion*, pp. 1-17, Sydney: Federation Press.

Deery, S. and Walsh, J. (1999) 'The Character of Individualised Employment Arrangements in Australia: A Model of "Hard" HRM', in Deery, S. and Mitchell, R. (eds), *Employment Relations: Individualisation and Union Exclusion*, pp. 115-129, Sydney: Federation Press.

Department of Workplace Relations (1998) *Agreement Making in Australia Under the Workplace Relations Act: 1997*, Canberra.

Department of Workplace Relations and Small Business (1998) *Agreement Making in Australia Under the Workplace Relations Act: Update to the 1997 Report*, Canberra.

Department of Employment, Workplace Relations and Small Business and the Office of the Employment Advocate (2000) *Agreement Making in Australia Under the Workplace Relations Act: 1998 and 1999*, Canberra.

Department of Employment and Workplace Relations and Office of the Employment Advocate (2002) *Agreement Making in Australia Under the Workplace Relations Act: 2000 and 2001*, Canberra.

Department of Employment and Workplace Relations and Office of the Employment Advocate (2004) *Agreement Making in Australia Under the Workplace Relations Act: 2002 and 2003*, Canberra.

Department of Employment and Workplace Relations (2007) *Agreement Making in Australia Under the Workplace Relations Act: 2004 to 2006*, Canberra.

Dickens, L. (2009) *Delivering Fairer Workplaces Through Statutory Rights? Enforcing Employment Rights in Britain*, Proceedings of 15th World Congress of the International Industrial Relations Association, 24-27 August 2009, Sydney.

Dickens, L. and Hall, M. (2005) *Review of Research into the Impact of Employment Relations Legislation*, DTI Employment Relations Series No. 45, London.

Dickens, L. and Hall, M. (2006) 'Fairness – Up to a Point. Assessing the Impact of New Labour's Employment Legislation', *Human Resource Management Journal*, 16(4): 338-356.

Econtech (2007) *The Economic Effects of Industrial Relations Reform Since 1993*, Final Report prepared for the Australian Chamber of Commerce and Industry, Canberra.

Ellem, B. (2007) *More Work, Less Choice: The Impact of National Labour Re-Regulation on Low-Paid Women Workers in the Australian Capital Territory*, Report for the Australian Capital Territory Department of Disability, Housing and Community Services, Canberra.

Elton, J., Bailey, J., Baird, M., Charlesworth, S., Cooper, R., Ellem, B., Jefferson, T., MacDonald, F., Oliver, D., Pocock, B., Preston, A. and Whitehouse, G. (2007) *Women and WorkChoices: Impact on the Low Pay Sector*, Centre for Work + Life, University of South Australia, Adelaide.

Elton, J. and Pocock, B. (2007) *Not Fair, No Choice: The Impact of WorkChoices on Twenty South Australian Workers and their Households*, Report for SafeWork SA and the Office for Women, Centre for Work + Life, University of South Australia, Adelaide.

Epstein, L. and King, G. (2002) 'The Rules of Inference', *University of Chicago Law Review*, 69(1): 1-133.

Evesson, J., Buchanan, J., Bamberry, L., Frino, B. and Oliver, D. (2007) *Lowering the Standards: From Awards to Work Choices in Retail and Hospitality Collective Agreements*, Report for the Queensland, NSW and Victorian Governments, Sydney.

Fenwick, C. (2006) *Workers' Human Rights in Australia*, Working Paper No 39, Centre for Employment and Labour Relations Law, University of Melbourne, Melbourne.

Fetter, J. (2002) *The Strategic Use of Individual Employment Agreements: Three Case Studies*, Working Paper No 26, Centre for Employment and Labour Relations Law, University of Melbourne, Melbourne.

Forbes-Mewett, H., Griffin, G. and McKenzie, D. (2003b) *The Australian Industrial Relations Commission: Adapting or Dying?*, Proceedings of Association of Industrial Relations Academics of Australia and New Zealand Conference 2003, 4-7 February 2003, Melbourne.

Forsyth, A. (2001) *Re-Regulatory Tendencies in Australian and New Zealand Labour Law*, Working Paper No 21, Centre for Employment and Labour Relations Law, University of Melbourne, Melbourne.

Forsyth, A. (2003) *The Revival of Arbitration? Recent Experience in the AIRC*, Proceedings of Legal Edge Seminar Series, Centre for Commercial Law, Australian National University, 5 August 2003, Canberra.

Forsyth, A. (2007b) *Freedom to Fire: Economic Dismissals Under Work Choices*, Report for the Victorian Office of the Workplace Rights Advocate, Melbourne.

Forsyth, A. (2007c) *Protection Against Economic Dismissals: How Does Australian Law Compare With ILO Standards and Five Other OECD Countries?*, Report for the Victorian Office of the Workplace Rights Advocate, Melbourne.

Forsyth, A. (2007d) 'The 2006 Independent Contractors Legislation: An Opportunity Missed' *Federal Law Review*, 35(2): 329-348.

Forsyth, A., Gahan, P., Howe, J. and Mitchell, R. (2006) *Regulating for Innovation in Workplace Production and Employment Systems: A Preliminary Discussion of Issues and Themes*, Proceedings of 3rd Australian Labour Law Association National Conference, 22-23 September 2006, Brisbane.

Forsyth, A., Creighton, B., Gostencnik, V. and Sharard, T. (2008) *Transition for Forward with Fairness: Labor's Reform Agenda*, Sydney: Lawbook Company.

Forsyth, A., Gostencnik, V., Ross, I. and Sharard, T. (2007) *Workplace Relations in the Building and Construction Industry*, Sydney: Lexis Nexis Butterworths.

Fox, C. (1999) *Union Democracy and Collective Bargaining: Public Policy in Transition*, Working Paper No 68, National Key Centre in Industrial Relations, Monash University, Melbourne.

Fox, C. (2001) *Union Decision Making and the State in Britain and Australia: A Comparative Analysis*, Working Paper No 76, National Key Centre in Industrial Relations, Monash University, Melbourne.

- Frazer, A. (2009) 'Industrial Relations and the Sociological Study of Labour Law', *Labour and Industry*, 19(3): 73-95.
- Frazer, A., McCallum, R. and Ronfeldt, P. (eds) (1997) *Individual Contracts and Workplace Relations*, Working Paper No 50, Australian Centre for Industrial Relations Research and Teaching, University of Sydney, Sydney.
- Gahan, P. (2006) *WorkChoices and Workplace Rights in Victoria: Evidence from the Workplace Rights Information Line*, Report for Victorian Office of the Workplace Rights Advocate, Melbourne.
- Gahan, P. (2007a) *Employer Greenfields Agreement in Western Australia*, Report for West Australian Fair Employment Advocate, Perth.
- Gahan, P. (2007b) *Employer Greenfields Agreements in New South Wales*, Report for New South Wales Office of Industrial Relations, Sydney.
- Gahan, P. (2007c) *Employer Greenfields Agreements in South Australia*, Report for South Australian Office of the Employment Ombudsman, Adelaide.
- Gahan, P. (2007d) *Employer Greenfields Agreements in Victoria*, Report for Victorian Office of the Workplace Rights Advocate, Melbourne.
- Gahan, P., Mitchell, R., Creighton, K., Josev, T., Fetter, J. and Buttigieg, D. (2004) *Regulating for Performance? Certified Agreements and the Diffusion of High Performance Work Practices*, Proceedings of Australian Labour Law Association 2nd National Conference, 24-25 September, 2004, Sydney.
- Gaston, N. and Rajaguru, G. (2009) 'The Long-run Determinants of Australian Income Inequality', *The Economic Record*, 85(270): 260-275.
- Gollan, P. (2001) *AWA Employee Attitude Survey*, Proceedings of The AWA Experience – Evaluating the Evidence Conference, Australian Centre for Industrial Relations Research and Teaching, University of Sydney, 7 September 2001, Sydney.
- Gollan, P., Markey, R. and Ross, I. (2001) *Additional Forms of Employee Representation in Australia*, Working Paper No 64, Australian Centre for Industrial Relations Research and Teaching, University of Sydney, Sydney.
- Goodwin, M. and Maconachie, G. (2008) *Political Influence and the Enforcement of Minimum Labour Standards in the Australian Federal Industrial Relations Jurisdiction*, Proceedings of Association of Industrial Relations Academics of Australia and New Zealand Conference 2008, 6-8 February 2008, Melbourne.
- Grozier, D. (2001) *Do Individual and Collective Agreements Make a Difference?*, Working Paper No 65, Australian Centre for Industrial Relations Research and Teaching, University of Sydney, Sydney.

Hall, R. and Van Barneveld, K., (2000) *Working It Out? Why Employers Choose the Agreements They Do – A Survey*, Working Paper No 63, Australian Centre for Industrial Relations Research and Teaching, University of Sydney, Sydney.

Hammond, S. and Ronfeldt, P. (1998) 'Legal Methods: Asking New Questions about Law and the World of Work', in Whitfield, K. and Strauss, G. (eds) *Researching the World of Work: Strategies and Methods in Studying Industrial Relations*, pp. 227-238, Ithaca: ILR Press.

Hancock, K. (1999) 'Labour Market Deregulation in Australia', in Richardson, S. (ed.), *Reshaping the Labour Market: Regulation, Efficiency and Equality in Australia*, pp. 38-85, Cambridge: Cambridge University Press.

Hancock, K. (2002) 'Work in an Ungolden Age', in Callus, R. and Lansbury, R. D. (eds), *Working Futures: The Changing Nature of Work and Employment Relations in Australia*, pp. 6-26, Sydney: Federation Press.

Hancock, K., Bai, T., Flavel, J. and Lane, A. (2007) *Industrial Relations and Productivity in Australia*, National Institute of Labour Studies, Flinders University, Report for Chifley Research Centre, Adelaide.

Harding, D. (2002) *The Effect of Unfair Dismissal Laws on Small and Medium Sized Businesses*, Report for Department of Employment and Workplace Relations, Canberra.

Hardy, T. (2007) *Protection of Employees in a Transmission of Business: What is Left in the Wake of WorkChoices and Subsequent Statutory Amendments*, Working Paper No 42, Centre for Employment and Labour Relations Law, University of Melbourne, Melbourne.

Hardy, T. (2009) 'A Changing of the Guard: Enforcement of Workplace Relations Laws Since Work Choices and Beyond', in Forsyth A. and Steward, A. (eds), *Fair Work: The New Workplace Laws and the Work Choices Legacy*, pp.75-98, Sydney: Federation Press.

Hepple, B. and Brown, W. (1981) 'Tasks for Labour Law Research', *Legal Studies*, 1(1): 56-67.

Industrial Relations Commission of South Australia (2007) *Inquiry into the Impact of Work Choices and the Independent Contractors Legislation on South Australian Workplaces, Employees and Employers*, Adelaide.

Isaac, J. (2005) 'The Deregulation of the Australian Labour Market', in Isaac, J. and Lansbury, R. D. (eds), *Labour Market Deregulation: Rewriting the Rules*, pp. 1-14, Sydney: Federation Press.

Jefferson, T., Preston, A., Chapple-Fahlesson, S. And Mitchell, S. (2007) *A Study of Low Paid Work and Low Paid Workers in Western Australia*, Women in Social & Economic Research, Curtin University of Technology, Perth.

Jones, M., Marshall, S. and Mitchell, R. (2007) 'Corporate Social Responsibility and the Management of Labour of in Two Australian Mining Companies', *Corporate Governance: An International Review*, 15(1): 57-67.

Jones, M., Marshall, S., Mitchell, R. and Ramsay, I. (2008) *Corporate Governance and Workplace Partnerships Case Studies: Research Report*, Centre for Corporate Law and Securities Regulation and Centre for Employment and Labour Relations Law, The University of Melbourne.

Knox, A. (2008) *How Low Can You Go?: Low Wage Jobs In Australian Hotels?*, Proceedings of Association of Industrial Relations Academics of Australia and New Zealand Conference 2008, 6-8 February 2008, Melbourne.

Know, A. (2009) 'Better the Devil You Know? An Analysis of Employer's Bargaining Preferences in the Australian Hotel Industry', *Journal of Industrial Relations*, 51(1): 25-44.

Lee, M. (2004) *Shaping a Preferred Bargaining Paradigm: Labour Law Remedies, the Scope of Agreements and Union Influence*, Proceedings of Association of Industrial Relations Academics of Australia and New Zealand Conference 2004, 3-6 February 2004, Noosa.

Lee, M. (2005b) *Whatever Happened to the Arbitration Inspectorate? The Reconstruction of Industrial Enforcement in Australia?*, Proceedings of Association of Industrial Relations Academics of Australia and New Zealand Conference 2005, 9-11 February 2005, Sydney.

Leonard, K. (2001) *AWAs – A Woman's Affair: The Effect of Decentralisation and Australian Workplace Agreements on Women's Employment in the Banking and Finance Sector*, Proceedings of Association of Industrial Relations Academics of Australia and New Zealand Conference 2001, 31 January – 3 February 2001, Wollongong.

Lyons, M. and Smith, M. (2006) *Gender Pay Equity, Wage Fixation and WorkChoices: Forward to the Past?*, Proceedings of Our Work Our Lives: National Conference on Women and Industrial Relations, Queensland Working Women's Service and Griffith Business School, Griffith University, 12-14 July 2006, Brisbane.

MacDonald, F., Whitehouse, G. and Bailey, J. (2007) *Tipping the Scales: A Qualitative Study of the Impact of WorkChoices on Women in Low-Paid Employment in Queensland*, Report for Queensland Department of Employment and Industrial Relations, Brisbane.

Hearn Mackinnon, B. (1996) *The Struggle for Managerial Prerogative: Ramifications of the CRA Weipa Dispute*, Proceedings of Association of Industrial Relations Academics of Australia and New Zealand Conference 1996, February 1996, Perth.

Hearn Mackinnon, B. (1997) 'The Weipa Dispute: Ramifications for the Spread of Australian Workplace Agreements' in Frazer, A., McCallum, R. and Ronfeldt, P. (eds), *Individual Contracts and Workplace Relations*, Working Paper No 50, Australian Centre for Industrial Relations Research and Teaching, University of Sydney, Sydney.

McCallum, R. (1997c) 'Individuals and Agreement Making: The Legal Options' in *New Rights and Remedies for Individual Employees: Implications for Employers and Unions*, Working Paper No 48, Australian Centre for Industrial Relations Research and Teaching, University of Sydney, Sydney.

McCallum, R. (2002) 'Legal Aspects of the Changing Social Contract at Work', in Callus, R. and Lansbury, R. D. (eds), *Working Futures: The Changing Nature of Work and Employment Relations in Australia*, pp. 87-100, Sydney: Federation Press.

McCallum, R., Grozier, D., Naughton, R., Coulthard, A., Napper, N. and Hennessy, N. (1997) *New Rights and Remedies for Individual Employees: Implications for Employers and Unions*, Working Paper No 48, Australian Centre for Industrial Relations Research and Teaching, University of Sydney, Sydney.

McCarry, G. (1998b) 'From Industry to Enterprise. From Award to Agreement; Federal laws and Workplace Change in Australia', in Nolan, D. R. (ed.), *The Australasian Labour Law Reforms: Australia & New Zealand at the End of the Twentieth Century*, pp. 52-71, Sydney: Federation Press.

McCrudden, C. (2006) 'Legal Research and the Social Sciences', *Law Quarterly Review*, 122: 632-650.

Mitchell, R. (1987) 'Labour Law Research in Australia: A Review of the Literature 1975-1985', *Labour and Industry*, 1(1): 96-139.

O'Neill, S. (2008) *Unfair Dismissal and the Small Business Exemption*, Background Note for Australian Parliament, Canberra.

Peetz, D. (2001) *Individual Contracts, Collective Bargaining, Wages and Power*, Discussion Paper No 347, Centre for Economic Policy Research, Australian National University, Canberra.

Peetz, D. (2002) *Individual Contracts, Bargaining and Union Membership*, Proceedings of Association of Industrial Relations Academics of Australia and New Zealand Conference 2002, 6-8 February 2002, Queenstown.

Peetz, D. (2004) *How Well Off are Employees Under AWAs? Reanalysing the OEA's Employee Survey*, Proceedings of Association of Industrial Relations Academics of Australia and New Zealand Conference 2004, 3-6 February 2004, Noosa.

Peetz, D. (2004) *The Decline in the Collectivist Model*, Report for Queensland Department of Industrial Relations, Brisbane.

Peetz, D. (2006) *Brave New Workplace: How Individual Contracts Are Changing Our Jobs*, Sydney: Allen and Unwin.

Peetz, D. (2007) *Assessing the Impact of "WorkChoices" One Year On*, Report for Industrial Relations Victoria, Melbourne.

Peetz, D. and Preston, A. (2007) *AWAs, Collective Agreements and Earnings: Beneath the Aggregate Data*, Report for Victorian Department of Innovation, Industry and Regional Development, Melbourne.

- Pistor, K., Keinan, Y., Kleinheisterkamp, J. and West, M. (2003) 'The Evolution of Corporate Law: A Cross-Country Comparison', *University of Pennsylvania Journal of International Economic Law*, 23(4): 791-872.
- Plowman, D. H. (2001) *Evaluating the AWA Experience: Reflections on a Study of Annual Leave Loadings*, Proceedings of The AWA Experience – Evaluating the Evidence Conference, Australian Centre for Industrial Relations Research and Teaching, University of Sydney, 7 September 2001, Sydney.
- Plowman, D. H. (2002) *Awards, Certified Agreements and AWAs – Some Reflections*, Working Paper No 75, Australian Centre for Industrial Relations Research and Teaching, University of Sydney, Sydney.
- Pocock, B. (2005) 'Labour Market "Deregulation" and Prospects for an Improved Australian Work/ Care Regime', in Isaac, J. and Lansbury, R. D. (eds), *Labour Market Deregulation: Rewriting the Rules*, pp. 44-61, Sydney: Federation Press.
- Pocock, B., Prosser, R. and Bridge, D. (2005) *The Return of "Labour-as-Commodity"? The Experience of Casual Work in Australia*, Proceedings of Association of Industrial Relations Academics of Australia and New Zealand Conference 2005, 9-11 February 2005, Sydney.
- Pocock, B. and Masterman-Smith, H. (2006) *Early Signs: The Impact of WorkChoices on Work and Family*, Report for Industrial Relations Victoria, Melbourne.
- Pozen, D. (2006) 'The Regulation of Labour and the Relevance of Legal Origin', *Comparative Labour Law and Policy Journal*, 28(1): 43-56.
- Pyman, A. (2004) *Union Rights of Entry: The New Contested Terrain?*, Proceedings of Association of Industrial Relations Academics of Australia and New Zealand Conference 2004, 3-6 February 2004, Noosa.
- Queensland Industrial Relations Commission (2007a) *Inquiry into the Impact of WorkChoices on Queensland Workplaces, Employees and Employers*, Brisbane.
- Queensland Industrial Relations Commission (2007b) *Pay Equity: Time to Act*, Brisbane.
- Revesz, R. (2002) 'A Defence of Empirical Legal Scholarship', *University of Chicago Law Review*, 69(1): 169-189.
- Roan, A. and Lafferty, G. (2001) *Skills, Training and Workforce Bargaining – The Implications of Australian Workplace Agreements*, Proceedings of The AWA Experience – Evaluating the Evidence Conference, University of Sydney, 7 September 2001, Sydney.
- Robbins, B., Murphy, D. and Petzke, S. (2004) *Albury Wodonga Employment Survey*, Report for Albury Wodonga Business, Albury Wodonga.
- Robbins, B. and Voll, G. (2002) *Awards vs AWAs: A Survey of Small Regional Business in Australia*, Proceedings of Association of Industrial Relations Academics of Australia and New Zealand Conference 2002, 6-8 February 2002, Queenstown.

Rooney, T. and Whitehouse, G. (2006) *Recent Child Care Worker Pay Cases in Australia: Implications for Pay Equity Under Work Choices*, Proceedings of Our Work Our Lives: National Conference on Women and Industrial Relations, Queensland Working Women's Service and Griffith Business School, Griffith University, 12-14 July 2006, Brisbane.

Ross, I., (2005) 'Commentary: Industrial Citizenship', in Isaac, J. and Lansbury, R. D. (eds), *Labour Market Deregulation: Rewriting the Rules*, pp. 37-43 Sydney: Federation Press.

Ross, I. and Trew, J. (2001) *Informed Consent in Agreement Making Under the Workplace Relations Act 1996 (CTH)*, Working Paper No 68, Australian Centre for Industrial Relations Research and Teaching, University of Sydney, Sydney.

Saville, K., Hearn-Mackinnon, B., Morris, L. and Waddell, D. (2008) *Work Choices: Increasing Productivity, Job Creation and Work-Family Balance? Not Likely!*, Proceedings of Association of Industrial Relations Academics of Australia and New Zealand Conference 2008, 6-8 February 2008, Melbourne.

Schuk, P. (1989) 'Why Don't Professors Do More Empirical Research?', *Journal of Legal Education*, 39(3): 323-336.

Siems, M. 'The Taxonomy of Interdisciplinary Legal Research: Finding a Way out of the Desert', at <http://ssrn.com/abstract=1146162>.

Stewart, A. (1999) 'The Legal Framework for Individual Employment Agreements in Australia', in Deery, S. and Mitchell, R. (eds), *Employment Relations: Individualisation and Union Exclusion*, pp. 18-47, Sydney: Federation Press.

Sutherland, C. (2007b) *Agreement-Making Under WorkChoices: The Impact of the Legal Framework on Bargaining Practices and Outcomes*, Report for Victorian Office of the Workplace Rights Advocate, Melbourne.

Teicher, J. (2004) 'Industrial Relations and the Law: The New Industrial Relations (Issues)', *Labour and Industry*, 15(2): 113-125.

Tham, J. and Chapman, A. (2001) *The Legal Regulation of Information in Australia Labour Markets: Information that is Required to be Disclosed by Employers to Employees and Trade Unions*, Working Paper No 23, Centre for Employment and Labour Relations Law, University of Melbourne, Melbourne.

van Barneveld, K. (2009) 'Australian Workplace Agreements in Universities', *Journal of Industrial Relations*, 51(1): 59-74.

van Barneveld, K. and Arsovska, B. (2001b) *AWAs: Changing the Structure of Wages?*, Working Paper No 67, Australian Centre for Industrial Relations Research and Teaching, University of Sydney, Sydney.

Van Gramberg, B. (2002) *Exploring Avenues for the Growth of Private Alternative Dispute Resolution in Australian Workplaces*, Proceedings of Association of Industrial Relations Academics of Australia and New Zealand Conference 2002, 6-8 February 2002, Queenstown.

Van Gramberg, B. (2006) *Managing Workplace Conflict: Alternative Dispute Resolution in Australia*, Sydney: Federation Press.

van Wanrooy, B., Oxenbridge, S., Buchanan, J. and Jakubauskas, M. (2007) *Australia@Work: The Benchmark Report*, Workplace Research Centre, University of Sydney, Sydney.

van Wanrooy, B., Jakubauskas, M., Buchanan, J., Wilson, S. and Scalmer, S. (2008) *Working Lives: Statistics and Stories*, Workplace Research Centre, University of Sydney, Sydney.

Victorian Office of the Workplace Rights Advocate (2007) *Report of the Inquiry into the Impact of the Federal Government's Work Choices Legislation on Workers and Employers in the Victorian Retail and Hospitality Industries*, Melbourne.

Voll, G. (2005) *Case Studies in "Unfair Dismissal" Process*, Proceedings of Association of Industrial Relations Academics of Australia and New Zealand Conference 2005, 9-11 February 2005, Sydney.

Watson, I., Buchanan, J., Campbell, I. and Briggs, C. (2003) *Fragmented Futures*, Sydney: Federation Press.

Weller, S. (2007) *Power and Scale: The Shifting Geography of Industrial Relations Law in Australia*, Working Paper No 41, Centre for Employment and Labour Relations Law, University of Melbourne, Melbourne.

Williamson, S. (2006) *Family Provisions and WorkChoices: Where to Now?*, Proceedings of Our Work Our Lives: National Conference on Women and Industrial Relations, Queensland Working Women's Service and Griffith Business School, Griffith University, 12-14 July 2006, Brisbane.

Wooden, M. (2000) *The Transformation of Australian Industrial Relations*, Sydney: Federation Press.

Wooden, M. (2002) 'The Changing Labour Market and its Impact on Work and Employment Relations' in Callus, R. and Lansbury, R. D. (eds), *Working Futures: The Changing Nature of Work and Employment Relations in Australia*, pp. 51-69, Sydney: Federation Press.

APPENDIX 3 – SYNOPTIC TABLE OF MAIN ACADEMIC JOURNAL ARTICLES REVELANT TO THE PROJECT

Area of law

1. Non-standard work
2. Wages
3. Minimum standards
4. Dismissals
5. Enforcement
6. Agreement making
7. The Australian Industrial Relations Commission and dispute resolution
8. Trade union organisation and power
9. Industrial action

Article	Area of law	Nature of research/ methodology	Area of impact/impact measure	Main findings
Knox, A. (2006) 'The Differential Effects of Regulatory Reform: Evidence from the Australian Luxury Hotel Industry', <i>Journal of Industrial Relations</i> , 48(4): 453-474.	1	Primary, qualitative, 101 interviews with employers, unions and employees in luxury hotel sector	Impact of award simplification process on working time arrangements	<ul style="list-style-type: none"> • Significant difference in working time arrangements between award based employers and those with collective agreements • Awards associated with increased casualisation and reduction in wages of part-time employees • By contrast, use of collective agreements resulted in reduced casualisation and increased workforce permanency • Award simplification had significant differential impact on different employees
Waring, P. (2003) 'The Nature and Consequences of Temporary and Contract Employment in the Australian Black Coal Mining Industry', <i>Labour & Industry</i> , 14(2): 83-96.	1	Primary, quantitative, analysis of 187 enterprise agreements struck between 1995-2003	Impact of <i>Workplace Relations Act 1996</i> (WRA) on contract and temporary employment	<ul style="list-style-type: none"> • Union capacity to resist contract and temporary employment reduced by WRA • Shift towards contract and temporary employing following introduction of WRA • Combination of legal/institutional change and change in the product market responsible for growth in temporary employment
Preston, A. (2003) 'Gender Earnings and Part-Time Pay in Australia, 1990-1998', <i>British Journal of Industrial Relations</i> , 41(3): 417-433.	2	Secondary, quantitative, Income Distribution Survey and ABS data	Impact of enterprise bargaining on gender wage outcomes	<ul style="list-style-type: none"> • Introduction of enterprise bargaining in 1990 resulted in earnings convergence between men and women • Reasons: In the part-time labour market, changes in workforce composition, particularly the entry of less qualified men. In the full-time segment, faster relative female wage growth.

van Barneveld, K. and Arsovska, B. (2001a) 'AWAs: Changing the Structure of Wages?', <i>Labour & Industry</i> , 12(1): 87-108.	2	Primary, quantitative, 4658 registered agreements	Impact of AWAs on the structure of wages	<ul style="list-style-type: none"> • AWAs less likely than collective agreements to contain guaranteed wage increases • Rather, wage increases in AWAs often not guaranteed, but conditional upon individual performance • Use of all-in rates of pay in AWAs often accompanied by open-ended hours provision • Demonstrates increased managerial prerogative
Whitehouse, G. and Frino, B. (2003) 'Women, Wages and Industrial Agreements', <i>Australian Journal of Labour Economics</i> , 6(4): 579-596.	2	Secondary, quantitative, ABS data	Impact of different industrial instruments on gender-wage outcomes	<ul style="list-style-type: none"> • Women overrepresented in low-paying 'award-only' sector • Gender-wage disparities most pronounced under individual and collective agreements
McDonald, P., Bailey, J., Oliver, D. and Pini, B. (2007) 'Compounding Vulnerability? Young Workers' Employment Concerns and the Anticipated Impact of the WorkChoices Act', <i>Australian Bulletin of Labour</i> , 33(1): 60-88.	4	Primary, quantitative, 4769 inquiries made to Young Workers Advisory Service (YWAS)	Nature of inquiries made to the YWAS	<ul style="list-style-type: none"> • Inquiries relating to unfair dismissal most prevalent, followed by inquiries relating to employment conditions and inquiries relating to pay

<p>Waring, P. and De Ruyter, A. (1999) 'Dismissing the Unfair Dismissal Myth', <i>Australian Bulletin of Labour</i>, 25(3): 251-274.</p>	<p>4</p>	<p>Secondary, quantitative, 1448 business surveys and ABS data</p>	<p>Impact of unfair dismissal protection on employment growth</p>	<ul style="list-style-type: none"> • Little evidence that unfair dismissal protection has had an impact on employment growth • Little evidence that small businesses see unfair dismissal laws as a significant barrier to employment growth or workplace efficiency
<p>Briggs, C. and Cooper, R. (2006) 'Between Individualism and Collectivism?: Why Employers Choose Non-Union Collective Agreements', <i>Labour & Industry</i>, 17(2): 1-23.</p>	<p>6</p>	<p>Primary, qualitative, surveys with range of IR practitioners, including consultants, employer association representatives, solicitors and union officials</p>	<p>Employer motivations for the use of non-union collective agreements</p>	<ul style="list-style-type: none"> • Employer decisions about which agreement to use made on the basis of the costs/benefits of each type of agreement • Administration costs and desire to alter wage-hours nexus are common motivations for the introduction of non-union collective agreements • Non-union collective agreements associated with more inclusive/soft HR practices, whereas AWAs associated with aggressive individualising practices and labour cost reduction/ hard HRM • Administrative ease major factor accounting for use of non-union collective agreements instead of AWAs
<p>Cairncross, G. and Buultjens, J. (2006) 'Enterprise Bargaining Under the Workplace Relations Act 1996 in Construction and Hospitality Small</p>	<p>6</p>	<p>Primary, quantitative, 102 certified collective agreements covering small firms in the construction and hospitality industries</p>	<p>Agreement outcomes; impact of trade unions on agreement outcomes</p>	<ul style="list-style-type: none"> • Employees in small businesses received lower wage increases than those in medium and large businesses • Union involvement increased employee wage outcomes • In hospitality, shift towards wider spread of hours, wage structures designed to avoid

<i>Businesses: A Comparative Study</i> , <i>Journal of Industrial Relations</i> , 48(4): 475-488.				overtime rates and reduced overtime payments; in construction higher level of union involvement has prevented these outcomes
<i>Gollan, P. J. (2004) 'Australian Workplace Agreements: An Employer Response'</i> , <i>Journal of Industrial Relations</i> , 46(1): 116-124.	6	Primary, qualitative/quantitative, survey of 688 AWA employers	Employer strategies and outcomes associated with the use of AWAs	<ul style="list-style-type: none"> • Increased hours flexibility, simplification of employment conditions and improvement of employer-employee relations major reported reasons for the introduction of AWAs • Improved employer-employee relations, improved labour productivity, higher employee commitment and improved capacity to implement change were the most reported outcomes from AWA introduction • AWA employers likely to engage in individualising HR practices and individual consultative processes • Majority of respondents expressed an intention to increase their use of AWAs, with increased flexibility and administrative simplicity of having all employees under one agreement type the major reasons provided
<i>Hodgkinson, A. and Markey, R. (2007) 'Industrial Relations Change in the Illawarra Region of NSW: An Insight into Responses to the Workplace Relations</i>	6, 8, 9	Primary, primarily quantitative, with some qualitative, Illawarra Region Workplace Industrial Relations Survey 2004 survey of employers	Impact of WRA on range of outcomes, including choice of payment systems, industrial jurisdiction coverage, employee participation mechanisms, union	<ul style="list-style-type: none"> • WRA resulted in a significant reduction in most forms of industrial action • This reduction probably occurred because of the constraints imposed by the WRA on industrial action • Significant decline in union density, in line with national trends

<i>Act</i> , <i>Australian Bulletin of Labour</i> , 33(1):32-59.			density and industrial action	<ul style="list-style-type: none"> • Likely link between the <i>WRA</i> and declining union density, amongst other factors • Little expansion in enterprise bargaining; awards remaining the major source of wages and conditions
Loudon, R. and Harley, B. (2001) 'Industrial Relations Decentralisation and the Growth of 12 Hour Shifts in Australia', <i>Journal of Industrial Relations</i> , 43(4): 402-421.	6	Secondary, qualitative, ABS data, AWIRS95, ADAM data	Impact of legislation on proliferation of 12-hour shifts	<ul style="list-style-type: none"> • The <i>WRA</i> has shifted balance of power towards employers, and made 12-hour shifts easier to introduce • The regulation of bargaining processes largely neglects OHS concerns
<i>Markey, R. and Hodgkinson, A. (2008) 'The Impact of the Workplace Relations Act on Regional Patterns of Industrial Relations: The Illawarra Region of Australia, 1996-2004'</i> ,	6, 8, 9	Primary, primarily quantitative, with some qualitative, Illawarra Region Workplace Industrial Relations Survey 2004 survey of employers	Impact of <i>WRA</i> on a range of outcomes, including union membership, industrial action, agreements and payment systems	<ul style="list-style-type: none"> • Significant fall in union density between 1996 and 2004, which was more pronounced in smaller workplaces; however union membership remains relatively high • Decline in industrial action in line with national trends; this is likely to reflect the impact of the <i>WRA</i> restrictions on industrial action • Increased formalisation of collective agreements • Decentralisation of industrial relations may have allowed significant scope for regional patterns of industrial relations to survive

<p>Mitchell, R., Campbell, R., Barnes, A., Bicknell, E., Creighton, K., Fetter, J. and Korman, S. (2005) 'What's Going on with the "No Disadvantage Test"? An Analysis of Outcomes and Processes Under the Workplace Relations Act 1996', <i>Journal of Industrial Relations</i>, 47(4): 393-423.</p>	<p>6</p>	<p>Primary, quantitative, 84 certified agreements</p>	<p>Effectiveness of the NDT in protecting employment conditions</p>	<ul style="list-style-type: none"> • Some doubt as to whether a number of agreements analysed satisfied the NDT • NDT failing to protect some employee conditions; this was most pronounced in relation to AWAs and non-union collective agreements • Lack of transparency in the administration of the NDT • Erosion of the award safety net underpinning the NDT also cause for concern about the NDT's effectiveness
<p>Mitchell, R. and Fetter, J. (2003) 'Human Resource Management and Individualisation in Australian Labour Law', <i>Journal of Industrial Relations</i>, 45(3): 292-325.</p>	<p>6</p>	<p>Primary, quantitative, 500 registered AWAs</p>	<p>Extent to which AWAs embodied 'high performance' work practices</p>	<ul style="list-style-type: none"> • Little evidence that AWAs were being used to advance high performance HRM practices; little evidence of employee participation mechanisms, employee consultation and other 'high performance' practices • AWAs generally oriented towards pay and hours flexibility • AWAs tended to grant wide managerial prerogative over functional flexibility; generally consistent with traditional hierarchical workplace structures
<p>Pocock, B., Elton, J., Preston, A., Charlesworth, S., MacDonald, F., Baird, M., Cooper, R. and Ellem, B. (2008) 'The Impact of</p>	<p>6</p>	<p>Primary, qualitative, interviews with 121 low paid female workers</p>	<p>Impact of <i>Work Choices</i> on a range of outcomes</p>	<ul style="list-style-type: none"> • Overall, decline in employee bargaining power • Close relationship between unfair dismissal protection and employee voice, particularly in relation to working time • Removal of unfair dismissal protection has

“Work Choices” on Women in Low Paid Employment in Australia: A Qualitative Analysis’, <i>Journal of Industrial Relations</i> , 50(3): 475-488.				<p>diminished employee bargaining power over a range of areas, such as hours, wages etc.</p> <ul style="list-style-type: none"> • Strengthened employer prerogative, resulting in work intensification
Roan, A., Bramble, T. and Lafferty, G. (2001) ‘Australian Workplace Agreements in Practice: The Hard and Soft Dimensions’, <i>Journal of Industrial Relations</i> , 43(4): 387-401.	6	Primary, quantitative, content of 539 AWAs	The extent to which AWAs embody ‘soft’ or ‘hard’ HRM practices	<ul style="list-style-type: none"> • AWAs are embodying ‘hard’ HRM practices based upon minimising labour costs, maximising hours flexibility and work intensification • Little evidence that AWAs were being used to pursue a ‘soft’ HRM agenda; provisions for developmental and personal needs of employees uncommon
Todd, P., Caspersz, D. and Sutherland, M. (2006) ‘Employers’ Choices in Workplace Regulation: Individual Agreements’, <i>Journal of Industrial Relations</i> , 48(4): 507-521.	6	Primary, qualitative, 16 interviews with employer association, union and government representatives	Response of WA employers to changes to agreement-making framework	<ul style="list-style-type: none"> • Dramatic rise in the use of AWAs following the introduction of state legislation restricting the use of state jurisdiction statutory individual agreements • Main factor driving the take-up of AWAs was perception by employers that the NDT was applied more favourably for employers in the federal jurisdiction
<i>Timo, N. (1998) ‘Precarious Employment and Individual Contracts in an Australian Mining</i>	6	Primary, qualitative, case study of mining company	Employer motivations for the use of individual contracts	<ul style="list-style-type: none"> • Primary motivation for the introduction of individual contracts was to enhance managerial prerogative and enshrine individual employee accountability

<i>Company', Labour & Industry, 9(1): 53-68.</i>				
<i>Whitehouse, G. (2001) 'Industrial Agreements and Work/Family Provisions : Trends and Prospects Under "Enterprise Bargaining"', Labour & Industry, 12(1): 109-129.</i>	6	Primary, quantitative, 3268 registered agreements	Incidence of work/family provisions	<ul style="list-style-type: none"> • Low incidence of work/family provisions in agreements • Trend towards increased family provisions in agreements halted or even reversed by 1997-1998 • Work/family provisions more prevalent where wage increases are low • Work/family provisions unequally spread; concentrated in female dominated industries and the public sector • At least one counterproductive hours provision more likely to be present where work/family provisions included in agreements
Whittard, J., Bray, M., Larkin, R., Lewer, J. and Groen, E. (2007) 'Collective Bargaining Rights Under the Workplace Relations Act: The Boeing Dispute', <i>Labour & Industry</i> , 18(1): 1-19.	6, 8	Primary, qualitative, case study of industrial dispute	Assesses the operation of the dispute resolution processes of the WRA	<ul style="list-style-type: none"> • Dispute highlighted significant limitation in the operation of the WRA; in particular the lack of any provision for union recognition and the inability of employees to bargain collectively with their employer in situations where the employer doesn't want a collective agreement • Ability of the AIRC to resolve the dispute was hamstrung by the WRA
<i>Wooden, M. (1999) 'Individual Agreement-Making in Australian Workplaces: Incidence,</i>	6	Primary, quantitative, survey of 463 workplace managers	Types of firms employing individual agreements, reasons for the introduction of	<ul style="list-style-type: none"> • Prevalence of individual agreements low, but increasing • High degree of standardisation of individual agreements

<i>Trends and Features</i> , <i>Journal of Industrial Relations</i> , 41(3): 417-445.			individual agreements, features of individual agreements	<ul style="list-style-type: none"> • Management preferences/strategy, obtaining better outcomes and improving employer-employee relations most common stated reasons for choice of individual agreements
Forbes-Mewett, H., Griffin, G. and McKenzie, D. (2003a) 'The Australian Industrial Relations Commission: Adapting or Dying?', <i>International Journal of Employment Studies</i> , 11(2): 1-23.	7	Primary, quantitative, focus groups, interviews and questionnaire surveys of users of the AIRC	Usage of AIRC processes, attitude towards AIRC processes amongst users	<ul style="list-style-type: none"> • High level of support for greater mediation capacities in the AIRC • High level of support for giving the AIRC power to compel parties in dispute resolution • User demand for the AIRC to play a more interventionist role • Overall, broad support for the AIRC amongst users • AIRC exhibiting considerable adaptability and flexibility to respond to legislative changes
<i>Forbes-Mewett, H., Griffin, G., Griffin, J. and McKenzie, D. (2005) 'The Role and Usage of Conciliation and Mediation in Dispute Resolution in the Australian Industrial Relations Commission', Australian Bulletin of Labour</i> , 31(2): 171-189.	7	Primary, quantitative, interviews, surveys and focus groups with users of the AIRC	Usage of AIRC mediation and conciliation; user attitudes towards form and extent of AIRC processes; user attitudes towards future role for AIRC processes	<ul style="list-style-type: none"> • Considerable support amongst AIRC users for current AIRC dispute resolution processes and practices, • High level of support for third-party dispute resolution processes more generally • Common concern of AIRC users were limitations imposed on AIRC dispute resolution processes by the WRA
<i>Pyman, A. (2001)</i>	8	Primary, qualitative,	Experience of trade	<ul style="list-style-type: none"> • Impact of WRA on unions

<p><i>'Workplace Relations and Other Legislation Amendment Act 1996 (Cwlth): Experiences of Five Australian Trade Unions', Journal of Industrial Relations, 43(3): 340-347.</i></p>		<p>interview with five officials from different trade unions</p>	<p>unions under the WRA</p>	<ul style="list-style-type: none"> • Significant differential impact between unions operating across different industries • Divergence in union attitudes towards the significance of various aspects of the WRA • Overall impact not as devastating for unions as predicted, impact ameliorated by union adaptation • Reasons: Utilisation of anti-union provisions in WRA not high, strategic use of provisions to further union objectives had some success
<p><i>Briggs, C. (2004a) 'The Return of the Lockout in Australia: A Profile of Lockouts Since the Decentralisation of Bargaining', Australian Bulletin of Labour, 30(2): 101-112.</i></p>	<p>9</p>	<p>Primary, quantitative/qualitative survey of industrial commissioners and union officials. Secondary, AIRC judgments and transcripts, newspaper reports</p>	<p>Incidence of employer lockouts and days lost in lockouts between 1994-2003</p>	<ul style="list-style-type: none"> • Dramatic increase in incidence of lockouts from 2000 onwards • Overwhelming majority of lockouts occurred in the federal jurisdiction • Jump in lockouts attributed to the WRA with the catalyst the clarification of certain legal aspects of lockouts occurring in 1999
<p><i>Cully, M. and Vandenheuvel, A. (1999a) 'Employee Relations in Australia – An Inter-industry Comparison', Australian Bulletin of Labour, 25(2): 89-97.</i></p>	<p>9</p>	<p>Secondary, quantitative, ABS data on industrial action</p>	<p>Impact of WRA on incidence of industrial disputation</p>	<ul style="list-style-type: none"> • Long-term trend of declining rates of industrial action in Australia mirrors international trends • Difficult to attribute decline to WRA, given long-term trend of declining industrial action generally
<p>Hodgkinson, A. and</p>	<p>9</p>	<p>Secondary,</p>	<p>Working days lost to</p>	<ul style="list-style-type: none"> • WRA associated with reductions in working

<p>Perera, N. (2004) 'Strike Activity Under Enterprise Bargaining: Economics or Politics?', <i>Australian Journal of Labour Economics</i>, 7(4): 439-457.</p>		<p>quantitative, ABS data on industrial action, profits, GDP etc</p>	<p>industrial action</p>	<p>days lost to industrial action</p> <ul style="list-style-type: none"> • Major factor causing reductions in strike action was the introduction of enterprise level bargaining in 1993
<p>Peetz, D. (1999) 'Nearly the Year of Living Dangerously: In the Emerging Worlds of Australian Industrial Relations', <i>Asia Pacific Journal of Human Resources</i>, 37(2): 3-23.</p>	<p>9</p>	<p>Secondary, ABS data on industrial action</p>	<p>Average annual working days lost to industrial disputes between 1966-1998</p>	<ul style="list-style-type: none"> • WRA associated with small reductions in levels of industrial disputes • Attributes this to weakening of unions and restrictions on industrial action, offset by union reaction to increased employer assertiveness • WRA associated with a shift in the basis of disputes from disputes over wages and other causes to disputes over managerial policies