

MONITORING THE EFFECTS OF AUSTRALIA'S NEW WORKPLACE REGULATIONS: THE CASE OF WOMEN "MINIMUM CONDITION" WORKERS

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ABSTRACT

Traditionally, "award only" provisions have performed a role beyond defining minimum employment conditions. Awards have effectively provided standard employment conditions for large workforce sectors, particularly those which have high proportions of women employees. With the introduction of five minimum conditions of employment, there is a need for data that can be used to monitor changes in the "minimum conditions" sectors of the labour market. However, relevant data are both fragmented and partial. As a result, monitoring the effects of new regulations on "minimum conditions" sectors or specific occupations will pose several challenges.

This paper discusses the need for shared understandings of the ways that existing ABS earnings data can be used for making claims about the operation of the new regulatory regime. This is done by reference to an example of earnings estimates reported in reports of the Office of the Employment Advocate and comparing them with unpublished ABS data. Particular attention is paid to the use of hourly earnings data, the need to distinguish between data that either include or exclude managerial employees and the availability of data for different forms of employment contract.

1 INTRODUCTION

Since the early 1990s Australian institutional arrangements for pay determination and labour market regulation have undergone considerable change. In a series of legislative amendments governments of all persuasions have sought to decentralise the level of bargaining and circumscribe the role of unions and tribunals in the wage determination process. The latest set of reforms, however, go much further than any of the previous changes and significantly change the process and outcomes of wage determination in Australia.

The stated goal for the new regulations, commonly referred to as "WorkChoices", is to:
...create a more flexible, simpler and fairer system of workplace relations for Australia. The Bill will carry forward the evolution of Australia's workplace relations system to improve productivity, increase wages, balance work and family life, and reduce unemployment (The Parliament of the Commonwealth of Australia, 2004/05).

In a radical departure from the arrangements governing wage fixing since 1904, the new regulation gives primacy to individual bargaining over collective bargaining.

It is widely predicted that women will be significantly worse off as a result of the changes (eg. Plowman and Preston, 2005; WEL, 2005; Pocock and Masterman-Smith, 2005; Peetz, 2006). Proponents of the legislation disagree however and point to the apparently higher earnings offered under Australian Workplace Agreements (AWAs) (federal individual agreements) reported by the Office of the Employment Advocate (OEA). Other proponents have highlighted the relative stability in the aggregate gender wage gap over the last ten years, notwithstanding predicted widening following the introduction of decentralised bargaining under the 1996 IR reforms.

In this paper we draw on unpublished earnings data to provide an alternative reading of the "story" as told by the OAE and to re-emphasise the financial risks for women under WorkChoices. We begin with a summary of the significant changes to the Australian IR system recently introduced through WorkChoices.

2 KEY LEGISLATIVE DEVELOPMENTS

The changes introduced under the *WorkChoices* provisions are extensive and have been the subject of much debate and critique.¹ For those with an interest in gender equity the changes are particularly relevant for several reasons. Firstly, they are relevant to legal requirements for gender equity within the workplace. The Convention on the Elimination of all forms of Discrimination Against Women (CEDAW: to which Australia is a party and which is scheduled to the Commonwealth Sex Discrimination Act 1984) highlights that the right to work and right to equal opportunities in employment, the right to equal remuneration and the right to promotion, job security, training and other benefits and conditions of employment are key elements of equality between men and women.

There are also a number of national legislative and international legal obligations that require Australia to further the goal of equity in employment.² These obligations are recognised as some of the Principle Objects of the *Workplace Relations Act 1996* (Cth), which include "assisting in giving effect to Australia's international obligations in relation to labour standards"; "assisting employees to balance their work and family responsibilities effectively through the development of mutually beneficial work practices with employers"; and "respecting and valuing the diversity of the work force by helping to prevent and eliminate discrimination on the basis of race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin" (Section 3, (l) (m) (n)).

¹ By way of example, more than 200 submissions were made to the Senate Inquiry into the provisions of the Workplace Relations Amendment (Work Choices) Bill 2005 (see http://www.aph.gov.au/Senate/committee/EET_CTTE/wr_workchoices05/index.htm).

² We are grateful to Jo Tilley from the Human Rights and Equal Opportunity for her advice on relevant international conventions. The following national legislation and international legal obligations require Australia to further equity in employment: the *Workplace Relations Act 1996*, the *Sex Discrimination Act 1984*, the *Human Rights and Equal Opportunity Act 1986*, CEDAW, the International Labour Organization (ILO) Convention 100 on Equal Remuneration for Work of Equal Value, the ILO Convention 111 Concerning Discrimination in Respect of Employment and Occupation, the ILO Equal Remuneration Recommendation 90, the ILO Discrimination (Employment and Occupation) Recommendation 111, and the International Covenant on Social, Economic and Cultural Rights. The ILO Convention 156 concerning Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities, further seeks to create equality of opportunity between men and women workers with family responsibilities, and between men and women with such responsibilities and workers without such responsibilities.

The extent to which the new workplace regulations are likely to work for or against women is debatable, although the weight of commentary suggests a less than optimistic scenario.³ Features of the IR changes that are most likely to adversely impact upon women include:⁴ (a) new processes for the setting of the federal minimum wage; (b) the (restricted) minimum standards provided for within the legislated 'Australian Fair Pay and Conditions Standard' (AFPCS); (c) the primacy given to individual bargaining over collective bargaining; (d) the limited provisions provided for in the unfair dismissal/redundancy laws; (e) the reduced powers of the AIRC; (f) limits on union power; and (g) specification of 'prohibited content' in agreements (i.e. content that parties may voluntarily agree on that may not explicitly be included in the formal agreement).⁵

The transfer of wage setting functions from the Australian Industrial Relations Commission (AIRC) to a newly established Australian Fair Pay Commission (AFPC), for example, limits the extent to which test cases may be used to advance women's wages. The changes similarly affect the principles used to guide wage fixing with primacy to be given to economic considerations over other normative considerations such as fairness and equity. Indeed there appears to be no provision in the new AFPC obliging an employer to offer similar employment conditions for employees doing the same work, thus putting into peril the concept of equal pay for work of equal value.⁶ The changes also remove the "no disadvantage test", a test which required that those working under AWAs would not be disadvantaged by a shift from collective forms of employment agreement.⁷

With respect to the setting of the minimum wage the focus will be on limiting wage movements on the assumption that high minimum wages contribute to unemployment. Relatedly members of the AFPC are not required to conduct a public interest test when considering their determination. Similarly there is no requirement that the value of the real wage be maintained.⁸

In summary, the new workplace regulations establish the type of decentralised structures that have been associated with a limited capacity to ensure gender equity. This is coupled with few processes for monitoring the content of registered AWAs. In this context, the reports required of the OEA and the availability of official earnings data become particularly important in ensuring that Australia is meeting its legal requirements to further gender equity.⁹

3 AWAS AND EARNINGS

3.1 OEA AND ABS REPORTED EARNINGS

Under section 358A of the Workplace Agreements Act 1996 (Cth), the OEA is required by legislation to present biennial reports to parliament on developments in bargaining for

⁴ For further details see Sara Charlesworth's 2005 presentation on the IR changes and women workers available from http://www.cbs.curtin.edu.au/files/The_IR_Changes_Women.pdf.

⁵ The Office of the Employment Advocate can refer any identified prohibited content in an AWA to the Office of Workplace Services for investigation. Prohibited content relates to any clauses which support union influence in the workplace; provide remedies for unfair dismissal; are discriminatory or are matters which do not pertain to the employment relationships such as provisions which require an employer to pay unions fees from wages.

⁶ For more on the principles historically applied by the AIRC and a discussion of the new changes see (Guthrie, Jefferson and Preston – WISER discussion paper 49, as well as Preston 2001 (chapter 3).

⁷ Once formed, AWAs are registered with the Office of the Employment Advocate (OEA). While the OEA plays the role of registry of AWAs, it does not vet the agreements in relation to wage levels.

⁸ Indeed, in the recent decision of the AFPC there is some debate as to the extent to which the adjustment is sufficient to accommodate recent inflationary trends, particularly for those on minimum pay scales of \$700+ per week (see Australian Financial Review, 27th October 2006).

⁹ The links between gender equity and the new workplace regulations are fully discussed in Preston, Jefferson and Seymour 2006.

the making of agreements. The reporting function is carried out jointly by the Department of Employment and Workplace Relations (DEWR), which reports on collective agreements and the OEA, who reports on AWAs. Perhaps surprisingly, the OEA does not collect wage information directly from AWAs for reporting purposes. Instead they use unpublished ABS data from catalogue 6306.0, a bi-annual publication.

In their most recent report, Agreement Making in Australia Under the Workplace Relations Act (DEWR and OEA, 2004) information about earnings under AWAs occurs at two main points. Information for all employees is included in section 3.1 (pages 83-84) while earnings information for “designated groups” of employees (women, part-timers, youth and people from non-English speaking backgrounds) is contained in section 3.3.

The earnings estimates used by the OEA are presented in a highly aggregated form and, as we discuss below, do not facilitate scrutiny of differences between different labour market sectors. The OEA also overstate the benefits of AWAs. For example, according to the OAE:

“most groups of non-managerial employees on AWAs ...had higher earnings than employees on federal CAs [collective agreements]. Intermediate and elementary clerical, sales and service workers, advanced clerical and service workers and associate professionals on AWAs earned more on average than equivalent employees on federal CAs.”

The unpublished ABS data in support of this claim is reproduced below as Table 1.

Table 1: Average hourly total earnings by occupation and type of agreement, May 2002

	Federal registered CA (\$)	Federal registered individual (\$)	All pay setting methods (\$)
Professionals	29.10	31.70	30.00
Associate professionals	26.70	35.50	31.50
Tradespersons and related workers	23.70	21.90	20.30
Advanced clerical and service workers	22.70	26.00	21.40
Intermediate clerical, sales and service workers	19.20	20.20	18.60
Intermediate production and transport workers	21.50	21.00	20.20
Elementary clerical, sales and service workers	15.20	17.60	15.30
Labourers and related workers	18.60	16.20	16.60
All occupations	23.40	30.20	24.60

Source: (DEWR and OEA, 2004: Table 3.1.6, page 84) (current prices).

In Table 2 below we adopt the same format as that used by the OEA (2004) but restrict the analysis to “non-managerial employees”, defined by the ABS as employees who are not classified as managerial; i.e. do not have “...strategic responsibilities in the conduct or operations of the organisation and/or [are not] in charge of significant numbers of employees”.¹⁰ We also include estimates from the latest, 2004, survey.

¹⁰ The OAE purportedly reports on non-managerial employees, however, their definition of non-managerial differs from that provided by the ABS. Rather than exclude non-managerial employees from all classifications (as has been done in Table 2), the OAE simply excludes ASCO Code 1 “Managerial and Administrative Employees”. This is notwithstanding a clear ‘warning’ by the ABS. “Care should be taken when comparing survey estimates based on ASCO groups with estimates based on the managerial status of employees. Estimates for employees with managerial status include employees classified to ASCO categories other than the ASCO major groups “Managers and administrators”; eg. employees classified as “professionals” according to ASCO may be categorised by employers as having managerial status. Conversely, tables in this publication which contain estimates for non-managerial employees (as defined by employers) will include some employees who would be classified to the ASCO major group Managers and Administrators. (ABS, 2004: 44).

There are two key points of interest. Firstly, for two of the occupational classifications which appear to have relatively favourable hourly wages in 2002, (Associate Professionals and Intermediate Clerical, Sales and Service Workers), the difference between AWAs and collective agreements is reduced when managerial employees are removed from the estimates. This is particularly the case for Associate Professionals, where hourly earnings estimates were reduced from \$35.50 (Table 1) to \$31.40 (Table 2).

Table 2: Average hourly total earnings by occupation and type of agreement for non-managerial employees, May 2002

Occupation (ASCO 1 digit level)	Federal registered CA		Federal registered individual (\$)		All pay setting methods (\$)	
	2002	2004	2002	2004	2002	2004
Professionals	28.60	29.30	31.00	34.20	27.90	29.60
Associate professionals	25.20	26.30	31.40	(29.30)	24.60	25.10
Tradespersons and related workers	23.70	25.60	21.90	(21.70)	19.00	20.80
Advanced clerical and service workers	22.70	24.60	26.00	(24.90)	19.60	22.00
Intermediate clerical, sales and service workers	19.20	20.40	19.70	(19.40)	17.90	19.10
Intermediate production and transport workers	21.50	22.10	21.00	24.80	19.50	20.60
Elementary clerical, sales and service workers	15.20	16.60	17.60	(16.20)	15.20	16.20
Labourers and related workers	18.60	19.40	16.20	16.60	16.30	17.60
All occupations	22.10	23.40	24.80	23.20	20.40	22.00

Source: DEWR and OEA, 2004: Table 3.1.6, page 84. Note (.) shows fall in AHTE between 2002 and 2004 (current prices).

The second notable point of interest concerns 2004 average hourly total earnings (AHTE). For five of the eight occupational groups AHTE for those on AWAs are lower in 2004 than they were in 2002. As the OEA's report using 2004 estimates has not yet been realised there is currently no explanation offered as to why this may be occurring. It may be that compensation is in the form of other non-wage benefits. We shall return to this point again later in the discussion.

3.2 WOMEN'S EARNINGS

As noted previously, women comprise one of the "designated groups" included in the OEA. Two tables that comprise significant parts of the OEA's gender analysis have been combined to produce Table 3 below:

Table 3: Female earnings by type of agreement 2002

	Total weekly earnings (\$)	Total hourly earnings (\$)	
	Female	Female	Male
Federal registered collective agreement	600.40	21.30	25.00
Federal registered individual agreement (AWA)	889.20	28.10	31.50
State registered collective agreement	664.70	24.10	26.60
State registered individual agreement	420.70	16.70	22.90
Other	506.90	20.20	28.90

All female employees	554.00	21.10	27.50
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Source: DEWR/OEA 2004 Table 3.3.1 and 3.3.2 page 99 (current prices).

The estimates included in Table 3 are used by the OEA to support two key claims. Firstly, the claim that "female employees on AWAs earned 32 per cent or more than counterparts on CAs" (this claim is based on the weekly wage rates). (OEA, 2004: 99). Hourly wage rates are used to support the second claim that:

"Female AWA employees earned 89 per cent of the male AWA employee hourly rate of pay. This compared to a female-male earnings ratio of 85 per cent for employees on federal registered collective agreements, and 77 per cent for all employees." (OEA, 2004:99)

In Table 4 we use non-managerial hourly wage data from 2002 and 2004 to assess these claims.

Table 4: Non-managerial Female and Male total hourly earnings by type of agreement May 2002 and May 2004

Type of agreement	Total hourly earnings (\$) 2002		Total hourly earnings (\$) 2004	
	Female	Male	Female	Male
Federal registered collective agreement	20.40	23.40	21.70	24.80
Federal registered individual agreement (AWA)	24.70	24.90	19.90	25.00
State registered collective agreement	22.70	24.60	23.80	25.70
State registered individual agreement	14.70	21.80	26.40	33.50
Other	17.50	19.80	19.10	21.60
All female employees	19.10	21.50	20.70	23.20

Source: Australian Bureau of Statistics, Catalogue 6306.0, unpublished data (current prices).

Based on these data we found that:

- When the sample is restricted to non-managerial employees, the apparent earnings advantage accruing to women in 2002 was 30 percent lower than that claimed by the OAE. In 2002 women non-managerial employees on AWAs earned approximately 21 per cent more than women on federal collective agreements, rather than the 32 per cent as reported by the OEA.
- There was no evidence of a gender wage gap amongst non-managerial employees on AWAs in 2002; rather than the 11 per cent gender wage gap noted by the OEA.
- Between 2002 and 2004 the gender wage gap amongst non-managerial employees on AWAs deteriorated by 19.6 percentage points to 79.6 per cent and was larger than the observed gender wage gap amongst non-managerial employees on collective (federally registered) agreements, equal to 87.5 per cent.

A comparison of the estimates from both 2002 and 2004 suggests that AWAs may operate quite differently in feminised sectors of the workforce, an aspect we investigate more fully by considering different occupational groups in more detail below.

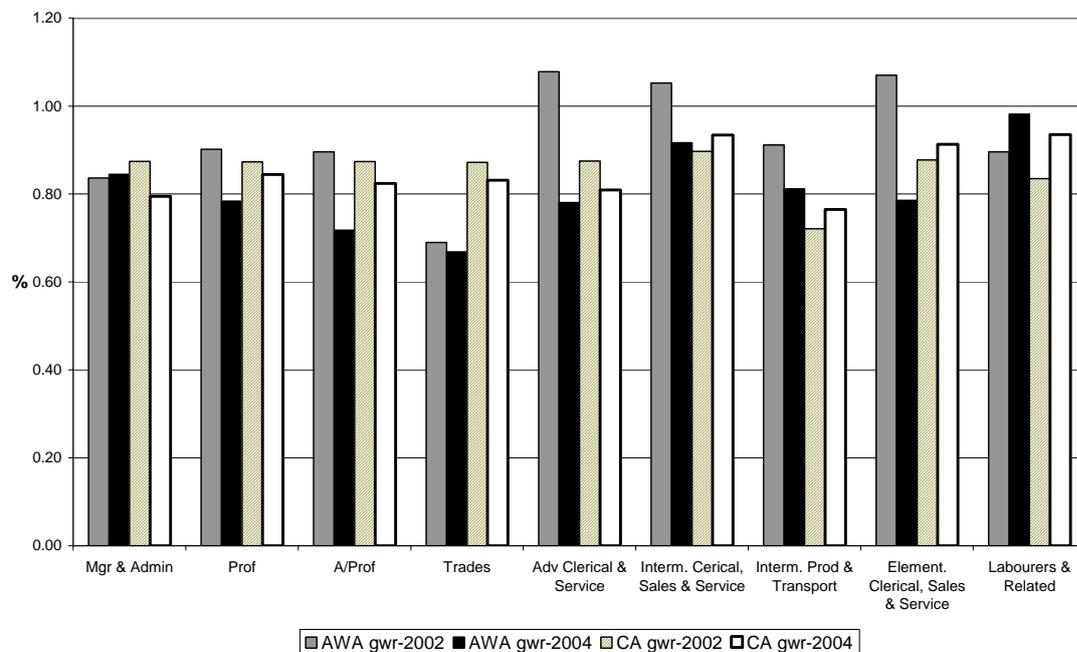
3.3 DISAGGREGATED OCCUPATIONAL ANALYSIS

In the following discussion we examine hourly ordinary time earnings estimates for non-managerial employees in each major occupational group at the ASCO one digit level (the exception applies to Managers and Administrators where the estimates are based on average weekly ordinary time earnings). We focus on hourly earnings because this prevents the anomalous situation of comparing average weekly earnings for categories of employee comprised of different proportions of part-time and full-time workers. We have

used ordinary time earnings to prevent comparisons being affected by possible changes in the patterns of working hours, for example, increased earnings due to additional overtime hours.

Figure 1 compares the gender wage ratio (common ratio of female AHOTE to male AHOTE) for AWAs and federally approved collective agreements over the period 2002 to 2004.

Figure 1: Gender Wage Ratio Within AWAs and Federal Collective Agreements, 2002 and 2004 non-managerial employees.



The following features of the data are worthy of comment:

- With the exception of two occupational groups (Managers and Administrators and Labourers and Related Workers), the gender wage gap amongst non-managerial employees on AWAs deteriorated between 2002 and 2004.
- The gender wage gap across occupations is persistent, significant and varied.
- In 2004, the gender wage ratio amongst non-managerial Advanced Clerical and Service Workers was 78 per cent. The corresponding ratios for Associate Professionals, Professionals and Labourers and Related Workers were 72, 78 and 98 per cent, respectively.
- Relative to non-managerial employees covered by AWAs, the gender wage gap amongst those covered by federal collective agreements was generally smaller.

Research elsewhere has noted that observed stability in the gender wage gap is underpinned by a deterioration in the relative wage outcomes of men rather than by improvements in female pay per se (see Preston, 2003). Table 5 shows the relative earnings of different occupational groups benchmarked to Professionals and disaggregated by type of agreement. In 2002 the AHOTE for female non-managerial employees employed as Labourers and Related Workers and covered by an AWA was equal to 49.7 per cent of the corresponding rate for female non-managerial Professionals. By 2004 the relativity had improved by 6.3 percentage points to 55.9 per cent. Amongst male Labourers and Related Workers the story was markedly different, with the corresponding relativity falling 5.3 percentage points from 50 per cent to 44.7 per cent. In Figure 1 the observed convergence in the GWR amongst Labourers and Related Workers covered by AWAs is underpinned by a deterioration on the relative pay of males (see also Figure 2 below).

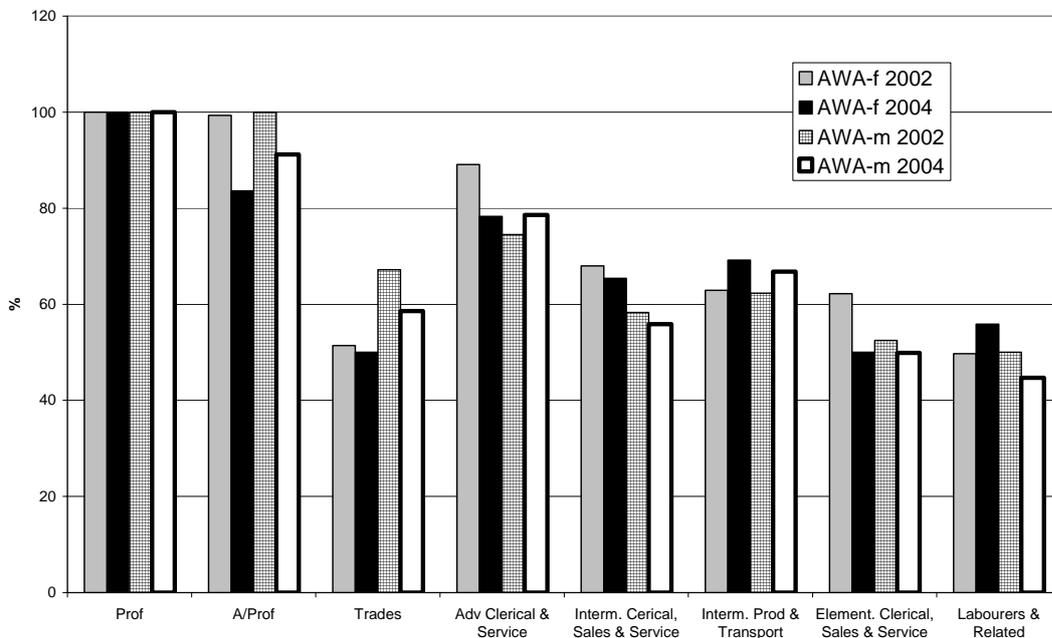
Table 5: Non-managerial female and male average ordinary hourly earning relativities by occupation and type of agreement May 2002 and May 2004

	AWA-f 2002	AWA-f 2004	CA-f 2002	CA-f 2004	AWA-m 2002	AWA-m 2004	CA-m 2002	CA-m 2004
Prof	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
A/Prof	99.3	83.6	84.8	86.0	100.0	91.2	84.7	88.2
Trades	51.4	50.0	73.6	74.3	67.2	58.6	73.7	75.5
Adv Clerical & Service	89.1	78.3	80.7	85.7	74.5	78.6	80.5	89.4
Interm. Clerical, Sales & Service	68.0	65.4	68.0	72.8	58.3	55.9	66.2	65.8
Interm. Prod & Transport	62.9	69.2	57.6	62.1	62.3	66.8	69.8	68.6
Element. Clerical, Sales & Service	62.2	50.0	53.2	58.1	52.5	49.9	52.9	53.7
Labourers & Related	49.7	55.9	56.5	64.0	50.0	44.7	59.1	57.8

Source: Australian Bureau of Statistics, Catalogue 6306.0, unpublished data

Notes: AWA denotes AWA; CA denotes coverage of federally approved collective agreements; 'f' and 'm' denote female and male, respectively. Professionals form the reference group.

Figure 2: AWA Wage Relativities (Relative to Professionals), by Sex and Occupation, 2002 and 2004, non-managerial employees.



Source: Table 5

4 SUMMARY AND DISCUSSION

WorkChoices, and particularly individual agreements in the form of AWAs, have been aggressively promoted as an appropriate way of negotiating workplace level employment arrangements that allow 'flexibility' in the way employment entitlements are structured. WorkChoices will also purportedly deliver increased productivity, increased wages and allow workers to better balance work and family life.

In this paper we review evidence with respect to earning outcomes and, using new unpublished data from the ABS, show that notwithstanding favourable claims from the OEA, women are likely to be significantly disadvantaged in a system where primacy is given to individual bargaining. Between 2002 and 2004 the gender wage gap amongst non-managerial employees on AWAs deteriorated by 19.6 percentage points to 79.6 per cent and was larger than the observed gender wage gap amongst non-managerial employees on collective (federally registered) agreements, equal to 87.5 per cent.

Aside from experiencing a widening gender wage gap, the data also show that female non-managerial employees on AWAs also experienced a deterioration in their real wage between 2002 and 2004 with absolute earnings (at current prices) falling over the period studied. Whilst it might be that earnings have been traded off for some benefit (eg annual leave), research elsewhere suggests that the employment conditions under most individual agreements covering non-managerial employees are inferior to awards (Plowman and Preston 2005; ACRRIT 2002: 64-65).

In short, available data demonstrate that some employees on AWAs appear to receive benefits in terms of increased earnings. However, the effects of AWAs vary markedly between occupational groups and across time. It appears that longer term benefits in the form of higher earnings are restricted to those in relatively favourable labour market positions, most notably those in administrative and managerial roles. Those who have traditionally been reliant on minimum award conditions to provide their standard employment entitlements, particularly women in non-managerial roles are not maintaining their earnings position. Further, it is unlikely that current data sources will be adequate for monitoring their position if trade offs between earnings and other entitlements become prevalent under the new WorkChoices arrangements. This may have significant implications for gender equity in the labour market as AWAs become more widely used. It is an issue that will require regular, appropriate data for monitoring future developments in order to encourage fairness and equity.

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