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Taking the Low Road: Minimum Wage Determination under Work Choices

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Abstract: The *Workplace Relations Amendment (Work Choices) Act 2005* changes the architecture of labour market regulation in Australia in a significant way. The focus of this article is on changes to the regulatory framework for minimum wage determination and the rationale for, and likely consequences of, conferring this power on the Australian Fair Pay Commission. Underpinning the Work Choices package is the view that Safety Net wage rises awarded by the Australian Industrial Relations Commission have had negative effects on employment. In this article we establish that the evidence to support this claim is weak, and is being used to engineer a historic shift in the objectives of the Australian wage setting process. We argue that the new legislation will act as a downward drag on the pay and conditions of minimum wage workers and advance an alternative policy approach in which attaining full employment does not require us to abandon the principle of fairness or a decent wage floor.

Keywords: *Australian wage setting; full employability; labour market deregulation; minimum wages*

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1 Introduction

The *Workplace Relations Amendment (Work Choices) Act* 2005, hereafter Work Choices, was assented to on 14 December 2005. The Work Choices legislation serves to significantly change the architecture of labour market regulation in Australia. Our focus in this article is on changes to the regulatory framework for the determination of minimum wages and the rationale for, and likely consequences of, conferring this power on a new statutory agency called the Australian Fair Pay Commission (AFPC). Work Choices provides for the establishment of the AFPC to set and adjust the standard Federal Minimum Wage and minimum award classification rates of pay; special Federal Minimum Wages for junior employees, employees with disabilities or employees under training arrangements; minimum wages for piece workers; and casual loadings (Commonwealth of Australia, 2005: s7D).

In exploring the implications of shifting responsibility for minimum wage determination from the Australian Industrial Relations Commission (AIRC) to the AFPC, the article will be organized as follows. Section 2 sets out the Government's rationale for changing the institutional framework through which minimum wages are determined. Section 3 examines the relationship between minimum wages and employment outcomes in Australia to assess the veracity of the assumptions that underpin the objectives specified in the Work Choices legislation. Section 4 provides detailed analysis of differences between the AIRC and AFPC with respect to the composition and independence of Commission members; the legislative criteria guiding wage decisions; and, the role accorded to these decisions in the pursuit of broader economic and distributional goals such as prosperity and fairness. Finally, Section 5 argues that the Work Choices legislation will act as a downward drag on the pay and conditions of minimum wage workers,¹ and sets out an alternative policy approach to attaining the Work Choices objectives. This approach requires a State commitment to full employment and the maintenance of a decent living wage.

2 The Australian Fair Pay Commission (AFPC): The Rationale for Change

Under the *Workplace Relations Act 1996*, the AIRC does not set a single Federal minimum wage. Instead, it determines safety net wage increases for workers who have not procured increases through enterprise bargaining, while specifying changes to minimum award rates. The desire to transfer wage determination functions to the AFPC is based on the Commonwealth's long-held view that the level of safety net adjustments awarded by the AIRC has been inimical to the goal of generating additional jobs, apprenticeships and traineeships; and that such adjustments should be confined to the low paid (Howe et al., 2005: 4).² Wage decisions that facilitate labour market entry are seen to serve as stepping stones to higher paying jobs over time (Australian Government, 2005: 64). It follows that in the absence of institutional reform

to wage setting arrangements, unemployed persons will remain 'priced' out of the labour market.

At the 2005–06 Budget Senate Estimates Hearings, the Department of Employment and Workplace Relations (DEWR) was asked to estimate the employment effects of changes to workplace relations under Work Choices, and to document the research used to support these estimates and the causal relationship implied. While DEWR did not provide the requested estimate it stated that:³

With regard to the establishment of the Australian Fair Pay Commission (AFPC), DEWR has provided considerable evidence of the negative effects on employment arising from the operation of the current *Workplace Relations Act 1996* where the Australian Industrial Relations Commission (AIRC) continues to grant large wage rises in the annual Safety Net Review ... The AFPC will ensure a better balance between fair pay and employment. (DEWR, 2005: W319–06)

In the following section we consider whether the economic research literature supports this claim.

3 Employment Effects of a Minimum Wage Rise

Underlying the job generation claims discussed in Section 2 is the proposition that wage increases, or the imposition of minimum wages and conditions, will have adverse consequences for employment. This proposition is grounded in orthodox microeconomic theory developed within the highly stylized 'competitive' model. The failure of the parameters of this 'text-book' model to materialize in the real world and the existence of pronounced interdependencies between labour demand and supply – in defiance of the model's assumption of independent costs and incomes – are typically ignored by those who want to abuse the 'text-book' theory and use it as an 'authority' for their claims (Thurow, 1983).

The dominance of the proposition has driven labour market policy over the last 12 years since the Organisation for Economic Co-operation and Development (OECD) released its *Jobs Study* (OECD, 1994), which provided a sophisticated and seemingly empirically tight argument for comprehensive labour market and welfare system reform. The OECD advocated extensive supply side reform with a particular focus on the labour market, because supply side rigidities were alleged to inhibit the capacity of economies to adjust, innovate and be creative (OECD, 1994: 43). The proposed reform agenda was adopted in various ways by many governments with Australia leading the way. Australia has been praised by the OECD (2001: 11) for our path-breaking lead in introducing 'market-type mechanisms into job-broking and related employment services'. The OECD (2001: 14) concludes that, in terms of labour market policies, Australia 'has been among the OECD countries complying best' with the 1994 OECD Jobs Strategy.

In the past several years, both the Commonwealth and the major business lobby groups have argued that an increase in the Safety Net wage would destroy

jobs.⁴ The principal research tendered to support this claim was undertaken by Leigh (2003), Harding and Harding (2004), and Dixon et al. (2005), and was considered in detail at the 2003, 2004 and 2005 Safety Net Review hearings (AIRC, 2003, 2004, 2005). One of the authors of the present article presented expert evidence before the AIRC in 2004 and 2005, critical of the research methodology used, and the findings reached, in these papers (Australian Council of Trade Unions [ACTU], 2004; Mitchell, 2005b).

In its 2005 decision (AIRC, 2005: para. 203), the Commission acknowledged that: '... the models assume that employers react to increases in real wages by reducing their demands for labour. Hence the simulations inevitably show that aggregate employment is reduced by increases in real award wages'. It went on to state:

We do not propose to place any weight on the Commonwealth's submission ... the analysis undertaken by the Commonwealth relies on only a small number of observations. In the May 2004 decision, the Commission referred to the evidence of Professor Mitchell in which he raised a number of limitations in the methodology applied in regression analyses undertaken by the Commonwealth in those proceedings. The limitations identified by Professor Mitchell included:

- Failure to full report diagnostic statistics;
- The number of observations were below the professionally accepted level of 30 in all but one of the models;
- Measurement problems and error; and
- Failure to control for factors which may both affect variables and produce bias and endogeneity problems.

It seems to us that at least the first two limitations identified apply with equal force to the Commonwealth's analyses in these proceedings. Given the technical limitations of the exercise, the material does not allow us to reach any conclusions as to the impact of safety net adjustments on employee hours worked in the three most award-reliant industries. (AIRC, 2005: para. 275-6)

In recent years, partly in response to the reality that active labour market policies have not solved unemployment and have instead created problems of poverty and urban inequality, some notable shifts in perspectives are evident among those who had wholly supported (and motivated) the OECD approach. Many academic studies have sought to establish the empirical veracity of the neoclassical relationship between unemployment and real wages and to evaluate the effectiveness of active labour market program spending. This has been a particularly European and English obsession. There has been a bevy of research material coming out of the OECD itself, the European Central Bank, various national agencies such as the Central Planning Bureau in the Netherlands, in addition to academic studies. The overwhelming conclusion to be drawn from this literature is that there is no conclusion. These various econometric studies, which have sought to establish the empirical veracity of the neoclassical relationship between unemployment and minimum wages and constructed their analyses in ways that are most favourable to finding the null that the OECD view was valid, provide no consensus view as Baker et al. (2004)

show convincingly. The eminent Harvard economist, Richard Freeman (2005) concludes that:

these analyses are akin to a prosecutor's case in a trial. They give the evidence that suggests the institutions are guilty but do not reflect on the weaknesses of that evidence. To reach a verdict, it is necessary to see the arguments by analysts who take the other side of the debate – the defence attorneys, as it were. These researchers give a different reading of what the data show and, most important, of the robustness of the case against labour institutions. (Freeman, 2005: 135)

In the face of the mounting criticism and empirical argument, the OECD has begun to back away from its hardline Jobs Study position. In the 2004 Employment Outlook, OECD (2004: 165) admits that the evidence supporting their Jobs Study view that high real wages cause unemployment 'is somewhat fragile'. However, in the 2006 OECD Employment Outlook, which is based on a comprehensive econometric study of employment outcomes across 20 OECD countries between 1983 and 2003, a major shift in perspective is offered. The study included those who have adopted the Jobs Study as a policy template and those who have resisted labour market deregulation. OECD (2006) finds that:

- There is no significant correlation between unemployment and employment protection legislation;
- The level of the minimum wage has no significant direct impact on unemployment; and,
- Highly centralized wage bargaining significantly reduces unemployment.

This latest statement from the OECD confounds those who have relied on its previous work including the Jobs Study, to push through harsh labour market reforms (such as the widespread deregulation in Australia as a consequence of the Work Choices legislation), retrenched welfare entitlements and attacked the power bases of trade unions.

To date, there has been no evidence that the Australian Government has acknowledged that the international debate on the impact of minimum wages on employment has shifted and the OECD position now offers no theoretical or empirical authority to underpin the developments that have occurred in this country under Work Choices.

4 Institutional Change in Minimum Wage Determination: Likely Effects

4.1 Wage Levels

Work Choices guarantees that nominal minimum and award classification wages will be protected at the level set after the inclusion of the increase granted at the AIRC's 2005 Safety Net Review case (ss 90L and 90O). Thus, the weekly Federal Minimum Wage cannot fall below AUSS\$484.40, which translates to an hourly rate of AUSS\$12.75. Where awards currently include specific pro-rata

wages for juniors, trainees or apprentices and employees with disabilities, these levels will also be protected at the 2005 Safety Net Review level.

While this serves to establish a money wage floor, the following section outlines the greater emphasis that the AFPC will be required to give to promoting economic prosperity, through employment generation, in determining the level of any subsequent adjustment. Given that the establishment of the AFPC has been explicitly linked to the view that the generosity of AIRC Safety Net decisions has been to the detriment of employment growth, it is reasonable to expect that the real minimum wage will fall over time or grow at a considerably slower rate. Briggs and Buchanan (2005: 188) note that the reforms will also impact on a cohort of skilled workers who lack bargaining power and on low paid workers who earn above the Federal Minimum Wage but for whom safety net increases represent a floor underpinning their wages. The indexation of income support payments suggests that a stagnant nominal minimum wage will also have implications for welfare recipients. This prediction is advanced by orthodox economists who argue that an increase in the replacement ratio will act as a disincentive to work and must be discouraged.⁵

For junior employees, employees with disabilities or employees to whom training arrangements apply, the AFPC will be required to ensure that appropriate minimum rates are established for any group or sub-group of workers not covered by a minimum classification rate of pay. The AFPC will thus have the power to fill gaps in existing coverage if it considers specific provision should be made for those employees. In establishing these minima, the AFPC will be required to set wages at a level that ensures the particular group of workers is competitive in the labour market (Howard, 2005). It will thus be important to monitor changes to the real wage outcomes of groups who move from the Federal Minimum Wage to a pro rata special minimum wage, and of groups currently in receipt of a special minimum wage for whom a new classification rate is established.

In a media statement on 20 September 2005, the Prime Minister stressed that the passage of the Work Choices Bill would see the removal of any state or federal award provision that restricted the range and availability of apprenticeships (Howard, 2005). As stated earlier, the AFPC would have the power to set competitive wages for apprentices and trainees. Should state governments mount a successful constitutional challenge in the High Court – to prevent the Work Choices provisions from overriding state industrial powers – the Commonwealth may still have a mechanism to displace state pay rates for minimum wage workers. It has been argued that the Whitlam Government's 1973 ratification of the International Labor Organisation Convention 131 (Minimum Wage Fixing) may enable the Commonwealth to appropriate the setting of minimum wages as the constitutional basis of the AFPC. This convention requires member states to establish a system of minimum wages that covers all groups of workers (Department of the Parliamentary Library, 2005: 2).

4.2 A Different Commission with Different Criteria

Under Section 7 of the Work Choices Act, the AFPC comprises five members appointed by the Government: a Chairman who can be appointed on a full- or part-time basis for a period of up to five years, and who will be required to have high levels of skills and experience in business or economics; and four Commissioners who can be appointed on a part-time basis for a period of up to four years. The Commissioners must each have experience in one or more of the following areas: business; community organizations; workplace relations; and, economics. By framing the selection criteria in terms of individual experience – as opposed to the representation of specified interest groups – the Act does not require that the AFPC, considered as a collective, has experience in each of the defined areas. The Commonwealth argues that the AFPC will be independent of Government. This is true to the extent that the AFPC will make its own determinations and its decisions cannot be appealed. However, the notion of independence is diluted by the short-term nature of appointments, which could leave appointees open to government pressures. Macken (2006: 4) argues that short-term appointees cannot develop patterns of precedent leading to greater confidence in court systems and that the stipulation of skills in areas including economics and business, do not equate to the skills required for judicial detachment. By contrast, while the Government also appoints AIRC Commissioners, these appointments are not time limited and the Government has defended the impartiality of its appointments in the past. Concerns about the independence and legitimacy of the AFPC are compounded by the provisions contained in Schedule 15 (s 30) of the Act, which allow the Minister to intervene and amend outcomes by regulation, even where the Commission has followed the parameters governing decisions as stated in the Act (Macken, 2006: 4).

The AFPC will determine the timing, scope and frequency of its wage reviews,⁶ the manner in which wage reviews are to be conducted and the date on which wage-setting decisions are to come into effect. In contrast to AIRC proceedings there is no obligation to undertake hearings. In its submission to the Senate Committee Inquiry on the *Workplace Relations Amendment (Work Choices) Bill 2005*, DEWR notes that the ‘policy intent’ of creating the AFPC is to ‘enable a more consultative approach to minimum wage setting in Australia’ (DEWR, 2005: 20). While the Department states that the wage reviews undertaken are designed to be inclusive and that the Commission *can* undertake or commission research, engage in consultation, and monitor and evaluate the impact of its wage-setting decisions, this will be for the AFPC to determine. There will be no legislative requirement for the process by which the Commission arrived at its decision to be transparent or for the relevant research evidence to be published. The AFPC will only be required to publish its wage-setting decisions and reasons in terms of the Commission as a body.

While the Government’s policy objective is to move away from the legalistic and adversarial process of minimum wage determination before the AIRC, it is

important to consider (1) whether AIRC safety net decisions are based on the application of appropriate standards of evidentiary proof to the submissions of all parties (Briggs and Buchanan, 2005: 188); and (2) why labour relations in Australia have, until the present time, been the province of a specialized judicial process.

With respect to standards of evidence, the Safety Net Reviews guarantee certain parties participation rights,⁷ while others are permitted to provide evidence as 'interveners' (One Hundred and Fifty One Australian Industrial Relations, Labour Market and Legal Academics, 2005: 14). A range of parties and expert witnesses present evidence, are questioned by the Commissioners, and may be subject to cross-examination. The Full Bench of the AIRC not only publishes its decision, but publishes a detailed evaluation and assessment of the evidence presented to explain the basis on which its determination was made. The standards of evidentiary proof are more exacting, and certainly more transparent, than those required of the AFPC and enable interested parties and academics to respond in their public comments and future evidence.

While it may be possible to conceive of legitimate wage determination processes without standards of evidentiary proof, such processes must still be consistent with natural justice. Natural justice is, in effect, denied under the Act given the lack of any requirement for the AFPC to conduct proceedings or inquiries in public, or have its evidence open to public scrutiny (Centre for Employment and Labour Relations Law cited in Teicher et al., 2006: 155). Methods for uprating minimum wages across a range of OECD countries are based on procedures that include formal negotiations with social partners and/or tripartite composition of review panels (Low Pay Commission, 2005: Appendix 4).

On the second point, the development of labour-specific, union-oriented conciliation and arbitration processes in Australia reflected a need for labour law to redress the power imbalance, which places workers in a subordinate position to employers (Mitchell, 2005a: 2). Labour relations were accorded a specialized judicial process as a countervailing power to ensure that employees were not treated as expendable commodities. Free market economics does not concur with Polanyi's argument that the 'commodity description of labour is entirely fictitious' (Polanyi, 1944: 72 cited in Briggs and Buchanan, 2005: 183), instead treating the exchange of labour as indistinguishable from the exchange of any other commodity. Accordingly, the object is exchanged for money and use values are transferred between worker and employer to be consumed outside the exchange (Mitchell, 2005a: 2). LaJeunesse et al. (2006: 127) note the growing number of economists who have recognized the difficulties involved with the commodification of labour in modelling the labour market. For example, the capacity of labour for reflection has meant that consideration is given to the fairness and quality of treatment in determining how much effort to supply. The notion of employment being an effort bargain over wages and working conditions has gained considerable currency within mainstream labour economics including efficiency wages and insider-outsider models.

By contrast, the textbook model of perfect competition that underpins the Work Choices legislation fails to recognize that labour is a special commodity because the employer consumes the use values of the exchange during the work process rather than after the exchange; because the worker relies on employment for both sustenance and social identity; and, because the worker has a capacity for reflection or self-consciousness. Shifting minimum wage determination from labour law to the AFPC dismantles responsibilities that transcend commodity exchange, leaving workers who have limited, if any, bargaining power in a vulnerable position.

Finally, changes to wage-setting parameters mean that, unlike the AIRC, the AFPC will not be required to consider the notion of fairness when determining the Federal Minimum Wage. While acknowledging that the Australian industrial relations system has continued to evolve – and that greater consideration of capacity to pay and productivity in minimum wage determination may have affected wage outcomes for the lowly paid – the ‘fairness’ principle and the ‘living wage’ (Teicher et al., 2006: 142) have remained central to Australia’s national wage determination system until Work Choices.

While the pre-Work Choices, *Workplace Relations Act 1996* (Section 88B), provided that the AIRC must ensure that a safety net of fair minimum wages and conditions of employment is established and maintained, the Work Choices changes have removed ‘fairness’ from both the wage-setting objectives. The AFPC must now consider only four economic criteria in their wage-setting decisions. These criteria (as stipulated in Section 7J of the Act) are:

- a The capacity of the unemployed and the low paid to remain in employment.
- b Employment and competitiveness across the economy.
- c Providing a safety net for the low paid.
- d 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 objective of parameter (a) is to ensure that the minimum wages and casual loadings set by the AFPC do not price the unemployed out of the labour market and do not place the jobs of the low paid at risk. As discussed in Section 3, earlier Safety Net Reviews have cast doubt on the implicit assumption that raising minimum wages will lower employment. However, in the absence of parameters that give regard to fairness and the living standards of the Australian community, the AFPC will be reluctant to increase the wages of workers at the bottom of the earnings distribution. With respect to parameter (b), DEWR (2005: 13) acknowledges that it is broader than parameter (a) as the focus on competitiveness requires that the AFPC support the competitive position of Australian industry, both domestically and internationally. Again, the focus on labour costs is likely to promote overly cautious wage decisions, particularly when economic activity slows.

Parameter (c) changes the concepts of ‘safety net’ and ‘low paid’ from those

currently defined under pre-Work Choices, *Workplace Relations Act 1996* (Section 88B). First, the maintenance of a safety net of fair minimum wages and conditions by the AIRC was not confined to the low paid, as is the case under Work Choices. DEWR (2005: 14) states that this amendment reflects the Government's commitment to using the tax transfer system in conjunction with the workplace relations system to address the needs of the low paid. Should safety net increases be confined to minimum classification rates at or below the C10 classification in the Metal Industries Award, this would compress relativities and deny a group of better paid workers access to wage increases. Howe et al. (2005: 4) note that if the AFPC was to restrict real wage rises to the lowest classifications within a rationalized award structure this would 'result over time in a compression of award rates towards a *de facto* single minimum wage' (emphasis in the original). Further implications that derive from parameter (c) will be the subject of the next section. Finally, parameter (d) is directed to supporting youth employment, apprenticeships and traineeships and employment opportunities for people with disability. With the unemployment rate for persons aged 15–19 years at 16.3 percent in October (Australian Bureau of Statistics [ABS], 2005) and the unemployment rate for people with disability at 8.3 percent in November 2003 (ABS, 2004) a Commission that assumes an inverse relationship between minimum wage and employment levels must cut the wages of the most disadvantaged in a flawed pursuit of competitive outcomes.

4.3 Confusing Ends and Means

Three of the four wage-setting parameters specified in Work Choices derive from the often-stated, though unsubstantiated, view that Safety Net wage increases under the AIRC have dampened employment growth. However, the remaining parameter – parameter (c) – reflects the growing attention given to the effectiveness of minimum wage adjustments as a distributional instrument.

Richardson and Harding (1999) examined the relationship between low wages, low family income and the tax and transfer systems in Australia between 1986 and 1994–5, finding that low wage (and minimum wage) workers were not strongly concentrated in households with low annual equivalent post-tax incomes. This result was attributed to two factors. First, single full-time workers in receipt of the minimum adult wage still had a middling level of equivalent income because the wage was only required to support one person. Second, many low-wage workers (particularly women engaged in part-time or casual work) had an employed spouse and their combined income pulled them out of the lowest deciles of the distribution.

These results have been used to advance the view that '... safety net adjustments are now a very blunt instrument for trying to improve the position of low income families' (Dawkins, 2005: 1). The extension of this argument is that pay equity and income distribution issues are better addressed through coordinated adjustments within the wage, tax and transfer systems. It is this approach to pro-

viding a safety net for the low paid that alters, in a fundamental way, the context for minimum wage determinations by the AFPC. We argue that focusing attention on the distribution of household income raises two important questions. First, what is an appropriate role for minimum wage decisions and the body charged with their determination? Second, if the concern to reduce household income inequality is genuine, is a focus on the intersection of the wage, tax and transfer systems an effective means by which to achieve this goal?

With respect to the first question, we argue that the AFPC will be required to give consideration to the household distribution of income when key parameters that influence this distribution (such as rates and thresholds within the personal income tax system and the level, and targeting, of income support payments) are the province of Government. In order for the Commission's wage-setting parameters to be consistent, attention must be directed to passing judgment on the labour market incentive or disincentive effects that are generated by the interplay of the wage, tax and transfer systems. Even if research evidence supported the view that employment decisions are being driven from the supply side, the AFPC will be required to respond to the effective marginal tax rates for low income groups, as determined by Government, as opposed to making determinations about appropriate wage settings *per se*. This decision-making process leaves no room for consideration of what constitutes a fair division of production between labour and capital. This represents an important shift from the determination of a fair social minimum, and the recognition that labour is a special commodity, which underpinned the 1907 Harvester Judgment and the Australian system of labour relations.

Work Choices fails to recognize that 'fairness among workers and fairness among the population are not the same thing' (Richardson and Harding, 1999: 152). While it is true that increasing the minimum wage will not, in isolation, have a potent and equalizing impact on the distribution of household income, it is important that a Commission charged with ensuring 'fair pay' is able to determine a minimum wage rate that prevents worker exploitation and provides remuneration that proxies the worker's contribution to the value of output.

With respect to the second question, the key to generating a more egalitarian distribution of household income is to generate the quantum of jobs, and the hours of paid work, required to absorb the unemployed, the underemployed and the hidden unemployed. While Richardson and Harding were correct to identify the spread of minimum wage workers throughout the household income distribution, of greater import is the concentration of the unemployed and those not in the labour force at the bottom of this distribution. In Section 3 we noted that the most recent and comprehensive research (OECD, 2006) has rejected the notion that Safety Net wage increases awarded by the AIRC have served to price the unemployed out of paid work. Cutting the real minimum wage – or slowing its rate of increase – does not guarantee paid employment outcomes for the unemployed although it does serve to undermine the traditional objectives of wage determination in Australia.

4.4 The First Fair Pay Decision: October 2006

On 26 October 2006 the long-awaited and first decision by the AFPC was handed down. While beyond the scope of this article, the AFPC determined that from 1 December 2006, all employees in the Federal jurisdiction will gain an increase of AU\$27.36 per week for minimum wage rates up to AU\$700 per week and AU\$22.04 per week for minimum wage rates AU\$700 per week and above. The new Federal minimum wage thus rose to AU\$511.86 per week. The last safety net adjustment under the old system was on 7 June 2006 when the Consumer Price Index (CPI) was 148.4. By September 2006 the CPI was 155.7 and based on the current inflation rate this will increase to 157.3 by the time the AFPC decision is introduced. A quick calculation reveals that the AFPC amounts to a real wage cut for the most disadvantaged workers. There has been no 'catch-up' for the inflationary period (and the delay in decision) and while the nominal wage increase surprised the commentators the trend towards real wage reductions has been set in place. The AFPC are clearly constructing real wages in broader terms however, and, it is apparent that they do not see employers paying the higher real wages to the workers covered by the decision. The AFPC (2006: 12) note that it: '... considers that the proposed wage rise, in combination with recent tax cuts and increases in income transfers, will deliver a real increase in the living standards of low-paid employees and their families'.

Supporting evidence suggests that the AFPC is beginning a process of real wage cutting. While the AFPC does not explicitly indicate what the impact of their decision on employment at the low-skill end of the labour market will be, the AFPC (2006: 7) state that as 'as far as possible, its decision should not exacerbate unemployment or inflation'. Further, and contrary to the OECD's (2006) revelations noted in Section 3, the AFPC (2006: 8) affirmed that it 'considers that there is a negative relationship between the level of minimum wages and employment in Australia. The basis for any disagreement seems to involve the magnitude of the relationship rather than its existence'. Logically, these pieces of information suggest that the AFPC is reducing the real labour costs of employers at the low-skill end of the labour market and relying on the transfer system to maintain real standards of living. This amounts to a fundamental shift from the old Safety Net system.

The outlook for 2007 includes 'a wage review focusing on minimum wages for junior employees and employees to whom training arrangements apply in early 2007' (AFPC, 2006: 15) and a second general wage decision in mid-year.

5 A Better Way

Following 14 years of sustained economic growth, the official unemployment rate in Australia remains at 5.2 percent (ABS, 2005) and broader measures of labour underutilization reveal that we are wasting 9.6 percent of willing labour hours (Centre of Full Employment and Equity, 2005). Work Choices argues

that persistent unemployment is the consequence of (overly) generous increases in the Safety Net Wage, which have been awarded by the AIRC. We argue that moving responsibility for the determination of the Federal Minimum Wage to the AFPC – and changing wage-setting parameters so that the new body gives regard to labour costs and economic competitiveness to the exclusion of fairness – will serve to ‘counter pose “standards” against “flexibility”’ (Briggs and Buchanan 2005: 189). Enhancing the capacity of employers to insecure, low-paid, poor-quality work under the guise of promoting competitiveness will only spur a race to the bottom.

Work Choices is correct to recognize that unemployment is our most serious labour problem. However, there is scant evidence to support its central tenet that cuts to (or slower growth of) real minimum wages is required to generate jobs and to create a more equal distribution of household income. The curse of Work Choices is that it ignores the role of macroeconomic policy in directly addressing the efficiency, fairness and distributional issues that have been said to motivate its provisions. The legislation also ignores the different bargaining power of workers and capital, and pays no attention to the serious social repercussions that will flow when labour is treated like a commodity. This begs the question of whether there is a better way available to achieve the employment and distributional objectives it stipulates.

To directly address the cause of unemployment and income inequality requires the State to use its power as the issuer of currency to maintain full employment and inflation control. In earlier papers (see Mitchell, 1998; Mitchell et al., 2003), the Centre of Full Employment and Equity (CoffEE) has set out a proposal for a Job Guarantee (JG) in which the public sector would maintain a ‘buffer stock’ of minimum wage jobs that would be available to anyone willing and able to work. Under the JG model, full employment is attained by the guaranteed provision of a public sector job to all workers unable to find a job in the private sector. It does not rely on engineering labour supply adjustments by paring back returns for those at the bottom of the earnings distribution. By setting the JG wage rate at the level of the Federal Minimum Wage, the private sector wage structure is not disturbed and workers cannot be played off against one another to the detriment of their bargaining position. In 2003, the net cost of eliminating youth and long-term unemployment via a JG was estimated at AU\$3.2bn per annum. This investment would create 334,000 jobs, including JG positions and additional jobs created through associated multiplier effects (Mitchell et al., 2003). By contrast, the Melbourne Institute has estimated the employment effects of a range of tax reform options, including the introduction of an Earned Income Tax Credit. Each proposal would have an upfront cost of AU\$3.8bn in 2005–6 and would generate between 17,500 and 86,000 additional jobs (Buddelmeyer et al., 2004: Table 4).

The JG does not force policy makers to choose between ‘high unemployment with moderate social protections, or lower unemployment with low levels of social protection and high income inequality’ (Palley, 1998: 338). In recognizing that unemployment is not a behavioural dysfunction, but a failure

in the conduct of macroeconomic policy, the State can address the problem at its root cause by maintaining full employment and a decent wage floor. As its name suggests, the JG model delivers employment outcomes rather than relying on real wage cuts to generate an unknown quantum of jobs.

Unlike Work Choices, it is a policy approach that does not require us to jettison economic security, social justice and the traditional objectives of wage setting in order to build an efficient and productive economy. In removing the consideration of 'fairness' from minimum wage determination in Australia, the *Work Choices Act* represents a fundamental break with what came before. The risk associated with the reduced protection now available to workers in low-paid and contingent forms of employment – along with the increasing focus on economic participation within the welfare system – will be that the policy framework serves to underwrite the operation of increasingly precarious labour markets. It is a low road that should lie beneath us.

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Notes

- 1 While the focus of this article is restricted to the impact of changes to minimum wage determination on the living standards of the low paid, we acknowledge that other elements of the Work Choices Bill will have a pernicious effect on the pay and conditions of workers with limited bargaining power. These elements include the abolition of the 'no disadvantage' test, the reduced protections offered by the Australian Fair Pay and Conditions Standard, changes to unfair dismissal laws, and the strictures placed on employee representation.
- 2 In this context the low paid are defined as individuals receiving wages at or below the equivalent of the C10 (skilled tradesperson) rate in the Metal Industry award (Howe et al., 2005).
- 3 A Treasury Executive Minute of 6 October 2005 provided under Freedom of Information to the *Australian* newspaper stated that '... due to a greater focus on economic impacts, minimum wages are likely to be lower than they would have been under the adversarial AIRC system ... In the short-term, labour productivity growth can be suppressed as workers with lower-than-average productivities join the workforce and capital accumulation fails to keep pace with employment growth' (Treasury, 2005: 3).
- 4 Including the Business Council of Australia, the Australian Chamber of Commerce and Industry, and the Australian Industry Group.
- 5 The replacement ratio is defined as the ratio between unemployment benefits and the post-tax income available to a person should he or she gain employment.
- 6 In a press release issued on 2 November, the Minister for Employment and Workplace Relations stated that: 'The first decision of the Fair Pay Commission will be no later than Spring 2006' (Andrews, 2005). While this is not stipulated in the Work Choices legislation, it implies that any adjustment of the Federal Minimum Wage will be

determined (as opposed to granted) between 15 and 18 months after the award of the last Safety Net wage rise on 7 June 2005.

- 7 The representative rights of trade unions have also served to ensure regular (that is, annual) reviews of the Safety Net wage level. Under Work Choices, the AFPC will determine the frequency of such reviews.

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