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Abstract: 2006 generally represented a solid year in terms of macroeconomic performance and labour market indicators, even under the threat of increasing inflation and interest rates. However, some favourable aggregate labour market indicators disguised major disparities at disaggregated regional, sectoral or demographic levels. The major development in the labour market was the implementation and operation of the WorkChoices legislation which will shape the industrial relations landscape in Australia for many years to come. This article presents an analysis of the performance of the macroeconomy and labour market, and reviews the developments of the WorkChoices legislation.

Keywords: economic performance; industrial relations legislation; labour market; WorkChoices

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Introduction

In a year dominated by inflationary (and associated interest rate) pressures from rising petrol prices and the continuing drought in Australia, labour market indicators generally remained healthy and robust with historically low unemployment rates and high labour force participation rates (LFPR). Total employment rose by 3 per cent over the year and the unemployment rate fell to a low of 4.6 per cent. High levels of labour demand have been driven by steady economic growth. However, the disparities in the sectoral and geographic distribution of economic growth in Australia, due in part to the strength of the minerals boom, have resulted in significantly different labour market outcomes across Australia.

The most dramatic development in the Australian labour market, which will be felt for years to come, was the implementation and operation of the WorkChoices industrial relations legislation. A number of issues regarding this legislation warrant investigation and analysis. Initially, a number of inequitable outcomes for workers dominated the media coverage of this legislation. Other important developments included the first wage decision of the Australian Fair Pay Commission, the High Court challenge of the WorkChoices amendments and further legislative amendments to WorkChoices.

The remainder of this paper is structured as follows. First the global and domestic macroeconomic context is explored. This is followed by an analysis of labour market indicators. Particular attention is given to the disparities emerging beneath seemingly robust aggregate indicators. Finally, we present a review of the implementation and operation of the WorkChoices legislation in Australia, followed by some concluding remarks.

The Economic Context

After the 2001 recession, the world economy started moving into an expansionary phase led by the United States, China and other East Asian countries but, by comparison, meager growth rates have been experienced in Japan and Europe. In general, global economic growth remained robust in 2006, with the International Monetary Fund (IMF) predicting growth in the world economy in its September World Economic Outlook at 5.1 per cent in 2006 and 4.9 per cent in 2007 (IMF 2006). Similar to Australia, in the US economy inflation has edged up because of capacity constraints and rising energy prices. Due to past interest rate increases and a weaker housing market, economic growth was at a slower pace towards the end of 2006 in both the US and Australia.

On the other hand, the IMF is still expecting double-digit growth rates in China for at least the next two years. China's expansion will positively impact on the rest of the world including Australia, but the picture for Japan is not very promising as their ongoing recovery is quite weak. Economic growth in Germany, France and the United Kingdom was promising in the first half of 2006 as a result of improved business confidence, stronger corporate balance sheets, and rising employment. However due to some dampening effects on consumer spending from the increase in the value added tax in Germany and the impacts of rising interest rates, economic growth is expected to be sluggish in 2007. There has been a significant world-wide surge in inflationary pressures driven by energy and other commodity price rises while economies, including Australia, reach capacity constraints. This has forced many

central banks to pursue tighter monetary policies. The contractionary monetary and fiscal policies in Australia, coupled with the lack of spending on infrastructure, capacity constraints, and skill shortages may hamper future economic growth.

On the back of strong Chinese demand and rising prices of coal and iron ore fuelled with the mild depreciation of the currency (proxied with the real exchange rate-real trade weighted), Australia received a substantial boost in 2006. The bulk of the commodity boom accrued to the mineral-rich states of Western Australia and Queensland. This recent boom in commodity prices could not come at a better time, helping to compensate for the fall in the growth of private investment from 10 per cent in 2005 to 2.9 per cent in 2006. Without higher commodity prices, the Australian economy could have tipped into sharp downturn because of a downfall in the housing market. According to Table 1, Australia's terms of trade (the ratio of export prices to import prices) rose by 6.8 per cent in 2006, taking the index to the highest level experienced since the early 1970s. An increase in the terms of trade can exert a multiplier effect on real income throughout the economy. During the last two years on average this boost has been 1.5 percentage points of GDP (Macfarlane 2005). The rise in income accrues to wage earners in the resource sector, some to domestic shareholders and a large amount through increased taxation and royalties to governments.

Comparing September quarter figures in 2006 and 2005, GDP grew at 2.2 per cent in 2006, about 0.7 per cent less than that of previous year, and well below trend growth of over 3 per cent. Similarly, the total number of hours worked also increased at 1.9 per cent in 2006 but its growth rate was less than that of the previous year. At the same time inflation stood at 3.9 per cent, reaching or breaching the upper end of the Reserve Bank's target range, despite several rate rises during the last year. Higher petrol prices and a sudden rise in fruit prices brought about by cyclone Larry triggered a bout of inflationary pressure in the economy. Table 1 shows that both inflation and the nominal unit labour cost increased equi-proportionally in 2006, supporting the view that labour market tightness contributed to a pick-up in wage inflation (Organisation for Economic Co-operation and Development (OECD) 2006). However, the nominal rise in the unit labour cost in 2006 (3.9 per cent) was less than half of the one in 2005 (8.7 per cent).

Inflation has been on the rise since 2003 and the Reserve Bank of Australia (RBA) has been quite pre-emptive in its fight against inflationary pressures. Due to the impact of higher upstream price pressures and rising inflation, the RBA increased the official cash rate three times in 2006 (3 May, 2 August and 8 November) each time by 25 basis points. The cash rate rose from 5.5 per cent in 2005 to 6.25 in 2006, resulting in a 1.1 per cent rise in the average mortgage rate. According to the OECD "the impact of high energy and exceptional fruit prices will fade away only gradually, headline inflation may not fall back within the 2-3 per cent target range until mid-2007" (OECD 2006, p.118). As a result of a higher housing interest rate (8 per cent) and its adverse impact on housing affordability, real private investment (mainly residential construction) grew by only 2.9 per cent in 2006 compared to a 10 per cent growth in 2005. Undoubtedly the flattening of already high house prices and several interest rate rises slowed down the housing sector significantly.

As seen from Table 1, compared to 2005, the government increased its real current expenditure (5.3 per cent) more than its real investment expenditure (4.6 per cent) in 2006, inducing partly more inflationary pressure on the economy. The annual growth rates of government current expenditure and investment in 2005 were 2.7 per cent and 5.2 per cent, respectively. In 2006 real imports grew substantially and as strong as last year (7.3 per cent) but real exports registered 6 per cent growth which was three times more than that of 2005 (1.9 per cent), thanks to red-hot global demand for rising price of raw materials, which constitute 60 per cent of Australia's total exports.

Despite this positive change in the Australian economy, non-residents continued to receive a substantial net income (such as interest payments on Australia's foreign debt and dividend payments to foreign owners of its mining companies) which constituted 73 per cent of Australia's current account deficit. Australia's net income balance has been in deficit and volatile for more than twenty years now. According to Table 1, the government fiscal surplus in 2006 was 1.5 per cent of GDP or equivalent to $14.8 billion ($4 billion more than the previous year). As usual, the bulk of the trade deficit was financed through private borrowings mainly by Australian banks and financial institutions. It should be borne in mind that an ongoing drought also exacerbated the trade deficit. The Australian government has also managed to eliminate its debt through running large budget surpluses and asset sales. Some analysts have argued that given the large budget surplus, the inflationary effects of the government's tax cuts introduced in July 2006 were trivial (Business Monitor Online 2006).

Table 1 Key Economic Indicators in 2005 and 2006

Variable	Unit	2005	2006
Real GDP growth	% change	2.9	2.2
Hours worked	% change	3.1	1.9
Terms of trade	% change	12.4	6.8
CPI	% change	3.0	3.9
Nominal Unit labour cost	% change	8.7	3.9
Real government expenditure	% change	2.8	5.3
Real household consumption	% change	2.7	2.8
Real Private investment	% change	10.0	2.9
Real Government investment	% change	5.2	4.6
Real exports	% change	1.9	6.0
Real imports	% change	7.6	7.3
Imports	$ Billions	190.2	210.9
Income received by non-residents	$ Billions	58.0	68.0
Exports of goods and services	$ Billions	167.6	196.3
Income paid by non-residents	$ Billions	25.3	29.0
Current account balance	$ Billions	-55.3	-53.5
Unemployment rate	%	5.1	4.6
Participation rate	%	64.4	64.8
Fiscal balance	$ Billions	10.8	14.8
Fiscal balance	% of GDP	1.2	1.5
Real exchange rate-Real Trade Weighted Index	% change	3.2	-1.1
Cash rate at the end of year	%	5.5	6.25
Housing interest rate	%	7.1	8.0

Sources: Australian Bureau of Statistics (2006a, 2006c, 2006d, 2006e); (b) Commonwealth Treasury (2006); (c) the Reserve Bank of Australia (2006).

Labour Force Developments 2006

The Australian labour market continued to exhibit strong growth during 2006 with total employment rising by 3 per cent and the unemployment rate falling to an historically low 4.6 per cent. High levels of labour demand have been driven by steady, although not historically high, economic growth. However, the disparities in the sectoral and geographic distribution of economic growth in Australia, due in part to the strength of the minerals boom, have resulted in significantly different labour market outcomes across Australia. This section provides an overview of the Australian labour market in 2006 with particular emphasis given to the emerging disparities that are concealed by the summary indicators of employment growth and the unemployment rate.

Since the recession of the early 1990's the rate of employment growth has been both relatively stable, and relatively strong, by historical standards. This more stable pattern of employment growth continued in 2006 with employment rising by 3.0 per cent.

Strong employment growth since the early 1990s has, however, coincided with a marked decline in the proportion of jobs that are full time. Part time work has grown much more rapidly than full time work for both men and women. In 2006 the strong growth of men in part time work continued with 9.6 per cent growth over the calendar year. Growth of full time jobs held by women (5.5 per cent) continued to outstrip growth in full time jobs held by men (2.0 per cent) over the same period. The number of women in part time work in 2006 declined slightly, with the number of women employed part time declining by 0.14 per cent.

Strong employment growth combined with low unemployment rates have also resulted in record high labour force participation rates. Having begun 2006 at 64.4 per cent the LFPR rose to 64.9 per cent by December after reaching a record 65.0 per cent in August and September 2006. The steady growth in the LFPR over the past two decades conceals the rapid rise in female participation and the steady decline in male participation. Over the course of 2006, however, male labour force participation rose slightly from 71.9 per cent to 72.3 per cent. This was the first annual rise in the male LFPR since 1989. The female LFPR rose from 57.1 per cent in January 2006 to 57.8 per cent by December.

Despite the growth in the number of people entering the labour force, the strong growth in employment has resulted in a historically low unemployment rate of 4.6 per cent in December 2006. Over the course of 2006 the male unemployment rate fell faster than the female unemployment rate. In December 1995 the unemployment rate for both men and women was 5.2 per cent but by December 2006 the male rate had declined to 4.4 per cent while the female unemployment fell only 0.2 per cent to 5.0 per cent.

While unemployment is low by historical standards there are substantial differences in the unemployment rate across demographic and geographic groups. For example, youth unemployment, that is the unemployment rate among those aged 15-19, remains significantly higher than the unemployment rate in the broader community. In December 2006 the unemployment rate for those in this age group was 14.3 per cent, down from 15.6 per cent in December 2005. Despite this reduction the youth

unemployment rate is still three times higher than the unemployment rate for the entire labour force (Australian Bureau of Statistics 2007).

The likelihood of being unemployed also varies significantly across geographic regions. Table 2 shows the disparities that exist between the small geographic areas with the highest unemployment rate and those with the lowest, with some areas reporting zero unemployment while other regions are experiencing unemployment rates of over 25 per cent. While regions such as Tanami and Sandover are quite remote, it is important to note that the centre of the capital city of Hobart, the tourism centre of Cairns, and the region of Playford on the outskirts of Adelaide are all experiencing unemployment rate of over 15 per cent (Dept workplace etc).

While some suggest that excessive labour market regulation is a cause of unemployment, it should be noted that within each state there are substantial disparities in unemployment despite the existence of uniform regulatory structures. Clearly the high unemployment rates experienced in regions such as Tanami and Hobart are caused by demographic and sectoral factors rather than 'rigidities' in the local labour market.

The disparities between regions shown in Table 2 are also apparent in the interstate comparison of employment growth. Queensland (5.48 per cent) and the ACT (4.95 per cent) saw the most rapid rate of job creation in 2006 while Tasmania was the only state to see employment decline. Despite the resources boom in Western Australia employment growth in that state was the second lowest in Australia at only 1.84 per cent. That said, in December 2006 the unemployment rate in Western Australia is among the lowest in Australia (3.1 per cent) while the unemployment rate in Tasmania was the highest in Australia at 6.1 per cent. The lowest unemployment rate was recorded by the Northern Territory at 2.4 per cent (Australian Bureau of Statistics 2006a).

The uneven sectoral impacts of the mining boom on the Australian economy have resulted in substantial disparities in the distribution of wage growth in 2006. Wages have grown more rapidly in Queensland (4.5 per cent) and Western Australia (4.3 per cent) than the national average of 3.8 per cent while employees in Victoria and South Australia received average increases of just 3.5 per cent and 3.7 per cent respectively. Similarly, employees in the mining and construction industries experienced much stronger wages growth in 2006 than those employed in the services sector (Australian Bureau of Statistics 2006b).

The Implementation and Operation of WorkChoices Legislation

The WorkChoices revolution dominated events in the Australian labour market in 2006. Conceived in the aftermath of the Howard Government's sweeping 2004 election victory, the *Workplace Relations Amendment (WorkChoices) Act 2005 (Cth) No. 153* passed on 7 December 2005 but much of the Act did not take effect until 27th March 2006. The legislation goes beyond the ambitions of earlier reform proposals and, although it contains some continuity with the previous system, breaks from it in very substantial ways. Draped in the language of fairness, the legislation is also firmly underpinned by the neo-liberal notion that the price of labour must be set at level which allows its supply to clear. Yet, as Briggs and Buchanan (2005) convincingly

argue, WorkChoices blends 'deregulatory rhetoric' with a heavily interventionist approach that seeks to unduly control agreement making processes and outcomes[i].

The nuances of the introduced changes, their complexity and the associated compliance burden, have been well documented in extensive academic commentary (see for instance Cooney 2006; Chapman 2006; Ellem, Baird, Cooper & Lansbury 2005; Fenwick 2006; Forsyth & Sutherland, 2006; Hall, 2006; Stewart, 2006; Waring, De Ruyter & Burgess 2006). Waring and Bray (2006) have summarised the substantial consequences of the legislation in terms of six key themes. These include the reduction of minimum standards and rights; the privileging of individual contracts; the disempowering of the Australian Industrial Relations Commission; the improvement of managerial prerogative and the weakening of unions; and, the increasing power of the state in employment relations.

Table 2 Unemployment Rates in Selected Regions (September 2006)

Statistical Local Areas	Unemployment Rate - September 2006
Tanami	25.4
Sandover	21.8
West Arnhem	19.7
Daly	18.2
Wacol	17.9
Playford (Elizabeth)	17.1
Hobart (Inner)	16.3
Cairns (City)	15.1
Bathurst (Melville)	14.9
Ballarat (South)	10.2
Auburn	10.1
Lake Grace	0.3
Victoria Plains	0.3
Unincorp (Lincoln)	0.0
Kowen	0.0
Weston Creek-Stromlo - SSD Bal	0.0

Source: Department of Employment and Workplace Relations (2006)

Waring and Bray (2006) have suggested that the legislation results in the *reduction of minimum standards and rights* through abolishing the 'no disadvantage test' and the introduction of the Australian Fair Pay and Conditions Standard (AFPCS) – a statutory standard composed of just five minimum conditions against which agreements are tested. This arrangement represents a substantial reduction in minimum standards since the benchmark for agreements has fallen substantially from awards that (pre-reform) contained at least twenty matters to the five conditions of the AFPCS. The abolishment of rights to access unfair dismissal remedies for employees employed in businesses with 100 or fewer employees, is a further strong example of the reduction of minimum standards and rights under WorkChoices.

The *privileging of individual contracts* is accomplished under WorkChoices. Under the legislation, these statutory individual contracts prevail over all other industrial instruments including collective agreements. Further, the legislation clarifies the legality of offering employment contingent on the acceptance of an Australian Workplace Agreement (AWA). As AWAs must only comply with the five conditions of the Australian Fair Pay and Conditions Standard, the legislation increases the likelihood of employment on below-award conditions.

WorkChoices also removes the wage determination function from the Australian Industrial Relations Commission (AIRC) and places it in the hands of the newly formed Australian Fair Pay Commission. The only remnant of wage determination power left to the AIRC is the narrow role it retains to arbitrate conditions of employment when the bargaining period has been terminated; and even then it must do so with reference to decisions of the Australian Fair Pay Commission. These changes along with the removal of access to remedies for unfair dismissal for a large section of the workforce are indicative of the extent to which WorkChoices *disempowers the Australian Industrial Relations Commission*.

Most analysis of the Act has also observed the way in which it substantially *improves managerial prerogative while further weakening the power of trade unions*. Management now have an almost unfettered power to hire using whatever industrial instrument they choose, to unilaterally determine wages and conditions upon the expiry of a certified agreement and to fire with few impediments. Meanwhile, union activity is further circumscribed, *inter alia*, by tougher right of entry provisions and complex secret balloting procedures before protected industrial action can be taken.

Waring and Bray (2006) also note the increasing power of the federal government in industrial relations as a result of the extensive use of the corporations power to take over much of the state's industrial relations jurisdictions. Indeed McCallum (2006) has suggested that the reforms represent the 'corporatisation of industrial relations' in which labour law is increasingly supplanted by corporations law. As Stewart (2006) has observed, in reality a single industrial relations system is not created by WorkChoices since the constitutional mechanisms used by the federal coalition government do not provide complete jurisdictional coverage. Nonetheless, the federal government's role in industrial relations is significantly magnified as a consequence of the takeover of much of the state systems.

Soon after the legislation came into effect, there were media reports of what appeared to be legal, though inequitable, applications of the legislation. A number of these cases occurred in low wage sectors of the economy consistent with some academic predictions of where the more extreme possibilities of WorkChoices would be explored. Some of these cases are discussed in a NSW Parliamentary Inquiry report on the impact of WorkChoices published in November 2006. In particular, the NSW Parliamentary Committee on Social Issues (2006) identifies the reported case of employees at retailer Spotlight who had been offered AWAs which removed penalty rates, overtime allowances and paid rest breaks in exchange for a 2 cent per hour increase in pay. This, the report concludes, was estimated to have resulted in an average $91 decrease in net pay per week. Similarly, in the hospitality industry, a number of cases of alleged exploitation emerged as WorkChoices became law. The Office of Workplace Services (OWS) [ii] for instance initiated proceedings against pulp juice bar operator, POW Juice Pty Ltd, for alleged underpayment of twelve young employees (OWS 2006). Indeed, restaurants and cafes' 'high rates of non-compliance' in 2006 prompted the OWS to launch a targeted campaign in early 2007 involving random wages and conditions audits of the industry (OWS 2007).

Another case reported by Humphries (2006) in the Sydney Morning Herald shortly after WorkChoices came into effect, brought to public attention the industrial relations strategy of the owners of the Cowra Abattoir. The abattoir owners had chosen to terminate 29 meatworkers and then rehire 20 on arrangements that amounted to a $180 per week wage reduction. The employer had effectively relied on s.643 (8) of the newly amended WorkChoices laws which protects businesses from an unfair dismissal claim where an employee is terminated for 'operational reasons'. When the case was publicised, the OWS investigated and claimed that it had persuaded the company to withdraw the termination notices 'despite evidence that Cowra Abattoir had complied with the Act'. The Australian Council of Trade Unions (ACTU) seized upon these comments to demonstrate that Work Choices permits the unilateral reduction of wages and conditions (ACTU 2006a, 2006b).

Aside from these more publicised cases, there were few other early empirical insights into the operation of WorkChoices. An exception came in May in the form of evidence provided to the Senate Employment, Workplace Relations and Education (EWRE) Committee by the Employment Advocate, Mr Peter McIlwain, on the content of a sample of AWAs lodged between March 27, when WorkChoices took effect, and April 30, 2006. The Office of the Employment Advocate (OEA) analysed the contents of a small sample of 250 AWAs from a total number of 6263 lodged in the first month of the WorkChoices operation. The Employment Advocate's evidence revealed that all AWAs expressly excluded at least one protected award condition while 16 per cent excluded all protected award conditions (Senate EWRE 2006). The evidence also revealed that 64 per cent excluded leave loading provisions, 63 per cent excluded penalty rates and 52 per cent excluded shiftwork loadings (Senate EWRE 2006). According to McIlwain, 78 per cent of AWAs in the sample provided a pay increase during the life of the agreement, meaning that 22 per cent did not.

A number of AWAs were also found to have substantially and illegally derogated from the Australian Fair Pay and Conditions Standard. For instance, the Employment Advocate informed the Senate Estimates Committee that 14 per cent of AWAs provided casual employees with less than the mandatory 20 per cent loading. It is

important to note that under WorkChoices, agreements including AWAs take effect from the day of lodgement, hence the OEA has no power to prevent their registration on the grounds that they provide less than the five minimum conditions of the Australian Fair Pay and Conditions Standard. In circumstances where the OEA discovers illegal conditions, the agency refers these agreements to the OWS for further investigation.

In November 2006, the Senate Estimates Committee on Employment, Workplace Relations and Economics met again. The Employment Advocate again gave evidence and informed the committee that a decision had been taken to discontinue the review of the contents of a sample of AWAs that had taken place for the first five weeks of WorkChoices operation (Senate EWRE 2006). As a result, it is not known how many AWAs exclude protected award conditions or provide a wage increase during the term of their operation. It is also unclear as to how many AWAs contain inferior and illegal conditions. However, McIllwain (the Employment Advocate) indicated to the committee that approximately 1700 AWAs, or a little below 1.5 per cent of all those AWAs lodged with the OEA, had been referred to the Office of Workplace Services. Upon further questioning from the members of the Senate Committee, it was revealed that it is OEA practice to review only a sample of AWAs that are lodged (Senate EWRE 2006). Hence it is from this sample that 1700 AWAs were found to contain conditions that were likely below the minima provided by the AFPCS. Thus the 1700 referred AWAs represents a much larger though unknown[iii] percentage of the sample of AWAs selected for review by the OEA. The actual number of AWAs that provide questionable and most likely inferior conditions of employment is unknown but likely to be much higher than the number referred to the OWS. This suggests that there are significant numbers of AWAs that do not meet the minima of the AFPCS and which are therefore illegal. However, unless these agreements are identified in the sample reviewed by the OEA they are unlikely to receive further scrutiny.

One of the more keenly anticipated events during 2006 was the handing down of the Australian Fair Pay Commission's inaugural minimum wage decision. Under WorkChoices, the Australian Fair Pay Commission now has responsibility for reviewing the Federal Minimum Wage (FMW) from time to time and minimum award wages (Australian Pay Classification Scales), the special FMW, piece rates, periodic rates and casual loadings.

The Australian Fair Pay Commission's decision surprised many when it was delivered on 26 October, 2006. The AFPC announced an increase of $27.36 per week for award wages up to $700 per week (including the FMW) and $22.04 for wages above $700 per week (AFPC 2006) citing a tight labour market and continuing economic prosperity in support of the decision. As Waring, De Ruyter and Burgess (2006) had argued, the altered legislative arrangements for wage determination and the fairly opaque processes of the AFPC, suggested that it would not be predisposed to offering generous minimum wage increases. However, its first pay determination was close to the Australian Council of Trade Union's call for an increase of $30 per week and, as a consequence, drew a hostile reaction from some employer associations such as the Australian Chamber of Commerce and Industry which described the decision as 'excessive and disappointing' (Hendy 2006). In contrast, Prime Minister John Howard described the decision as 'genius' and 'a very clever decision, a very fair decision' (Howard 2006). The ACTU's senior industrial officer, Belchamber (2006), has

suggested that the increase was similar in nominal terms to previous award safety rises granted by the Australian Industrial Relations Commission and offers two explanations for the decision; either that it was designed to quell criticism of the Commission and opposition to the Howard Government's industrial relations policies more generally, or is an objective determination based on compelling evidence.

Another important, though far less heralded event, came with the release of the Award Review Taskforce's report on 3 November 2006 (Andrews 2006). The taskforce was established in October 2005 and was required to report on the rationalisation of federal awards and award wages and classification structures. The final report adopts principles that will most likely result in the rationalisation of approximately 4000 federal awards (prior to March 2006) to between 100 to 150 awards. According to the recommendation of the taskforce, awards will be rationalised on an industry basis corresponding to the divisions of the Australian New Zealand Standard Classification (ANZSIC) (Award Review Taskforce, 2006). Given the extent to which agreements and awards are often inter-linked and 'layered' (see Bray and Waring 2005), the consequences of such a large reorganisation may be far-reaching.

Finally, three other events in 2006 cannot go unnoticed in a review of the Australian labour market. First, in a split 5:2 decision (Kirby J and Callinan J dissenting), the High Court upheld the validity of the WorkChoices amendments. In essence the majority confirmed the capacity of s.51xx (the Corporations power) to fully regulate industrial relations. The decision validates the significantly extended reach of the new federal industrial relations jurisdiction and will clearly have significant consequences for industrial relations regulation whichever political party holds federal office in the future.

Second, the amended *Workplace Relations Act 1996* and the *Workplace Regulations 2006* were further amended on 15 December 2006. The amendments reduce some of the burdensome timekeeping requirements WorkChoices imposes; allows for the cashing out of sick and carer's leave so long as an employee retains a balance of 15 days; allows employers to stand down employees if they are idle due to factors outside of the employer's control; cap the accrual of annual leave and carer's leave in respect of worked hours above 38 and protect redundancy pay entitlements for a period of 12 months after an agreement has been terminated (NSW Parliamentary Committee on Social Issues 2006).

Third, the federal *Independent Contractors Bill (2006) (Cth)* and the *Workplace Relations Legislation Amendment (Independent Contractors) Bill 2006* were passed in December but will not take effect until 2007. These related laws essentially override the deeming provisions in state industrial relations laws and also state legislative mechanisms for reviewing 'unfair contracts'. Dr John Buchanan, in evidence given to the NSW Parliamentary Committee inquiry on the impact of WorkChoices, argued that the Independent Contractors Act's consequences could be more significant than WorkChoices in time because it creates the space which will permit independent contractor arrangements to 'flourish' (NSW Parliamentary Committee on Social Issues 2006).

Taken together, these developments represent an unprecedented year of change in the Australian labour market; the effects of which will be felt in years to come. 'Mimetic isomorphism' or the pressure on employers to emulate others in response to similar environmental conditions, will gradually permeate the labour market but especially in low wage sectors where WorkChoices is likely to have a greater impact.

Conclusion

The Australian labour market experienced strong growth in 2006. The cumulative effect of over a decade of economic and employment growth is a record low unemployment rate and a record high labour force participation rate. Employment and wages growth have not, however, been evenly distributed across either demographic or geographic groups. As discussed above, the state of Queensland experienced employment growth of nearly 6 per cent in 2006, around twice the national average, while Tasmania experienced a 1.8 per cent reduction in the number of people employed. Similarly, while some regions are now recording zero unemployment, others, including some major metropolitan centres, continue to experience double digit unemployment rates. Finally, the incomes of those in employment rose unevenly in 2006. While those employed in the relatively highly paid sectors of mining and construction experienced strong wages growth, employees in the relatively poorly paid industries of retail and hospitality received some of the lowest average wage increases in 2006.

While the labour market is performing well in terms of summary indicators such as the unemployment rate and the LFPR the benefits of a strong labour market are not being distributed evenly. It is clear that steady economic growth has not solved the problems of youth unemployment, regional unemployment or low wages in some sectors. It is, therefore, unlikely, that the continuation of current policies will solve such problems in the future. Now that the goal of low unemployment has been achieved perhaps the most important problem for policy makers is no longer the choice of policy instrument, but the choice of policy targets.

The disparities emerging in the labour market with respect to wages and unemployment are of particular relevance in the context of the implementation of WorkChoices legislation. Those in low paid sectors, where labour is relatively plentiful and turnover costs are low, are especially vulnerable to price competition. WorkChoices has effectively lowered transaction costs for employers seeking to reduce labour costs by enhancing managerial prerogative to impose conditions of employment and establishing a near 'employment-at-will' environment. Ironically, while some employers may not wish to adopt the 'low road' employment relations options permitted under WorkChoices, they may have no choice where one or more competitors choose this path. The tight labour markets currently being experienced in some industries such as mining will prevent these options from being exercised for the time being, meaning that sharper differences in wages and employment outcomes are likely to be experienced by workers within the Australian labour market for some time to come.

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[i] It is worth noting that Des Moore, an advocate for greater labour market deregulation has stated in relation to the Work Choices legislation that "On the one hand it (WorkChoices) purports to allow Australia's employers and employees the freedom and the choice to sit down and work out the arrangements that best suit them, but only the other hand, continues to severely constrain that freedom" Moore (2006).

[ii] The federal industrial inspectorate enlarged under Work Choices.

[iii] The Employment Advocate took a question on notice (W325_07) as to how many AWAs are sampled but at the time of publication, the answer had not yet been provided.