Australian Wage Determination and Gender Equity: A View from the West

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Women in Social and Economic Research

Women in Social and Economic Research (WiSER) is a research program that spans two divisions of Curtin University: the Curtin Business School (CBS) and the Division of Humanities. WiSER was founded in April 1999 in response to a growing void, both within the Australian and international contexts, in the gendered analysis of the economic and social policy issues that confront women. As such, WiSER is committed to producing high quality quantitative and qualitative research on a broad range of issues which women identify as impeding their ability to achieve equity and autonomy. The gender perspective generated through the work of WiSER has provided a number of key opportunities to inform the policy debates within numerous government departments. WiSER seeks to further its commitment to providing a meaningful gender analysis of policy through pursuing further research opportunities which focus on women's experiences of social and economic policies within the Australian context. The broad objectives of WiSER include:

- To identify the cases and causes of women's disadvantaged social and economic status and to contribute to appropriate policy initiatives to address this disadvantage;
- To demonstrate the way in which social factors, particularly gender, influence the construction of economic theory and policy;
- To extend current theory and research by placing women and their social context at the centre of analysis;
- To contribute an interdisciplinary approach to the understanding of women's position in society. In turn, this should enable the unit to better reflect the interrelatedness of the social, economic and political discourses in policy and their consequent implications for women;
- To foster feminist research both nationally and internationally;
- To expand linkages with industry;
- To establish and support a thriving Curtin University of Technology post-graduate research community with a common interest in feminist scholarship.

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1 Introduction

On 27 March 2006 new industrial relations legislation, commonly referred to as *WorkChoices,* came into effect in Australia. The legislation has had a profound effect on the way in which wage determination is conducted in Australia. Historically centralised wage fixing has characterised the Australian landscape although from the mid 1980s this gradually gave way to industry and workplace level enterprise bargaining. Legislative provisions for individual (non-union) bargaining have prevailed since 1993. Under the Australian Labor Party (ALP) these provisions were not actively promoted. While the 1996 industrial reforms of the Howard Coalition Government facilitated the making of individual agreements (known as Australian Workplace Agreements or AWAs) the take-up of AWAs remained low. Through the use of the Corporations Power in the Australian Constitution the Federal government has significantly expanded the coverage of the Federal jurisdiction and with it access to individual bargaining. Indeed individual bargaining now has priority over collective bargaining. The use of the Corporations Power and expansion of the federal jurisdiction has significantly encroached on the coverage previously enjoyed by the State jurisdiction. It also circumscribes the ability of individual States to influence employment standards. In this article we review these developments and assess the likely effects of the reforms on one particular labour market indicator, the gender pay gap.

2 A Brief History of Wage Setting in Australia

The Australian system of wage determination is widely regarded as unique. Its uniqueness stems, primarily, from the constitutional constraints and the limitations placed on the Federal Government to legislate directly on employment matters. These provisions are rooted in the tumultuous strikes of the 1890s and their widely perceived source in the power imbalance between capital and labour. At the time of Federation in 1901 the new constitution thus contained provision for the settlement and prevention of industrial disputes, particularly those extending beyond any one State. The powers are commonly referred to as the Industrial Powers or the Arbitration Powers (Section 51 (xxxv)). The *Conciliation and Arbitration Act* was

drawn-up under these powers and led, in turn, to the establishment of the Commonwealth Court of Conciliation and Arbitration which is known today as the Australian Industrial Relations Commission (AIRC).

Over the course of the last century there were numerous High Court challenges as to the scope and power of the Act. Over time the Federal jurisdiction became the dominant jurisdiction with States (who did have the ability to legislate directly on employment matters) agreeing to mirror developments at the Federal level. State industrial tribunals soon began the practice of flowing through decisions of the Federal industrial tribunal (the AIRC) and in this way brought considerable uniformity to the Australian wage structure and community standards enshrined in awards.

Other powers in the constitution have also played a role in the regulation of industrial relations matters. Section 51(29) (the External Affairs Power) is, for example, used to give effect to international conventions such as ILO conventions. Under Section 52 the government is able to legislate directly for public service employees. Section 51(20) the Corporations Power allows for the making of laws with respect to foreign corporations and trading or financial corporations. It is through an extended interpretation of the Corporations Power that the Federal government has recently been able to expand the coverage of the Federal jurisdiction and widely increase the provision for individual bargaining and the signing of formal AWAs (individual, non-union, agreements).

As is implied from the above, the Industrial Powers and the associated industrial tribunals have given explicit recognition to trade unions and employer organisations in the bargaining process. Individuals were excluded from the system of conciliation and arbitration that evolved under the industrial powers. In other words there was no provision for the formal recognition of individual or collective non-union agreements. In 1993 the ALP creatively used the Corporations Power to allow for collective non-union agreements, although the hurdles that parties to such agreements faced in the formal ratification of a non-union agreement were a significant deterrent to their making.

In 1996 the new Liberal-National Coalition (Howard) Government built on the Corporations Power to allow for individual bargaining and facilitate making of non-union collective agreements. The reforms, which came into effect on 27 March 2006, go further and indeed prioritise individual bargaining over collective bargaining (a reversal of the pre *WorkChoices* situation). An individual agreement may now override the provisions in a collective agreement. Prior to 2006 this was not permitted.

WorkChoices is radically different from past employment regulations. It significantly changes the arrangements for wage determination in Australia. As indicated above, historically wage setting was the responsibility of the AIRC with decisions flowing through to the States via the State tribunals. In making its determinations the AIRC and its state counterparts would typically hear from key parties (eg. governments, employer organisations, unions) and on the weight of evidence presented would present an arbitrated decision. Over time the AIRC developed a set of 'wage fixing principles' to guide its determination. The principles were not set in stone but were reflective of prevailing community standards and norms. As community standards and norms evolved so did the wage fixing principles. By way of example, in the early part of the last century the principle of comparative wage justice (CWJ) had considerable weight. The commonly held view was that the provision of a 'fair' wage structure (taken to mean a set of wage relativities known and agreed to by the community) would minimise industrial disputation. As a result of this principle any movement in the wages of one group would be flowed through the system. The Metalworkers Award soon became an important standard in this regard. The industrial power of the metal unions meant it was often the first to call a review of award rates. Any decision to vary the conditions, allowances or wages in the metal award were, in time, reflected in other awards which benchmarked themselves to this key award.

Throughout the 1980s economic principles increasingly dominated the wage fixing agenda. CWJ was no longer seen as a basis for fixing wages and national level bargaining gradually gave way to industry and workplace level bargaining. That said,

social principles such as equity and individual needs did continue to influence the decisions of tribunals.

The pre *WorkChoices* system of industrial relations also afforded an important means for raising community standards in areas such as hours, work and family and occupational health and safety. Industrial parties could, at any time, apply for a review of conditions of employments in an award. Known as 'test cases' this process delivered important gains in areas hours of work, parental leave and pay equity.[i]

Under *WorkChoices* the wage setting function in the federal jurisdiction no longer rests with the AIRC. Responsibility is now vested in a new institution known as the Australian Fair Pay Commission (AFPC). *WorkChoices* has also effectively stripped the award system bare. In 1996 the set of 'allowable matters' (i.e. matters that could be contained in award) was reduced to 20.[ii] The 2006 reforms further reduces the set of allowable award matters to five minimum conditions: a minimum hourly rate, ten days sick leave, four weeks annual leave (two weeks of which can be 'cashed out'), unpaid parental leave and a maximum number of weekly working hours. The changes have also seen the removal of the skill-based career classification (and pay) structures from awards. These classifications have been migrated over to a new instrument known as the Australian Pay and Classification Scales (APCS). The AFPC, not the AIRC, has responsibility for setting and adjusting rates in the APCS.

As a new institution the AFPC does not, as yet, have a set of wage fixing principles to guide it in its determination. The AFPC does, however, have a set of obligations that it must follow when setting wages. It must, for example, have regard to:

- The capacity for the unemployed and the low paid to obtain and remain in employment
- Employment and competitiveness across the economy
- Providing a safety net for the low paid
- Providing minimum wages for junior employees, employees to whom training arrangements apply and employees with disabilities that ensure those employees are competitive in the labour market.

The development of the APCS and the vesting of responsibility for wage setting in the AFPC means that nationally co-ordinated arbitrated bargaining (eg. national wage cases) are very much a thing of the past in Australia. The change is expected to see greater variation in wages across industries, occupations and states and within organisations. In other words, it will lead to widening wage inequality.

Women are likely to be particularly disadvantaged by the move to a more decentralised system of wage bargaining. Australian women have, historically, benefited enormously from the centralised system of Australian wage determination. By compressing the wage distribution and raising the relative wages of those on the bottom, the Australian wage setting system was able to deliver greater levels of gender pay equity than those observed in most other Western developed economies. *WorkChoices* will, as noted above deliver greater levels of wage inequality and, consequently, greater gender wage gaps as relative pay position of women across the pay distribution deteriorates.

Other detrimental effects from *WorkChoices* with respect to pay equity include:

- Abolishment of the no-disadvantage test. Under the pre-*WorkChoices* regime individual contracts could only be ratified if it could be shown that the conditions of employment were no worse than those provided for under the comparator award. This provision has been removed which means individual agreements may reduce employment conditions previously provided for in the award.
- Weakening the coverage provided for by the 'common rule' provisions. By drawing all incorporated companies (small and large) into the federal jurisdiction *WorkChoices* limits the effectiveness of the common rule provisions which extended the standards in state awards beyond those who were named respondents to the award.
- Limits on the coverage of state based Equal Remuneration Principles (ERPs). ERPs have been used at the state level to prosecute pay equity but with more and more employers covered by the federal jurisdiction the effectiveness of any state based campaign is effectively reduced.

- Limits on the AIRC to make orders for the equal remuneration of work of equal value (ERWEV). The ERWEV principle is retained in the *Workplace Relations Act 1996*. However, the transfer of the pay setting function to the AFPC will constrain the operation of this principle.[iii]
- The removal of the requirement to offer AWAs on the same terms to comparable employees. This opens up potential for greater discrimination between workers doing similar work
- Limits on pattern bargaining, union rights of entry and union involvement in negotiation.

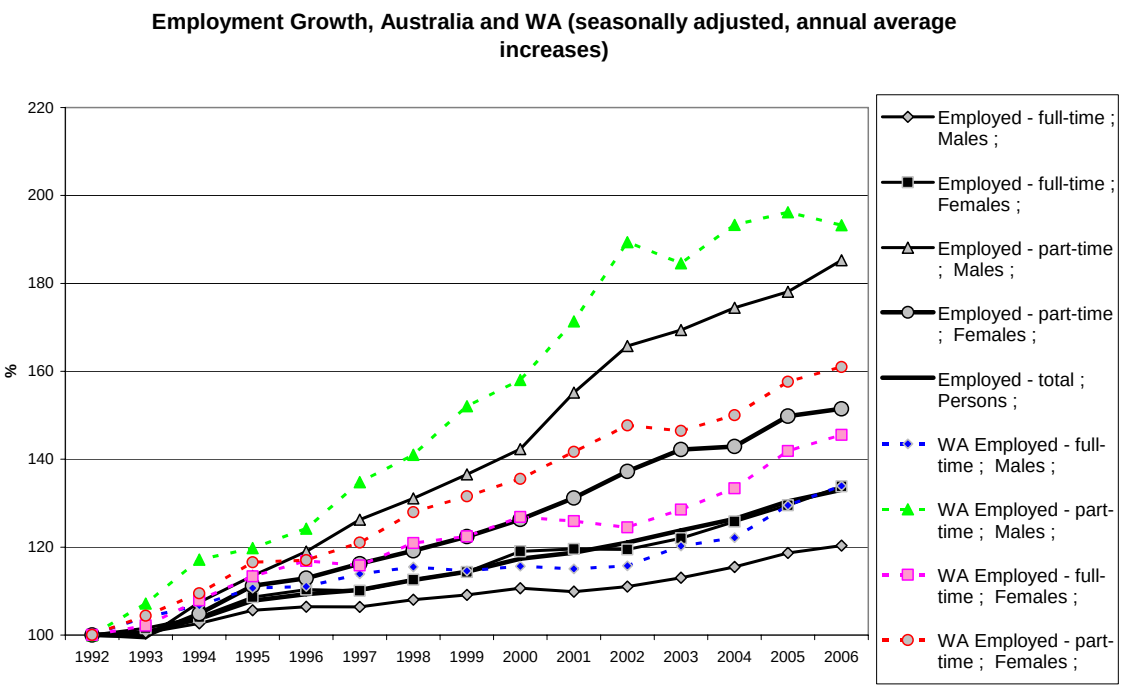
3 Pay equity in Western Australia

In this section we profile the current gender wage gap using recent ABS data on average wages. The section begins with a brief overview of labour market trends to provide a context for discussion of the data. We then examine average wages in the full-time labour market before discussing hourly earnings (which include part-time employees).

3.1 Western Australian Employment and Participation Rates

Between 1992 and 2006 total employment in Western Australia increased by 45.2 per cent, most of it fuelled by strong growth in the part-time sector (underpinned by increased demand for labour flexibility amongst employers) (see Figure 1). Nationally the corresponding growth rate was 33 per cent. By 2006 there were 1,069,300 people employed in WA (equal to 10.5 per cent of total employment in Australia). Women accounted for 43.9 per cent of all WA employees with the employment of women almost equally divided between the full-time and part-time sector. In 2006 52 per cent of all WA women worked on a full-time basis, i.e. 35 or more hours per week. Men employed full-time form the largest single group, equal to 48.5 per cent of the workforce, while men employed part-time, 7.7 per cent, form the smallest but fastest growing group. By 2006 28.9 per cent of all employees in Western Australia were employed on a part-time basis.

Figure 1



Western Australia currently boasts the highest growth (population and gross state product) and the lowest unemployment rates in the nation. The state also has one of the highest participation rates, especially for women. At January 2007 67.4 per cent of the potential WA labour force were either in employment or looking for work. The male and female participation rates were equal to 75.3 and 59.5 per cent, respectively.

3.2 AWOTE (Full-time labour market)

Latest data from the ABS for the full-time labour market shows that the gender pay gap in Western Australia is growing. At November 2006 the common ratio of the average weekly ordinary time earnings (AWOTE) of non-managerial women and men in Western Australia was equal to 74.4 per cent, or a gap of 25.6 per cent. In dollar terms this gap translates to a difference of $317 per week or $16484 per annum.[iv] National gender wage gap was equal to 16 per cent. Key determinants of the gender pay gap include different bargaining power of different groups, differences in industry capacity to pay (eg. mining viz aged care), occupational and industry segregation and associated differences in the valuation attached to male and female

jobs. Institutional provisions and minimum wage laws also affect the size of the gender wage gap.[v]

At the state level the relative pay position of women in WA has been deteriorating since the early 1990s. It reached a low in May 1995 with a gender wage ratio of 76.4 per cent and slowly recovered to 79.4 per cent by May 2002. Since then the ratio has been on the decline again.

The mining boom may account for part of the strong increase in male AWOTE (see the WA male/Australian male average shown in figure 2) and thus partly explain the recent deterioration in the WA gender pay ratio. However, strong growth in earnings of males employed in the mining sector is only part of the story. More insight can be derived from a comparison of the WA women/Australian women pay ratio. The Australian (and WA) labour markets are characterised by high degrees of occupational (and industry) sex segregation. A comparison of WA women with women nationally effectively controls for different industry effects on the wages of women and men.

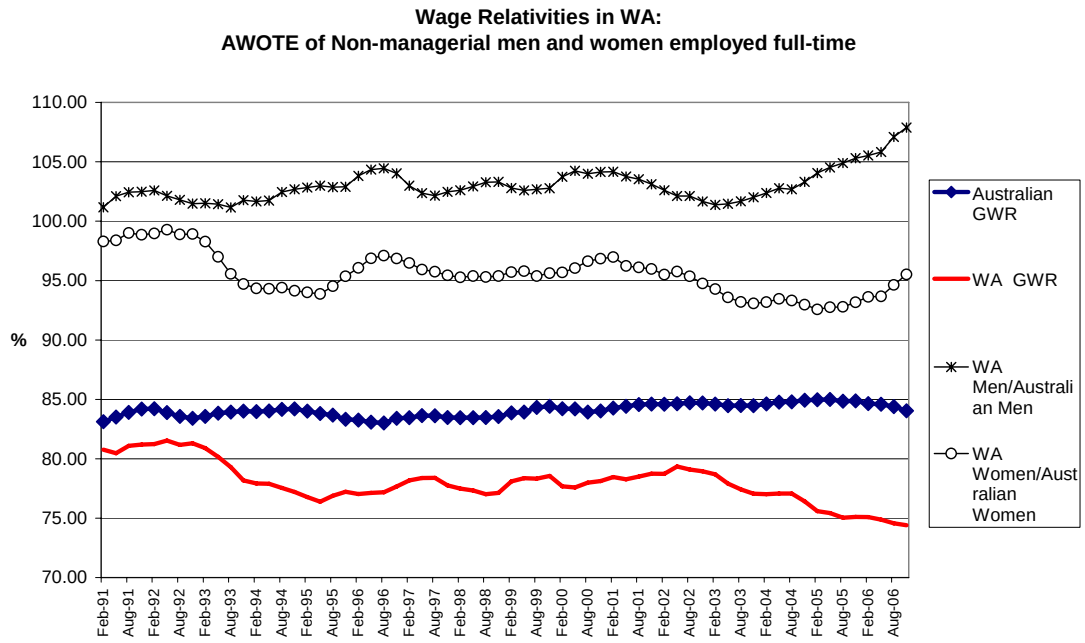
Figure 2 shows significant deterioration in the relative pay of WA women relative to Australian women in the early 1990s and again from 2002. These changes are not driven by developments in the mining industry. Nor are they accounted for by changes in the human capital characteristics (eg. education and experience levels) of WA women relative to Australian women. These changes would not impact so strongly in such a short period of time.

The conclusion drawn is that the observed deterioration in the relative pay of women in WA compared to women nationally in wave 1 (commencing 1993) and wave 2 (commencing 2002) is that it is institutionally generated. What might these institutional forces be? Wave 1 coincides with the introduction of individual contracts in Western Australia and a strong growth in individual agreements in sectors such as health services and retail trade (Crockett and Preston 1998), Wave 2 coincides with introduction of new industrial relations in Western Australia designed to reduce the attractiveness of individual agreements. The resultant effect

was a growth in the number of Western Australian's covered by federal AWAs as businesses shifted out of the state jurisdiction and into the federal jurisdiction where the ratification of an AWA was much easier.

It is further hypothesised here that the recent improvement in the relative pay position of women in Western Australia relative to women nationally has more to do with the deterioration in the pay position of women nationally. As more and more women nationally are covered by AWAs in the federal jurisdiction where it is more difficult to preserve pay and conditions it is likely that this will impact on their actual pay and thus their relative pay compared to West Australians. The following analysis of hourly pay data sheds more light on this hypothesis.

Figure 2



3.3 Hourly Rates

As an indicator of wage movements, trends in the full-time labour market provide only a part-picture. As noted above, employment growth in recent years has been particularly strong in the part-time sector where arrangements for wage determination are quite different. Recent data from the ABS *Employee Earnings and Hours Survey* shows that nationally 12.5 per cent of persons employed full-time were award dependent workers at the time of the last survey (May 2006). In the part-time sector the corresponding share was 33.8 per cent. Part-time employees (which includes casual workers) are thus much less likely to be covered by formal agreements (eg. collective agreements) and much more likely to be dependent on decisions of the AIRC (and now the AFPC) for wage increases.

By focussing on hourly earnings we capture averages of employees in the full-time and part-time sectors. Table 1 sets out the average hourly cash earnings (adjusted for salary sacrificing) of men and women in Australia and WA. When the analysis is restricted to non-managerial employees and based on hourly cash earnings rather than AWOTE a different picture to that painted above emerges. The first, and perhaps most obvious, is that the gap in the earnings of Western Australian women

relative to the national average has gone. That said, at a more disaggregated level, differences exist.

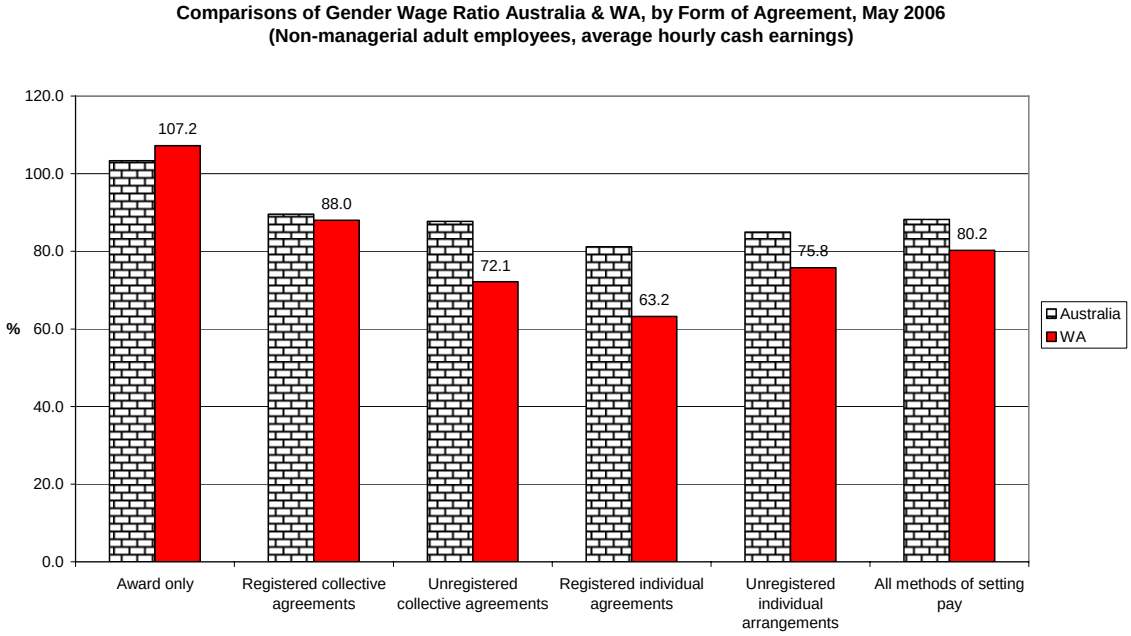
WA women on awards and unregistered individual agreements earn between four and five per cent less than their counterparts nationally. There is also a favourable (almost non-existent) gender wage gap in this sector. The story is less positive for workers covered by other agreement forms. AWAs have the worst outcomes. Nationally the AWA gender pay gap is around 20 per cent, in Western Australia the AWA gender pay gap is closer to 37 per cent.

Table 1: Average Hourly Cash Earnings (A$), Non-managerial adult employees, May 2006

	Australia		WA		WA/Australia Ratio (%)	
	Males	Females	Males	Females	Males	Females
Award only	$18.0	$18.6	$16.60	$17.80	0.92	0.96
Registered collective agreements	$28.7	$25.7	$29.10	$25.60	1.01	1.00
Unregistered collective agreements	$23.6	$20.7	$28.00	$20.20	1.19	0.98
Registered individual agreements	$28.1	$22.8	$36.70	$23.20	1.31	1.02
Unregistered individual arrangements	$27.2	$23.1	$28.90	$21.90	1.06	0.95
All methods of setting pay	$26.3	$23.2	$28.80	$23.10	1.10	1.00

Source: ABS 6306.0

Figure 3



Source: ABS 6306.0 Table 10 (Data Cubes)

4 Discussion

Amongst all states and territories in Australia Western Australia's record with respect to gender equality (as measured by the gender pay gap) is the most disappointing. At November 2006 the gender wage ratio was equal to 74.4 per cent in the full-time non-managerial labour market. Nationally the corresponding ratio was 84 per cent.

Institutional arrangements affecting wage determination at both the state and federal levels have impacted on the relative pay position of women within the state. The introduction of individual bargaining in Western Australia in 1993 (wave 1) contributed to the first observed significant deterioration in their pay position. The second slide (wave 2) followed the introduction of legislative changes which made individual bargaining in Western Australia difficult and encouraged flight to the federal jurisdiction. The more recent improvement in the pay position of women in WA relative to women nationally may relate to recent legislative changes in the federal jurisdiction, the removal of award protection (eg. the removal of the no-disadvantage test) and possible deterioration in Australian women's wages as a result

(in May 2006 the WA women/Australian women AWA wage ratio was equal to 102 per cent; in other words, WA women on AWAs earned 2 per cent *more* than their counterparts nationally).

The interesting policy question to arise from all this is how best to address the large and significant wage gap. In the past the West Australian Industrial Relations Commission (WAIRC) could have reviewed all state award rates and ordered necessary adjustments (eg. for work value). The WAIRC, of course, can still undertake such a review but the coverage of the state award system has been significantly reduced following forced entry of incorporated businesses (large and small) into the federal jurisdiction.

The WA government retains power to set and adjust the state minimum wage covered by the *Minimum Conditions of Employment Act 1993* (WA) however the coverage and impact of this act is again curtailed by the shift of so many incorporated businesses to the federal jurisdiction.

In a recent report by Joan Eveline and Trish Todd (2004) to the WA Parliament on strategies to combat gender wage inequities in Western Australia the authors recommend a suite of regulatory and voluntary strategies.[vi]. The voluntary strategies which are being vigorously pursued through the recently established Pay Equity Unit within the Department of Consumer and Employment Protection (DOCEP) include: gender audits; public sector best practice, education and training (including educating on pay equity) and equal employment opportunity.[vii] The regulatory recommendations from Eveline and Todd (eg. requirement that registration only be given where parties have demonstrated that an agreement has addressed gender equity considerations) are equally creative and laudable, but their likely impact, if implemented, significantly reduced.

In summary *WorkChoices* has significantly curtailed the ability of State governments to affect large, significant and quick changes to the gender pay gap. Changes through the voluntary strategies will have a positive, but much slower, effect. *WorkChoices* has similarly curtailed the ability of the States to advance important labour standards.

Historically it has been through the State systems that many important changes (eg. parental leave) have been initiated and won.

5 Conclusion

WorkChoices marks a radical departure from the past and signals a new era for wage fixing in Australia. Whereas the pre-*WorkChoices* era was characterised by highly centralised, co-ordinated wage negotiations the post-*WorkChoice* era is the complete opposite. Individual bargaining takes precedent over collective bargaining and co-ordinated bargaining (eg. pattern bargaining) is expressly prohibited. Using the Corporations Power of the Australian Constitution the Federal Howard Government has been able to significantly enlarge the coverage of the Federal jurisdiction. Whereas in the past employers (and unions) could pick and choose between jurisdictions, now all constitutional corporations (incorporated companies) are drawn into the Federal jurisdiction even if they express a preference to remain in the State system. From a public policy perspective this development restricts the capacity for State governments and tribunals to respond to labour market developments, such as the large and growing gender wage gap in WA. It also restricts the capacity for the States to advance labour standards through avenues such as State based test cases.

6 References

Crockett, G. and Preston, A. (1999) *Pay Equity for Women in Western Australia: Research Report,* prepared for the Department of Productivity and Labour Relations, Western Australia.

Eveline, J. and Todd, T. (2004) *Report on the Review of the Gender Pay Gap in Western Australia*. Independent report for the Minister for Consumer and Employment Protection, Western Australia.

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

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

[iii] As Alan Grinsell-Jones from Deacons Lawyers notes "… the AIRC's power to make any order adjusting those rate son the basis of the equal pay for work of equal value principle is effectively extinguished". (Alan Grinsell Jones (2006), notes from an ACT pay equity roundtable).

[iv] The AWOTE for non-managerial men employed full-time in WA in November 2006 was equal to $64,027.6 per week annum (or $1124.90 per week).

[v] Other contributory factors include working arrangements (eg. full-time and part-time jobs), access to education and training, access to promotion, family responsibilities, discrimination, glass ceiling etc.

[vi] The full report along with an Executive Summary may be found at http://www.docep.wa.gov.au/lr/WorkLife/Pay%20Equity/Pages/Review_of_the_Gender.html

[vii] For further information on the work of the WA Pay Equity Unit see http://www.docep.wa.gov.au/lr/WorkLife/Pay%20Equity/Pages/The_Pay_Equity_Unit_.html