

COLLATERAL DAMAGE:

WOMEN AND THE WORKCHOICES BATTLEFIELD

In 2003, management at a nursing home in Parkes, New South Wales, attempted to persuade its enrolled nurses to become Care Service Employees, on significantly lower rates of pay. The nurses refused, and the company, aware it would have to deal with the state industrial commission if it pursued the matter, backed off.

On 14 June 2006, ten weeks after the federal government's industrial relations reforms, known as 'WorkChoices', took effect, five nurses at the nursing home were given an offer. They could accept redundancy, in which case they would be replaced by Care Service Employees – or they could become care service employees themselves, taking a pay cut of 22 per cent, about \$170 per week.¹ Due to WorkChoices, the nurses were no longer in the state jurisdiction. After failing to get anywhere with the employer, the nurses went public through their union. The government's local member urged the nurses to refer the matter to the Government's Office of Workplace Services (OWS).² But in mid September, the OWS concluded that what the employer had done was perfectly legal under WorkChoices. The nurses took the redundancy packages rather than the pay cuts.³

If this story sounds familiar, it is because it has many similarities to what happened at Cowra abattoir, where workers were laid off and offered their jobs back on Australian Workplace Agreements (AWAs), the individual contracts under WorkChoices, on pay cuts of up to \$300 per week. Although the Minister originally indicated the company may have "jumped the gun",⁴ in the end the OWS reported back that it had all been perfectly legal.⁵

These are just two skirmishes in a larger theatre. Lined up on one side is a group of powerful people determined to bring about regime change in the workplace. Their principal target is trade unionism. Government Ministers were reportedly speculating to journalists that union density may fall to as low as 12 per cent as a result of the industrial relations policy package.⁶ A major objective of WorkChoices is to move people from unionism and collective agreements onto individual contracts. This is

most clearly evident in the privileges granted to AWAs (which can at any time override a collective agreement) and the restrictions placed upon unionism and collective bargaining, in evident breach of ILO conventions regarding the rights to freedom of association and collective bargaining. For example, in no other western democracy can a union be fined for pattern bargaining, that is, seeking similar outcomes in different agreements, or for including in a collective agreement provisions that protect against unfair dismissal. In no other western democracy does the government micro-manage consenting relations between employees and employers to such a degree, threatening to fine employers for making agreements that show good relations with employee representatives by allowing union officials onto their own workplace or permitting union-provided training.⁷ It is, as the HR Nicholls Society president says, the 'old Soviet system of command and control, where every economic decision has to go back to some central authority and get ticked off'.⁸ In no other western country can an individual be jailed for six months for refusing to answer questions asked by government inquisitors about what happened at a union meeting where such seditious matters as pattern bargaining or union security provisions were discussed. As of 30 June, 29 people had been secretly questioned under such threat of jail if they refused to submit⁹ or told anyone about what happened in the interrogation room. Some were denied the right to be represented by the lawyer of their choice.¹⁰ Even terror suspects have been able to exercise that right. It is a strange war where union members in designated industries have fewer rights than terror suspects.

The secondary target of WorkChoices is the independent industrial tribunals, the institutional apparatus that was seen as supporting trade unionism (except by some of the trade unions themselves). Their powers have been emasculated and largely given to partisan government agencies or private contractors: approval of agreements to the Employment Advocate, dispute settlement to the courts or to private mediators, unfair dismissals to the ether. The federal tribunal is left mainly with responsibility for administering the anti-strike laws targeted at unions. An aim is to move people from tribunal awards to individual contracts.

Where do women fit into this? The smart bombs have already struck a direct hit on the federal tribunal. The unions have so far evaded many of the bullets. It is going to be a long battle, and women are the ones suffering the collateral damage. They are

not the principal target, but they will be very damaged by this bid for regime change, aimed at reshaping power in the employment relationship.

To explain, I shall go back a few steps.

Gender and Firepower

It is generally thought that women have less bargaining power than men, and on this basis many infer that women will do less well than men out of WorkChoices. However, in their submission to the Fair Pay Commission's first minimum wage case, the Australian Chamber of Commerce and Industry (ACCI) said:

it should not be accepted as a truism that women have less bargaining power. The labour market and women's working is becoming more complex, diverse and heterogeneous. As such, such assumptions would need to be drilled down and closely examined prior to being able to be accepted.¹¹

Let us drill into the complexity of the relationship between gender and bargaining power.

Gender and Union Collective Bargaining

Most attitudinal studies in both Australia and overseas have shown that women are as likely to want union membership as men¹². This is despite the fact that, in most countries including Australia, women have traditionally had lower union density than men – in the 1980s, Sweden was the only OECD country where this was not the case.¹³ In recent years, with the end of compulsory unionism, and the awakening of unions to the fact that they have to respond to the wishes of a potential constituency that is increasingly female, the gap between male and female membership rates has been declining substantially.¹⁴ In Australia, in 1990 women were, in trend terms, only 77 per cent as likely as men to belong to a union, but by 2005 they were 91 per cent as likely to belong. The remaining gap between male and female union density is due entirely to segmentation in the labour market, that is their differing employment

distributions – the fact that women are more likely than men to be in casual jobs, and in weakly unionised occupations.¹⁵ Indeed, if men had the same employment distribution as women, on their recent rates of density by industry and occupation, they would have an overall union density about one percent less than women.¹⁶ In the UK, by 2004, female union density had already exceeded that of males, for the first time ever.¹⁷

When women are unionised, and engage in collective bargaining, they fare moderately well. Since 1994, DEWR and its predecessor departments have been collecting data on federal collective enterprise agreements. In the 1990s, men did about 0.2 percentage points a year better than women, sometimes a bit more, but early this decade the figures converged. In 2002 the gap was 0.1 points, in 2003 there was no gap.¹⁸ To the extent that men do better than women, it reflects differences in the industries in which they operate. The highest increases, by far, have typically been in a very male-dominated sector, construction. The other industry consistently paying above average increases in enterprise bargaining has been metals manufacturing, also male-dominated.¹⁹ To the extent that women have done less well from enterprise collective bargaining than men, the gap has been smaller than I, and probably many others, originally expected, especially bearing in mind the gender compositions of different industries. In addition, ABS data show that the ratio of women's to men's hourly earnings under registered collective agreements was virtually constant at 89.5 per cent in 2000, 2002, 2004 and 2006, while the ratio fluctuated but overall probably improved slightly for the minority of collective agreements that were unregistered (from 87.3 per cent in 2000 to 87.7 per cent in 2006).²⁰

To look at it another way, given a chance through collective organisation, women are just as militant and effective as men in securing wage increases.

Gender and Individual Contracting

However, it is not the same story under individual arrangements. For example, for unregistered individual contracts, which make up the bulk of individual arrangements, the same ABS data show the female to male hourly earnings ratio consistently falling from 91.1 per cent in 2000 to 84.9 per cent in 2006. Amongst the smaller number of

registered individual contracts, mainly Australian Workplace Agreements (AWAs,) the ratio fluctuated but fell between 2000 (81.6 per cent) and 2006 (81.1 per cent).²¹ Women's position is weaker, and has worsened, in the individualised sector of the labour market.

Studies have shown that women and men negotiate differently, particularly in relation to money. Men initiate salary negotiations four times as often as women and women ask for and receive, less in salary negotiations than men.²² On the other side of the table, men are more likely to reward other men, for example through promotion, especially where women are in the minority.²³ In individual bargaining women, more than men, tend to undervalue themselves, lacking confidence in their worth, lacking belief that they are better than, or entitled to be paid more than, others, and believing they should prove themselves in the job rather than in the negotiation.²⁴ This leads them to disproportionately avoid competitive behaviour – whereas men are likely to compete too much, engaging in competitions even when it is to their disadvantage.²⁵ This pattern in part reflects gender differences in confidence, some of the causes of which probably go back deeply into socialisation as children and young adults. It means that women are likely to undersell themselves, relative to men, in individual contract negotiations – if such negotiations take place at all.

A survey of workplace delegates from the finance sector found that, after controlling for differences in training and experience, women delegates were less confident than male delegates.²⁶ Yet on most measures, women were no less *activist* than men, once there were controls for training and experience.²⁷ There is no need to worry about whether women's alleged focus on nurturing makes them avoid conflict – train them, build up their confidence, and they will be at the barricades faster than one can say 'essentialist stereotyping'.

So while women have worse labour market outcomes than men, this is not uniform or ubiquitous. The great gains for women have been made, and are made, through collective action. It is the people in the weakest positions in society who have the greatest to gain through exerting collective power, including collective action in the labour market. In Australia, while male unionists in 2005 earned on average 9 per cent more than male non-unionists, female unionists earned 23 per cent more than

female non-unionists.²⁸ Unions tend to raise wages by the most for women, low-wage workers and the young—the groups who, in the absence of unions, would be in the weakest position in the labour market.²⁹ Comparisons across countries indicate that higher rates of union density are strongly associated with lower levels of inequality between the high paid and the low paid. Higher union density is also associated with a higher ratio of female to male earned income and a higher score on the United Nations Gender Development Index.³⁰

The individualisation of employment relations is particularly damaging for women, because it relegates them to a position where their disadvantage in power relations is most acute, where their structural disadvantage is unmitigated and where any disadvantage in confidence can be fully exploited. Overall, women are actually more likely to be covered by collective agreements than men, mainly because they are more likely to work in the public sector. But outside this citadel of collective agreements, a disproportionate number of women are wholly reliant on awards and do not receive any overaward payments, whether they be negotiated with the employer or unilaterally provided by them. In the days when the ABS still collected such data, it was estimated that women received less than half the average level of overaward payments that were received by men.³¹ The absence of effective unionisation, and a low level of overaward payments, are prominent amongst the characteristics of female occupations where work is undervalued.³²

In the end, differences in pay between men and women, once adjustments are made for hours worked, industry, skill and occupation, reflect differences in power. Differences in power arise from many things. They arise from what happens in the domestic division of labour, from access to resources, from the capacity to organise collectively, from the strength of networks, the nature of norms and group identification, the capabilities of mobilisers, people's sense of confidence in themselves and expectations of what they can achieve, the way that institutions behave and, of course, the state of the economy and the demand for skills.³³ Women are paid less than men because the norms that shape the domestic division of labour and compel discrimination in the labour market linger to withhold power from women and undervalue skills associated with female work.³⁴ Only by reclaiming that power through collective organisation is it redressed.

WorkChoices and the gender pay gap

What has been the outcome for women in the WorkChoices battlefield? I will focus here on just one issue – the gender pay gap, that is, the ratio of female to male average earnings.

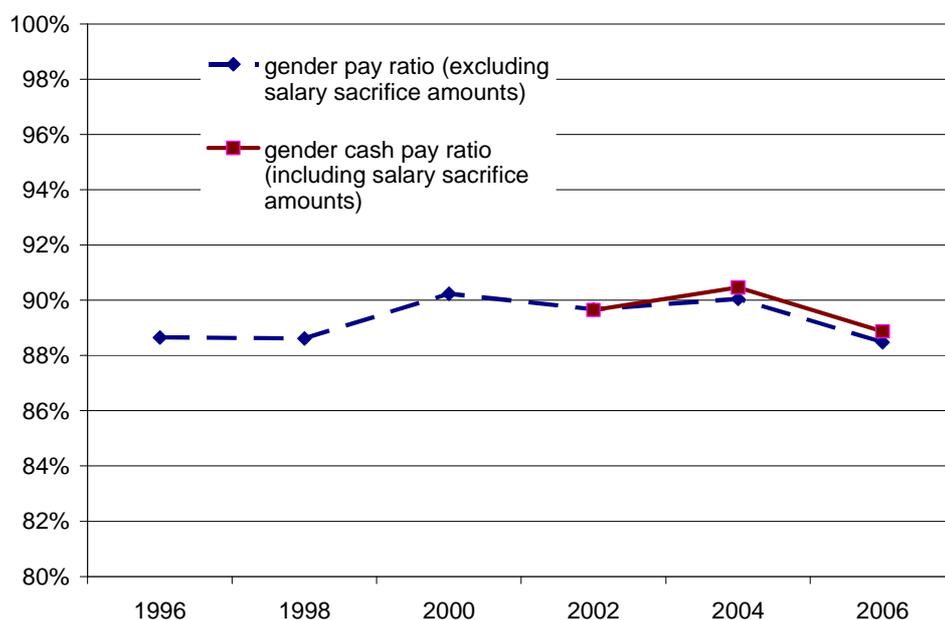
The Commonwealth government argued, in defence of WorkChoices, that the World Economic Forum's global gender gap report for 2006 refers to Australia as a 'leader' in closing the gap between men's and women's earnings.³⁵ It is important to note that the report said that Australia had been a leader in closing the overall gender gap, a much wider concept in which, it noted, Australia's good performance was driven by its record regarding women in education. More significantly, almost all the data sources on which the Forum relied were from 2005, before WorkChoices came into law. Only one economic index had data from 2006 – 'wage equality between women and men for similar work'. On this measure Australia ranked 45th.³⁶ It was based on the results of a survey of executive opinions, and tells us something about the perceptions of Australian managers as to whether there is 'wage equality between women and men for similar work' (clearly they do not think that there is), but it does not tell us about actual wage rates.

When looking at the gender earnings gap, it is best to focus as much as possible on comparing like with like. To say that women's average weekly earnings are roughly two thirds of men's is true, but it does not tell us much other than the fact that women are much more likely to work part-time than men, which is hardly news. What is more interesting is whether their wage *rates* are similar, that is, are they paid similar amounts per hour, or for the ordinary hours of a full-time job?

There are two main sources of information on gender earnings gaps.³⁷ The first source is the ABS Employee Earnings and Hours (EEH) survey. This is the most thorough measure of earnings, enabling us to look specifically at non-managerial employees, but it is conducted only once every two years. In May 2004, average hourly earnings for female non-managerial employees (including amounts salary sacrificed) were 90.5 per cent of their male equivalents. That is, the gender pay gap (the reverse of the gender pay ratio) was 9.5 per cent. By May 2006, the gap had grown to 11.1 per cent.³⁸

Before 2002, the ABS only published EEH data that excluded amounts salary sacrificed. On this measure, in May 1996, the gender pay gap for non-managerial employees was 11.3 per cent. It fell to 10.0 per cent by 2004, but rose again to 11.5 per cent by 2006. Thus, according to the EEH survey, all of the gains in reducing the gender pay gap between 1996 and 2004 were wiped out by 2006 (Chart 1).³⁹

Chart 1 Gender pay ratios 1996-2006



Source: ABS 6306.0.

The second source on the gender pay gap is the average weekly earnings (AWE) series. It has the advantage of being conducted quarterly, but lacks the depth of the EEH survey. The most useful measure here is average weekly ordinary time earnings for full-time adult employees (AWOTE), expressed in trend terms (that is, after the ABS has attempted to removed the effects of short term volatility due to sampling error and the like).

This source shows some important differences between women's experiences in the public and private sectors. In trend terms, the gender pay gap in the public sector has been relatively stable for over a decade. It was 12.9 per cent in February 1996,

reached a low of 11.5 percent in May 1999, then gradually grew to 12.9 per cent by February 2006.⁴⁰ After nine months of WorkChoices it had almost maintained that level, at 13.0 per cent. Overall, real AWOTE in the public sector grew by 0.4 per cent for females between February and December 2006, the same growth rate as achieved by men.

It is a different story in the private sector. There, the gender pay gap, which in trend terms had slowly fallen from 20.4 per cent in February 1996 to 18.7 per cent by February 2006, grew sharply to 19.9 per cent by November 2006.⁴¹ That is, 70 per cent of the gains achieved over ten years had been wiped off in nine months.

After accounting for inflation, real female AWOTE in the private sector fell by 1.0 per cent in the nine months to November 2006, whereas real male AWOTE there fell by just 0.2 per cent (and could be expected to improve in the near future).

Combining the public and private sectors, for women as a whole the gender pay gap had fallen from 17.1 per cent to 15.4 per cent in between February 1996 and February 2006, but in the nine months to November 2006 some 55 per cent of these gains were lost, with the ratio expanding back to 16.4 per cent.⁴² On average, real AWOTE fell by 0.8 per cent for women between February and November 2006, but rose by 0.3 per cent for men.

The growth in the gender pay gap would have been more severe were it not for women being over 50 per cent more likely to work in the public sector than men – some 23 per cent of women, compared to 15 per cent of men, work in the public sector.⁴³ It is the one saving grace for women. But as we shall see shortly, women face a greater number of disadvantages that help explain why the gender pay gap has grown, and why women overall are disadvantaged by WorkChoices.

Table 11.1 Gender pay ratios, trend ordinary time earnings for full-time adult employees, states and Australia, 1996-2006.

	February 1996	February 2006	November 2006	Change February-November 2006
Victoria	84.3	85.8	84.4	- 1.4
New South Wales	82.0	84.7	84.0	- 0.7
Queensland	84.7	85.4	84.5	- 0.9

Western Australia	76.8	74.7	74.1	- 0.6
South Australia	84.0	89.9	87.8	- 2.1
Tasmania	85.8	86.6	87.2	+ 0.6
Australia – total	82.9	84.6	83.6	- 0.9
Australia – public sector	87.1	87.1	87.0	- 0.1
Australia – private sector	79.6	81.3	80.1	- 1.2

Source: ABS Cat No 6302.0

Collateral Damage and the WorkChoices Battle

There are several reasons why women experience the collateral damage in this crusade against unionism.

Award Reliance

First, women are more reliant on awards, and it is people who are reliant on awards who have most to lose from WorkChoices. Women are 55 per cent more likely to be reliant on awards than men – just under one in four women, compared to under one in six men, rely on awards to set their pay and conditions.⁴⁴ One of the key features of WorkChoices is the removal of the 'no disadvantage test' for agreements, whereby agreements were meant to leave employees no worse off than they would be under the award. If a woman lost her penalty rates or something else, she was meant to be compensated, most probably through an increase in the base hourly rate of pay. Now, she can lose any or all award conditions and not receive any compensation.

A core objective of this is to give employers a real incentive to move people off awards, a central aspect of dismantling what Finance Minister Nick Minchin calls "the whole edifice that remains there, in terms of awards, the IR commission".⁴⁵ Up until now, people had voted with their feet and mostly rejected AWAs. After over seven years, these individual agreements only covered 2.4 per cent of employees in 2004.⁴⁶ Eight times as many people were still on awards, fifteen times as many on collective agreements. With WorkChoices, the Minister anticipates that few people will remain on awards in five or so years.⁴⁷ And it will be mainly people presently reliant on awards who are casualties of this key change to the minimum standards for

agreements.

Most of those who are on collective agreements will have the collective bargaining power to resist reductions in pay and conditions. Many of those who are on over-award payments ('unregistered individual arrangements' to the ABS), will already be in a market or negotiating position to avoid such cuts; that they are receiving above the minimum is an indication of this. At least, this will be the case while the economy reaps the gains from the resources boom. But those who are entirely award-reliant, who until now have enjoyed the collective protection of awards, are people without individual market bargaining power, and they have suddenly had that collective protection turned from a solid edifice to a pile of rubble. And they are predominantly women.

The limited official data that exist indicate that AWAs are associated with the loss of a range of 'protected' award conditions of employment.⁴⁸ There have been numerous media stories about pay and conditions being cut through AWAs. For example, workers at a call centre operated for Lufthansa were told to sign AWAs that cut their base pay by between 3 and 10 per cent, reduced penalty rates and loadings, and to allegedly offset this, provided a complex discretionary bonus scheme in which workers had to achieve 110 per cent of the performance targets to get the full bonus, and not take more than one day of sick or carer's leave in three months. The Equal Opportunity Commission of Victoria considered that there was

considerable potential for the proposed performance bonus scheme... to discriminate against employees who need to utilise their leave entitlements because they experience personal illness and/or have parental or carer responsibilities."⁴⁹

Award-reliant women who are not put onto AWAs are dependent on the minimum wage decisions of the Australian Fair Pay Commission (AFOC). In November 2006 the Australian Fair Pay Commission AFPC decided to grant a \$27.36 per week increase in award wages for workers on wages of up to \$700 per week, and \$22.04 per week above that. This was seen by many as unexpectedly generous to those reliant on awards. The AFPC, however, had little room to manoeuvre. State tribunals had

already granted their award workers increases of around \$20 over 12 months. To grant less than the 18 month equivalent of this (something between \$27 to \$30) would have raised questions about the legitimacy of the AFPC by reference to the tribunals it was meant to replace.

The eighteen month gap between the final decision of the AIRC and the first decision of the AFPC created a lacuna in which, for award-reliant low wage earners, continuing price rises and frozen wage rates meant that the real value of their wages fell. For some, but not the majority, the value of their pay packets was eventually restored, but this did not make up for the loss in income during that extended delay period.

When annualised, the AFPC's increase was actually slightly less generous than what most state tribunals had provided. It was the second lowest minimum wage increase in real terms since the Coalition came to office – representing a real wage fall of 0.9 per cent fall on average for award-reliant employees, according to data from the AFPC chair.⁵⁰

We can see how some of these factors tie together in retailing and hospitality. Some 54 per cent of employees in retail trade, and 58 per cent of employees in accommodation, cafes and restaurants, are female. Overall 25 per cent of female employees, including 45 per cent of female casual employees, work in these two industries.⁵¹ These are industries where, as already discussed, real wages have fallen, probably as a result of the delays in obtaining minimum wage increases and of the loss of penalty rates. The Victorian Workplace Industrial Relations survey, undertaken in mid 2006, provides some hints in support of the latter, showing that female dominated workplaces were less likely than other workplaces to pay for overtime and weekend penalties.⁵²

Retail trade is also an industry where the gender pay ratio appears to have fallen, probably for the same reason. Although industry level data in the AWE survey need to be treated cautiously, they show that in retail, the average gender pay gap over the three quarters of WorkChoices (May to November 2006), at 12.6 per cent, was 3.0 per cent above the figure for the corresponding three quarters in 2005 (9.6 per cent).⁵³ The largest single industry employing women, health and community services (which

accounts for 18.5 percent of female jobs),⁵⁴ experienced an even larger growth in the gender pay gap: from 25.2 per cent in May to November 2005, to 31.1 per cent in May to November 2006, a growth of 6 percentage points.

Differential Union/Contract Wage Effects

The second factor in the collateral damage for women from WorkChoices is that they have more to lose from the loss of unionism and consequent shift to individual contracts. As was discussed earlier, unionism and collective bargaining appear to have a bigger positive effect on women than on men. Conversely, individual contracting appears to disadvantage women significantly. In 2006, the difference between hourly earnings of non-managerial males under the registered collective agreements and AWAs was only 2 per cent, but for non-managerial women on AWAs, hourly earnings were an average of 11 per cent less than those on registered collective agreements.⁵⁵ The gender pay gap was worse on AWAs: whereas women on registered collective agreements received nine tenths of the hourly pay of men on such agreements, women on AWAs received little more than eight tenths of the hourly pay of men on AWAs.⁵⁶ It may be, however, that the disadvantage afforded men by AWAs is understated by the high proportion of high-wage men in the Western Australian mining industry on AWAs.⁵⁷

We saw how women were relatively disadvantaged in Western Australia during the 1990s, when a system of individual contracting without a 'no disadvantage test', was introduced. Among those on Western Australian 'workplace agreements', two in ten male employees, but three in ten female employees, had ordinary time wages below the award rate.⁵⁸ In 2002, average hourly earnings under formalised individual contracts in Western Australia were 26 per cent lower for women than for men—the highest gender gap for any type of agreement in any state.⁵⁹ So it was not surprising that the independent review into the gender pay gap in Western Australia, undertaken by Patricia Todd and Joan Eveline, endorsed 'the importance of collective bargaining, in preference to individual agreements, in wage determination for the achievement of a narrowing of the gender pay gap'.⁶⁰

The better performance of the gender pay gap in the public sector than the private sector relates to the relationship between sector and methods of pay setting. The vast majority (90 per cent) of women in the public sector are covered by collective agreements,⁶¹ which help maintain parity between men and women. In the private sector, however, only 22 per cent of women are covered by collective agreements. One in three private sector women (compared to one in six private sector men) are wholly reliant on awards.⁶²

Institutional Leverage

The third reason for collateral damage is that the state institutions directly targeted by WorkChoices, the independent industrial tribunals, had been amongst the principal mechanisms in the move towards gender equity but are yet to complete their task. One major vehicle for advancing towards gender equity, past and potentially in the future, has been national test cases, covering areas such as maternity and paternity leave, family and carer's leave, and unreasonable hours. Test cases are now impossible. The most recent test case, which established employees' "right for request" certain family-friendly terms, was unable to be properly implemented before WorkChoices took effect.

The Equal Pay decisions of 1969 and 1972, the nurses pay decision of 1985, the award restructuring processes of the late 1980s and early 1990s which helped boost child care workers pay amongst others, the equal remuneration claims arising from the Brereton legislation, and most recently, the pay equity cases held in state tribunals over the last few years, were all steps, some major, some minor, some disappointments, towards the goal of equal pay. Much work was still to be done. The recent state pay equity cases (commencing with examinations of child care workers, librarians, clothing outworkers, seafood processors hairdressers and other occupations in New South Wales and Queensland, and moving on to specific cases such as Queensland dental nurses) demonstrated that there were still problems arising from institutional undervaluation of women's work. Sometimes proper work value exercises had not been undertaken, or they had been undertaken but suffered from gender bias, or like with like comparisons had not been made between male and female classifications, or qualifications had not been properly recognised, or the pay

structures provided no career structures for female-dominated occupations.⁶³ But while the tribunals had power over wages, these inadequacies could be, and indeed were being, addressed. Now these powers are mostly in the hands of the AFPC which has no obligations, capacities or interest in these issues. Although the Industrial Relations Commission still retains a limited capacity to deal with certain equal remuneration cases (ss622-634), its new composition and record on the use of that Division do not suggest it will be taking an activist role in this area.

So the institutional basis for achieving gender equity has been shelled, and almost abandoned. It is now up to women to use the weapons of the market to make further progress. But it is worse than it appears. Road blocks are actively placed in the path of those who would wish to use collective bargaining to pursue equal pay. Under the pattern bargaining rules, unique in the Western world, it is illegal for a union to pursue a claim seeking common wages or conditions of employment for two or more proposed collective agreements (ss421,431). It does not stop all equal pay claims, but it is remarkable that there could be a provision in legislation making even one type of equal pay claim illegal, and punishable, if accompanied by industrial action, by fines of \$33,000. In the old days of equal pay struggle, women at least had to chain themselves to a bar or a gate to get arrested in pursuit of the cause. Nowadays, they can be fined just for asking for it the wrong way. Perhaps equal pay is a seditious thought these days.

Discrimination and Harassment

The fourth reason for collateral damage is that, when power shifts away from workers, there are certain problems that women inherently face from disempowerment that men face to a much lesser degree, in particular discrimination and sexual harassment. About three quarters of people who experience physical sexual harassment at work are women.⁶⁴ An analysis of calls to the Victorian Workplace Rights Information Line showed an increasing incidence of calls regarding discrimination and harassment issues, made by or on behalf of women experiencing problems.⁶⁵

Individual protections against discrimination and harassment remain, at law, unchanged by WorkChoices. So why might such problems be possibly increasing? Individual rights at work, for example, against discrimination and harassment, mean little if they are not backed up by collective rights. Workers are likely to lack the confidence, knowledge or resources to assert their rights at work if they do not feel they have the power to protect themselves and ensure that the matter is properly dealt with. In HREOC's telephone survey, which found that almost one in five people had experienced sexual harassment at work, only a few percent reported the harassment to someone in authority, and only a minority of those who did not report it said this was because they did not think it was serious enough to report. Some took care of the problem themselves, but more lacked faith in the complaints process, thought nothing would change, considered the harasser was too senior, or feared a negative impact on themselves.⁶⁶

The message sent by WorkChoices is that it is acceptable and legitimate for managers in firms with less than 101 employees to dismiss staff harshly, unjustly or unreasonably. This clearly translates itself into a changed perception of power relations at the workplace, and is reflected in employers doing things, such as certain dismissals, that they previously thought they could not do. Sometimes these things have been illegal, and the government repeatedly claims that if an employer engages in an illegal act, he will be prosecuted by the government. But often the acts, while illegal, have gone unpunished and unnoticed because the employee concerned does not have \$30,000 available with which to enter into the federal court or the social capital to generate a media frenzy. Despite falling unemployment, 33 per cent of employees in one web-based survey (over-representative of managerial-professional workers) said that they felt more scared about their job security now than they were before the IR reforms came into effect,⁶⁷ and over two fifths felt that changes to the industrial relations system made it easier for employers to discriminate against individuals.⁶⁸ The perception of regime change is even more important than the formal law itself in shaping employer and employee behaviour.

Welfare to Work Choices

The fifth aspect of collateral damage derives from the interaction of WorkChoices with its close ally, the "welfare to work" legislation. Targeted particularly at women (as sole parents) and the disabled, the welfare to work legislation stripped thousands of the lowest income recipients of twenty to forty dollars each week, and imposed effective marginal tax rates well above what the highest income males face. But it is most pernicious through its interaction with its Coalition partner, WorkChoices, because if a sole parent is offered a job on an AWA that has no penalty rates, no overtime pay, no meal breaks, no shift allowances, no leave loading, no redundancy pay and only pays minimum wage, and she knocks it back, she is breached and without income for eight weeks. If she does not have enough savings then it is a matter of going down to the local charity, the relatives, or maybe the ex-partner, cap in hand. There does not seem to be much work choice there.

I have only touched on some aspects of WorkChoices, some of those where women are likely to be disproportionately affected. I have not dealt in any depth with the full implications of the restrictions on the employees right of access to unions at the workplace, restrictions on the right to strike, the unfair dismissal changes including the 'operational reasons' exclusions, the removal of redundancy payment rights from workers in firms with less than 15 employees, the ability of firms to pay below the minimum wage for 6 months if they pay above it for the next 6 months, the scope for firms to force employees to work 'reasonable overtime' at ordinary rates of pay, the long list of regulations, the potential for cuts in pay and conditions while suspending the right to strike under the Orwellian-named employer greenfields agreements (which in fact are not agreements in any sense of the word), or the other 2600 pages of legislation, regulations and explanatory notes. These must be left for another place.

The Resistance Movement

Before concluding, it is worth briefly discussing women in the resistance movement. The resistance basically operates through two strategies.

The first aims to increase the power of employees at the workplace through collective action, in the face of WorkChoices. A study of union delegates looked at the sources of member power at the workplace. Barbara Pocock and I found that where unions

were seen as paying attention to women's issues, their members were nearly twice as likely to have relatively high power at the workplace⁶⁹ than where unions did not pay attention to women's issues.⁷⁰ From a survey of organisers in 13 unions, we found that the degree of openness of a union – which could be measured by whether the union paid a lot of attention to women's issues amongst its members, whether women occupied many powerful positions within the union, and whether the union frequently worked in coalition with women's or community groups to pursue its goals – was positively linked to the rate at which employees were joining the union.⁷¹ This openness was closely related to perceptions of democracy within the union, which our delegates' survey showed was the strongest predictor of member power in the workplace.⁷² It seems pretty obvious, but it is worth saying: engaging women is a crucial part of the resistance to WorkChoices. The signs for the resistance movement are good – or at least, better than they were in the past.⁷³ In our delegates survey, only 13 per cent of female delegates disagreed, and 60 per cent agreed, that the union branch paid a lot of attention to women's issues. In our organisers survey, a majority of female organisers also agreed with this proposition, though by a smaller majority.⁷⁴ A union that does not give power to its members, female and male, will be unable to effectively organise at the workplace. Women and men cannot have power in the workplace if they do not have power in the union.

The second strategy of the resistance is to overturn the WorkChoices legislation in Parliament, which will most likely only happen after a double dissolution of parliament – that is, after two elections. Here, it is worth noting several opinion polls have shown greater opposition to WorkChoices amongst women than amongst men.⁷⁵ The most recent AC Nielsen poll showed that, amongst people who think industrial relations will be the most important issue in deciding their vote, four fifths will give their vote against the Coalition. However, the same poll showed women only two thirds as likely as men to consider it the most important issue – the most cited issue for women was health, on which party preferences were more evenly divided.⁷⁶ Other surveys indicate that awareness of WorkChoices is lower amongst women than men.⁷⁷

Conclusion

Women have worse labour market outcomes than men, but this is neither uniform nor ubiquitous. The great gains for women have been made, and are made, through collective action. Women are as likely to unionise, and behave militantly, as men. However, women's position has deteriorated in the individualised sector of the labour market. The individualisation of employment relations is particularly damaging for women, because it relegates them to a position where their disadvantage in power relations is most acute, where their structural disadvantage is unmitigated and where any disadvantage in confidence can be fully exploited. Only by reclaiming power through collective organisation and pressure is this inequity redressed.

Women are not the principal target of the WorkChoices war – those targets are trade unionism and, to a lesser extent, the independent tribunals – but they will suffer collateral damage for several reasons. Women are more reliant on awards, and it is people who are reliant on awards who have most to lose from WorkChoices. Women have more to lose from the loss of unionism. The state institutions directly targeted by WorkChoices, the independent industrial tribunals, had been amongst the principal mechanisms in the move towards gender equity but are yet to complete their task. Now road blocks are actively placed in the path of those who would wish to use collective bargaining to pursue equal pay. When power shifts away from workers, there are problems that women inherently face from disempowerment to a much greater degree, in particular discrimination and sexual harassment. And women are particularly affected by the interaction of WorkChoices with the "welfare to work" legislation.

For the resistance movement, the task remains of alerting women more fully to the content of WorkChoices, and the seriousness of its consequences for them, their partners, and their children. Long after the resources boom that is offering temporary shelter to many workers from the shrapnel of WorkChoices has been blasted away, it is the daughters and granddaughters, those will do future battle in an individualised labour market, that will be most ravaged by the effects of the war on collectivism.

-
- ¹ NSW Nurses Association, Desperate Federal Government Wrong About Parkes Nurses, Whose Rights At Work Were Reduced, press release, 28 July, 2006.
- ² J. Cobb, *Niola Nursing Home investigations set to continue*, media release, Parkes, 30 August 2006.
- ³ ABC, 'Investigation into Parkes nursing home finds no breach of IR laws', *ABC Online*, 15 September 2006, <http://www.abc.net.au/news/newsitems/200609/s1741654.htm>.
- ⁴ K. Andrews, Andrews defends IR laws, *Insiders*, ABC Online, 2006, <http://www.abc.net.au/insiders/content/2006/s1606485.htm>.
- ⁵ 'Andrews "deceitful" on Cowra, says Combet; now Telstra plans sackings: ACTU', *Workplace Express*, 7 July 2006.
- ⁶ J. Wendt, 'Sunday', *TCN 9*, 29 May 2005.
- ⁷ s356 of WR Act and Regulations 8.5(1)(c),(g) and (5).
- ⁸ Age, 'IR laws like 'Soviet-style command'', *The Age*, 26 March 2006.
- ⁹ Office of the Australian Building and Construction Commissioner, *Report on the Exercise of Compliance Powers by the ABCC for the period 1 October 2005 and 30 June 2006*, Australian Building and Construction Commissioner, secret address, August 2006.
- ¹⁰ *Bonan v Hadgkiss (Deputy Australian Building and Construction Commissioner)*, FCA, 12 October 2006.
- ¹¹ ACCI Submission to AFPC p139 cited in Australian Fair Pay Commission, *Wage-Setting Decision and Reasons for Decision*, AFPC, Melbourne, October 2006, p. 150.
- ¹² Gallie, 'Trade union allegiance and decline in British urban labour markets', in *Trade Unionism in Recession*, eds R. P. D. Gallie and M. Rose, Oxford University Press, Oxford, 1996, pp. 140-174; J. G. Getman, S. B. Goldberg and J. B. Herman, *Union Representation Elections: Law and Reality*, Russell Sage, New York, 1976; P. F. M. Grimes, *The Determinants of Trade Union Membership: Evidence from Two Australian Surveys*, PhD thesis, Research School of Social Sciences, Australian National University, Canberra, 1994; J. Payne, 'Trade Union Membership and Activism Among Young People in Great Britain', *British Journal of Industrial Relations*, vol. 27, no. 1, March 1989; S. A. Youngblood, A. S. DeNisi, J. L. Molleston and W. H. Mobley, 'The impact of work environment, instrumentality beliefs, perceived labor union image, and subjective norms on union voting intentions', *Academy of Management Journal*, vol. 27, no. 3, September 1984.
- ¹³ J. Visser, 'Trade Unionism in Western Europe: Present Situation and Prospects', *Labour and Society*, vol. 13, no. 2, April 1988.
- ¹⁴ Australian Bureau of Statistics, *Employee Earnings, Benefits and Trade Union Membership, Australia*, Canberra, various years 6310.0.
- ¹⁵ D. Peetz, 'Trend analysis of union membership', *Australian Journal of Labour Economics*, vol. 8, no. 1, 2005.
- ¹⁶ *ibid.*
- ¹⁷ H. Grainger and H. Holt, *Trade Union Membership 2004*, Department of Trade and Industry, London, 2005.
- ¹⁸ Department of Employment and Workplace Relations and Office of the Employment Advocate, *Agreement Making in Australia under the Workplace Relations Act, 2002 and 2003*, DEWR, Canberra, June 2004.
- ¹⁹ Department of Employment and Workplace Relations, *Wage Trends in Enterprise Bargaining*, DEWR, Canberra, December quarter and previous editions 2004.
- ²⁰ Australian Bureau of Statistics, *Employee Earnings and Hours, Australia*, Canberra, 6306.0. The term 'probably' is used because a change in the method of calculation of pay by the ABS in 2006 makes comparisons with previous years problematic. The new method (which includes amounts salary sacrificed) produces slightly higher estimates of the gender pay ratio than the old method.
- ²¹ *ibid.*
- ²² L. Babcock and S. Laschever, *Women Don't Ask: negotiation and the gender divide*, Princeton University Press, Princeton, NJ, 2003; L. A. Barron, 'Ask and you shall receive? Gender differences in negotiators' beliefs and requests for a higher salary', *Human Relations*, vol. 56, no. 6, June 2003.
- ²³ R. Kanter, *Men and Women of the Corporation*, Basic Books, New York, 1977.
- ²⁴ Babcock and Laschever, *Women Don't Ask: negotiation and the gender divide*; Barron, 'Ask and you shall receive? Gender differences in negotiators' beliefs and requests for a higher salary', p. 77.
- ²⁵ Babcock and Laschever, *Women Don't Ask: negotiation and the gender divide*, p. 102; M. Niederle and L. Vesterlund, *Do Women Shy Away from Competition? Do Men Compete too Much?*, NBER working paper No. 11474, National Bureau of Economic Research, Cambridge, MA, July 2005.

- ²⁶ As measured by a seven-item index measuring how confident delegates felt about undertaking various activities.
- ²⁷ D. Peetz, C. Webb and M. Jones, 'Activism amongst workplace union delegates', *International Journal of Employment Studies*, vol. 10, no. 2, October 2002.
- ²⁸ This is without controls for industry, occupation, etc. Australian Bureau of Statistics, 6310.0.
- ²⁹ Based on multivariate studies, eg D. G. Blanchflower, 'Changes over time in union relative wage effects in Great Britain and the United States', in *The History and Practice of Economics: Essays in honor of Bernard Corry and Maurice Preston*, eds S. Daniel, P. Arestis and J. Grahl, Edward Elgar, 1999; K. F. Butcher and C. E. Rose, *Wage effects of unions and industrial councils in South Africa*, Working Paper 2520, World Bank, Washington DC, 2001, http://econ.worldbank.org/working_papers/1336/; R. B. Freeman and J. L. Medoff, *What Do Unions Do?*, Basic Books, New York, 1984; A. Jackson and G. Schellenberg, *Unions, Collective Bargaining and Labour Market Outcomes for Canadian Working Women: Past Gains and Future Challenges*, Research Report 11, Canadian Labour Congress., 1999.
- ³⁰ International Labour Organisation, *Statistics of Trade Union Membership*, ILO Bureau of Statistics, Geneva, 2006; United Nations, Human Development Report 2004: Statistics, UN, New York, 2005,
- ³¹ Australian Bureau of Statistics, 6306.0. They also had (and have) less access to overtime than men.
- ³² Centre for Research on Employment and Work and Socio Legal Research Centre, *Pay Equity in Queensland*, Report to Department of Industrial Relations, Queensland Government Submission, Pay Equity Inquiry, QIRC, Brisbane, 2000.
- ³³ D. Peetz, *Brave New Workplace: How Individual Contracts are Changing our Jobs*, Allen & Unwin, Sydney, 2006.
- ³⁴ S. Horrell, J. Rubery and B. Burchell, 'Gender and skills', *Work, Employment and Society*, vol. 4, no. 2, 1990; B. Pocock, 'All change, still gendered: The Australian labour market in the 1990s', *Journal of Industrial Relations*, vol. 40, no. 4, 1998; G. Strachan and J. Burgess, 'Employment restructuring , enterprise bargaining and employment conditions for women workers', *Current Research in Industrial Relations*, Proceedings of the 11th AIRAANZ Conference, Association of Industrial Relations Academics of Australia and New Zealand, Brisbane, 1997, pp. 321-29.
- ³⁵ J Hockey in Australian Broadcasting Corporation, 'Hockey rejects research claiming decrease in women's wages ', *PM*, ABC Radio, 14 February 2007.
- ³⁶ R. Hausmann, L. D. Tyson and S. Zahidi, *The Global Gender Gap Report 2006*, World Economic Forum, Geneva, 2006.
- ³⁷ The Labour Price index, being based on jobs, has no gender data.
- ³⁸ Australian Bureau of Statistics, 6306.0. In terms of weekly earnings, the gender pay ratio fell by 2.0 percentage points (from 70.9 per cent to 68.9 per cent), but as this figure is affected by compositional change between full-time and part-time work, it is a less reliable indicator than the hourly figure.
- ³⁹ *ibid.* In terms of weekly earnings, the gender pay ratio fell by 2.0 percentage points (from 70.9 per cent to 68.9 per cent), but as this figure is affected by compositional change between full-time and part-time work, it is a less reliable indicator than the hourly figure.
- ⁴⁰ Australian Bureau of Statistics, 6302.0.
- ⁴¹ *ibid.*
- ⁴² Australian Bureau of Statistics, 6302.0.
- ⁴³ Australian Bureau of Statistics, 6310.0.
- ⁴⁴ Australian Bureau of Statistics, 6306.0.
- ⁴⁵ N. Minchin, speech to HR Nicholls Society, 3 March 2006.
- ⁴⁶ Australian Bureau of Statistics, 6306.0.
- ⁴⁷ Workplace Express, 'No move to 40 Hours, says Howard', *Workplace Express*, 22 June. 2005.
- ⁴⁸ P. McIlwain, evidence to May Estimates hearing, Senate Employment, Workplace Relations and Education committee, Canberra, 29 May, 2006.
- ⁴⁹ Office of the Workplace Rights Advocate, *Report on the investigation into a complaint regarding Australian Workplace Agreements being offered by Global Tele Sales Pty Ltd*, Melbourne, 8 August 2006.
- ⁵⁰ Workplace Express, 'Harper downplays impact of minimum wage rise, looks for jobs growth', *Workplace Express*, 23 November 2006.
- ⁵¹ Australian Bureau of Statistics, 6310.0.
- ⁵² Industrial Relations Victoria, *Women in the Victorian Workplace: Findings from Victorian Workplace Industrial Relations Survey 2006*, Department of Innovation, Industry and Regional Development, Melbourne, 2007.

-
- ⁵³ Australian Bureau of Statistics, 6302.0. The ratio also fell by 2 percentage points in hospitality but the fall there was not large enough to be statistically significant. Data are averaged over three quarters to reduce sampling error.
- ⁵⁴ Australian Bureau of Statistics, 6310.0.
- ⁵⁵ These data do not control for industry or occupation. Doing so would probably increase the gap between AWAs and individual contracts, due to the disproportionate number of men on AWAs in mining, particularly in Western Australia.
- ⁵⁶ Australian Bureau of Statistics, 6306.0.
- ⁵⁷ D. Peetz, *Assessing the Impact of WorkChoices - One Year On*, Industrial Relations Victoria, Department of Innovation, Industry and Regional Development, Melbourne, March 2007.
- ⁵⁸ Commissioner of Workplace Agreements, *Summary statistics and other information*, Vol 8, CWA, Perth, 1999, http://www.wa.gov.au/workplace/html/5pub_idx.htm.
- ⁵⁹ Australian Bureau of Statistics, 6306.0.
- ⁶⁰ T. Todd and J. Eveline, *Report on the Review of the Gender Pay Gap in Western Australia*, University of Western Australia, Perth, November 2004, http://www.docep.wa.gov.au/Ir/LabourRelations/Media/Gender_Pay_Final_Rep.pdf.
- ⁶¹ Australian Bureau of Statistics, 6306.0.
- ⁶² *ibid.*
- ⁶³ Centre for Research on Employment and Work and Socio Legal Research Centre, *Pay Equity in Queensland*.
- ⁶⁴ Human Rights and Equal Opportunities Commission, *Sexual harassment in the Australian Workplace*, Canberra, 2004, http://www.hreoc.gov.au/sex_discrimination/challenge_continues/data/chap2.html.
- ⁶⁵ P. Gahan, *WorkChoices & Workplace Rights in Victoria: Evidence from the Workplace Rights Information Line*, Report to the Office of the Workplace Rights Advocate, Melbourne, 2006.
- ⁶⁶ Human Rights and Equal Opportunities Commission, *Sexual harassment in the Australian Workplace*.
- ⁶⁷ Talent2, *Aussies scared for their jobs*, Press release, Markson Sparks Publicity, Sydney, 15 August 2006.
- ⁶⁸ Talent2, *Industrial relations reform - raw*, Data tables from survey of 1595 employees, August, Sydney, 15 August, 2006.
- ⁶⁹ Measured by a four item index based on responses to questions asked of union delegates in a survey of 2500 delegates in eight unions.
- ⁷⁰ D. Peetz and B. Pocock, 'Workplace Delegates and Worker Power', *21st Century Work: High road or low road*, Association of Industrial Relations Academics of Australia and New Zealand, Adelaide, February 2006.
- ⁷¹ D. Peetz and B. Pocock, 'Community activists, coalitions and unionism', in *Unions and Community*, ed D Buttigeig et al, Heidelberg books, Adelaide, 2007 (forthcoming).
- ⁷² Peetz and Pocock, 'Workplace Delegates and Worker Power'; Peetz and Pocock, 'Community activists, coalitions and unionism'.
- ⁷³ B. Pocock (ed.) *Strife: sex and politics in labour unions*, Allen & Unwin, Sydney, 1997; E. Ryan and H. Prendergast, 'Unions are for Women, Too!' in *Power, Conflict and Control on Australian Trade Unions*, ed K. Cole, Melbourne, Ringwood, 1982; D. Storer and K. Hargreaves, 'Migrant women in industry', in *Social Policy and Problems of the Workforce*, ed S. Staats, Vol 1, Social Welfare Unit, Australian Council of Trade Unions., Melbourne, 1976, pp. 39-104.
- ⁷⁴ Peetz and Pocock, 'Workplace Delegates and Worker Power'; Peetz and Pocock, 'Community activists, coalitions and unionism'.
- ⁷⁵ Newspoll, 'National telephone survey of 1200 adults, 15-17 December 2006', *Australian*, 3 January 2007, p. 2, http://newspoll.com.au/image_uploads/cgi-lib.13778.1.0101quality_of_life.pdf; Roy Morgan Research, *Majorities Of People Disagree With IR Reforms, Think They Will Be Bad For Australia*, Morgan Poll, Sydney, 7 April 2006; M. Schubert, 'Middle-aged workers most hostile to workplace changes', *Age*, 26 October 2005.
- ⁷⁶ A C Nielsen, 'National phone poll of 1408 respondents', 5-7 October 2006,
- ⁷⁷ Roy Morgan Research, *Majorities Of People Disagree With IR Reforms, Think They Will Be Bad For Australia*.