The Australian Fair Pay Commission: Rationale, Operation, Antecedents and Implications

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Abstract

The Australian Fair Pay Commission (AFPC) is the latest institution to be created by the Federal government in the industrial relations arena and is one of the key pillars of the Workplace Relations Amendment (Work Choices) Act 2005 (Cth) No. 153. In this article we examine the rationale for the establishment of the AFPC, outline the structure and operational details associated with the AFPC and compare it with the UK Low Pay Commission. The creation of the AFPC presumes some failings of the Australian Industrial Relations Commission with respect to its safety net wage case deliberations. We attempt to identify what these failings were. Finally, we consider what the implications of the creation of the AFPC will be. On this point the establishment of the AFPC must be placed in a context of ongoing legislative change to welfare access and in the other major developments in the Work Choices legislation, especially the creation of the Australian Fair Pay and Conditions Standard.

Introduction

The Work Choices legislation represents a significant transformation of Australian wage fixation arrangements with the establishment of the

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Australian Fair Pay Commission (AFPC). The wage fixing function associated with safety net wage cases has been transferred from the Australian Industrial Relations Commission (AIRC) to the AFPC. In this article we seek to answer six questions:

1. Why was the AFPC established, or more precisely why were the safety net wage fixing powers taken away from the AIRC?
2. Following, is there any evidence to suggest that the operations and decisions of the AIRC had not been in the public interest?
3. What are the operational details of the AFPC?
4. In what ways does the AFPC differ from the AIRC?
5. To what extent can we see similarities between the AFPC and the UK Low Pay Commission?
6. What are the likely consequences of the AFPC for pay and conditions?

A few observations are necessary before addressing these questions. First, the constitutional validity of the legislation has not yet been confirmed by the High Court of Australia. Second, within the Work Choices legislation there is extensive scope for regulations that provide wide ranging powers to the Minister. Overall, this adds to the complexity and uncertainty of the legislation (Stewart 2005). Third, the Work Choices legislation has to be viewed in conjunction with other concurrent legislative changes. The focus of the AFPC will be on the low paid but coincidentally the government has amended welfare legislation (O'Brien et al. 2006) to move welfare recipients into work. In all probability, many of these job seekers will be seeking low paid jobs and the decisions of the AFPC will directly affect them.

Why was the AFPC Established?

The reasons for the establishment of the AFPC are not based on any prior research or evaluation of the safety net decisions of the AIRC in terms of processes and outcomes. Like much of the Work Choices legislation the basis for claims rests on assertions and beliefs, rhetoric and wishful thinking (Ellem et al 2005; O'Brien et al 2005). Indeed it is difficult to understand why the AFPC was established, though we can garner a few clues. The timing is also curious. The unemployment rate is at a 25 year low, labour force participation rates have increased, the economy has enjoyed 14 years of growth, the inflation rate is stable and within the Reserve Bank target band and interest rates have been stable (O'Brien et al 2006). The state of the economy and the labour market does not provide any prima facie

support for claims that the AIRC has abrogated its wage fixing responsibilities in terms of considering the consequences of its decisions on the economy. Additionally, the Reserve Bank of Australia has assumed the responsibilities of umpiring the umpire, making it clear that economically irresponsible decisions (that is, wage outcomes that threaten the inflation rate target) will be met with interest rate increases (Stegman 1997).

Here we have a new institution and a new bureaucracy. The AIRC is not supplanted, only marginalised, since one of its traditional functions has been assigned to the AFPC. This continues the process of increasing complexity associated with industrial relations reforms in Australia over the last decade and a half (Bray and Waring, 2005). It is not absolutely clear what is behind the new institution, nor is it clear why the existing legislation could not have more simply been amended to alter the criteria for safety net wage cases conducted by the AIRC. Some insight, however, may be gained from a ministerial press release which indicated that the AFPC will move away from an adversarial and legalistic approach to wage determination; not involve ambit and arbitrary wage claims by unions; and consider different criteria, primarily the employment of the low paid and the unemployed (Andrews 2005a). The Minister suggested that the AFPC

"represents a long overdue shift from the arbitrary and ambit claims for wages made by employers and unions in industrial tribunals...."

In its Work Choices document (Australian Government 2005a), it was claimed that:

'the Fair Pay Commission represents a long overdue shift from the historically legalistic and adversarial process for setting wages in Australia...the Fair Pay commission will adopt a consultative approach with all interested stakeholders.'

The rationale appears to be in part related to the procedures associated with the hearing of safety net wage increases before the AIRC. There was no suggestion that the existing legislation should be changed to suit the philosophy of the Howard Government. Also, the claims about consultation by the AFPC are not born out by the legislation. According to the *Workplace Relations Amendment (Work Choices) Act 2005 (Cth) No. 153* (WC Act) the AFPC is not required to consult with any interested party. The processes will be dealt with later.

The Australian Chamber of Commerce and Industry (ACCI) submission to the Senate Inquiry into Work Choices gives an indication of the business sector critique of the AIRC in its conduct and decisions in safety net wage

cases. In its submission the ACCI claims that it "regards the existing national wage process of the AIRC as unacceptable and unsuited to the contemporary role minimum wages play in Australian workplace relations" (ACCI 2005: 28). It goes on to claim that Australia has the highest minimum wage rate in the world relative to the overall labour market (ACCI 2005: 29) and that the AIRC has imposed "some of the world's highest minimum wage increases" (ACCI 2005: 30). Moreover, they assert that "in award dependent industries (retail, health, hospitality), the minimum wage is higher than the safety net wage" (ACCI 2005: 31) and that minimum wage adjustments have been ongoing, with annual adjustments every year since 1997 (ACCI 2005: 32). The ACCI also argue that the safety net wage adjustments fail to take into account non-wage sources of income, especially welfare support (ACCI 2005: 32). Finally, the ACCI criticises the safety net review process and procedures, namely – the initiation of claims by the ACTU, the use of ambit claims, the adversarial and legalistic nature of the proceedings, the costs of the process and the lack of economic expertise within the AIRC (2005: 33-34).

In a review of minimum wage fixing, Wooden (2005) restates the conventional critique of institutional wage fixing, some of which is common to the ACCI submission. He is critical of what he sees as the continuation of a flawed process regardless of what institution has responsibility for this process. What is wrong with the AIRC and safety net wage decisions according to Wooden (2005)? First, the minimum wage in Australia is high relative to that in other OECD economies. Second, the AIRC does not have the necessary expertise to make informed decisions. Third, the highly legalistic operations of the AIRC are unsuited to reviewing the minimum wage. Fourth, there is insufficient consideration to the variable demographics of the low paid, and the notion of a 'standard' household is no longer relevant.

Has the case been convincingly made for the establishment of the AFPC? The Government case seems to rest on alleged complexity of the procedures associated with the AIRC safety net wage cases, but, as with most of the Work Choices legislation, there is no substantiation of the claims made. The business sector critique is that wage claims have been too generous and have not considered the consequences for the unemployed or the economy. On the evidence of prevailing economic conditions, this case is also difficult to sustain. In terms of having the highest minimum wages in the world argument, this was considered by the AIRC in its 2005 safety net decision (see below).

Recent Decisions of the AIRC in Safety Net Wage Cases: Irresponsible?

In its 2005 decision the commission followed its legislative instructions and made its decision on the basis of those responsibilities. In the pre-reform *Workplace Relations Act (1996)* s88A sets out the objectives of the wage setting arrangements and s88B sets out how the commissions should perform its functions under the Act. The decision of the AIRC, as with previous decisions, closely follows its legislative responsibilities.

In its 2005 decision the AIRC made the following points:

- The increases in the minimum wage rate 1996-2004 was 33.8 per cent, over the same period average weekly ordinary time earnings increased by 41.2 per cent (table 20)
- The ratio of the minimum wage rate to the median wage was 0.584 in 2004. The AIRC points out that while this ratio is high by OECD standards it is not a recent development, indeed since 1996 the ratio has declined from 0.606 (table 22). It concludes that "despite the size of safety net adjustments since 1996, the growth in the minimum wage has not kept pace with the growth in average weekly earnings for full-time adults." (paragraph 17)
- The economy was within the Reserve Bank's inflation zone for all but a few quarters between 1996 and 2005 (paragraph 19)
- In the 1996 to 2005 period employment increased by 19% and the numbers unemployed declined by 26 per cent. (paragraph 20)
- The estimates if the wage elasticity of demand for employment presented by the Commonwealth differ from those provided in the 2004 case. (paragraph 22)

The AIRC commented that "it would be difficult to accept that the Commission's safety net adjustments have been excessive even if employment were the only matter the Commission had to take into account in maintaining the safety net" (paragraph 22).

The arguments that recent wage decisions by the AIRC have been excessive and have had a negative impact on the economy, as suggested by employer groups, are difficult to sustain. The 'highest minimum wage rate in the world' argument is presented as if it were a shameful outcome. However, if the imputation is that this has inhibited employment and boosted unemployment, then Australia should have the highest unemployment rate in the world! The use of the median wage ratio is also arbitrary; one could point out the growing wage disparity in the economy and the growing gap between the low paid and high paid groups (ACIRRT 1999). Moreover, there is no suggestion that the safety net wage decisions

have compromised the inflation target; the discussion of wage inflation within the Reserve bank quarterly review has largely taken an interest in wage increases for skilled and relatively high paid workers. In the last 4 quarterly reviews of the economy, the pressure on wages has been associated with sectors and occupations where there is either strong growth and/or skill shortages – mining, construction, accounting, education and health care (Reserve Bank Quarterly Statement on Monetary Conditions www.rba.gov.au).

Table 1 Safety Net Submissions and Decisions 2000 - 2005 Introduction

Year	ACTU Submission	Federal Government Submission	ACCI Submission	AIRC Decision	CPI annual %
2000	$24 up to C7 and 4.5% above C7	$8 up to C10 classification	Defer the decision.	$15 min $400	5.8
2001	$28 for classifications up to C10; 5.7% above C10	$10 increase up to C10	$10 increase at the minimum wage	$13 (below $490); $15 (490-590); $17 (590 plus) min $413.40	3.1
2002	$25 for all award rates	$10 increase up to C10	$10 increase at the minimum wage	$18 for all award rates min $431.40	3.0
2003	$24.60 for all award rates	$12 increase up to C10	No increase	$17 for all awards up to $731.80, $15 for rates above this. Min $448.40	2.4
2004	$26.60	$10 up to C10 level	$10 up to C10 level	$19 for all awards. min $467.40	2.6
2005	$26.60	$11 up to C10 level	$10 up to C10	$17 for all awards. min $484.40	2.9
Total	$158.40	$61	$40	$99	

Source: adapted from O'Neill (2005); CPIderived from Reserve Bank of Australia (www.rba.gov.au)

Table 1 demonstrates two outcomes in the safety net decisions that we would suggest have a bearing on the establishment of the AFPC. First, the decisions by the AIRC have always been above those suggested by the

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Commonwealth, and well beyond those of the employer groups. If the Commonwealth's submissions were accepted, minimum wages would be $38 per week lower than their current level. If the submissions of the ACCI had been accepted, then the minimum wage would be $59 per week below its current rate. In real terms, and with reference to the total increase in the consumer price index, the AIRC's decisions represent a total increase in real minimum wages over the 5 year period of around 4 per cent. The Commonwealth's submissions amount to around a five per cent reduction in real minimum wages while the ACCI's submissions translate into an 11 per cent reduction in real terms. Second, the coverage of the decisions is much broader than that sought by employer groups and the Federal government, the federal government and the employers have sought to limit the coverage of safety net wage increases to the lowest paid classifications (C14 – C10).

It is difficult to establish that the AIRC has been irresponsible. First, it carefully follows the legislative directions set out to guide its decisions. Second, the decisions over the last five years have been associated with a falling unemployment rate, ongoing jobs growth and a stable inflation rate. If the AIRC decisions were irresponsible in terms of their inflationary consequences, one might have expected comment and action by the Reserve Bank (Stegman 1997).

The Australian Fair Pay Commission: Structure, Powers and Functions

The Australian Fair Pay Commission (AFPC) is established by s 20 of the consolidated *Workplace Relations Act 1996 (Cth)* (WRA) Unlike most other parts of the Work Choices legislation which do not come into effect until March 2006, the AFPC came into effect when the WC Act received Royal Assent on December 14, 2005. The AFPC is supported by a separate bureaucracy known as the AFPC secretariat established under s.46 of the WRA which is designed to assist the AFPC in wage reviews and in publishing its decisions.

The Commission is composed of a full-time chair and four part-time commissioners. Under s 29, the AFPC chair is appointed by the Governor-General for a period of five years upon recommendation and must be a person with high level skills and experience in business or economics (s 29[3]) . This requirement contrasts with the skills and experience of the AIRC President who must have formal legal qualifications. It is also interesting to note that the amended WRA does not require the chair to

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have any experience in industrial relations or to use the preferred nomenclature of the Howard Government, 'workplace relations'. The first Chair of the AFPC is Professor Ian Harper – an academic economist from the University of Melbourne with particular skills in financial economics but without substantial experience in labour economics or industrial relations. Professor Harper's suitability for the position of chair was questioned in December 2005 when it emerged that he had previously been a director of a failed enterprise that went into liquidation and was unable to pay its workers their employment entitlements. Professor Harper denied any wrongdoing and this was supported by the Prime Minister. (Gluyas 2005: 2)

The skills and experience of the four part-time Commissioners of the AFPC are more varied then those required of the chair. Under s 38(3), Commissioners are required to have experience in either business, economics, community organizations or workplace relations. These part-time Commissioners are appointed for a term of four years. When questioned in December 2005 as to the identity of the four Commissioners, Minister Andrews replied "...someone from a business background, someone with labour market economic expertise, someone who's drawn from broadly the welfare sector, and someone who's drawn from an employee background are the categories of people that we are looking for the four further positions". This is consistent with earlier comments made by the Minister and the Prime Minister about moving minimum wage determination away from an industrial context and to encourage broader participation in the establishment of wages for the low paid. While broad participation in minimum wage determination may be desirable, we would submit that this regularly occurred within the context of AIRC safety net decision-making and what the federal government actually means by this is the exclusion of union involvement in minimum wage determination.

On 27 March, 2006, Minister Andrews announced that Hugh Armstrong, Patrick McClure AO, Michael O'Hagan and Professor Judith Sloan had been appointed as part-time Commissioners to the AFPC (Andrews 2006). Armstrong is a former senior official of the Australian Services Union while McClure is the CEO of the welfare organization, Mission Australia. O'Hagan is a business owner and member of the advisory panel of the Reserve Bank while Sloan is an academic labour market economist (Andrews 2006). These appointments are consistent with Andrews' previous comments alluding to the background of the four part-time Commissioners.

The key functions of the AFPC are to review the Federal Minimum

Wage (FMW) from time to time, determine special FMWs for junior employees, employees with disabilities for whom training arrangements apply, determine minimum award wages (Australian Pay Classification Scales) and casual loadings (see s 22). This effectively removes the AIRC's power to make safety net adjustments for the low paid, however, under the transitional arrangements under the WC Act, the AIRC will still be responsible for minimum wage adjustments for those employees on Federal Awards and employed by incorporated businesses who fall outside of the AFPC's jurisdiction for up to five years. The AFPC may also undertake any additional functions conferred on it by regulations or by other legislation and it must also undertake activities "to promote public understanding of matters relevant to wage setting" (s 21[d]).

Under s 22, the AFPC is empowered to undertake wage reviews and adjust the federal minimum wage (FMW) (and the FMW for junior employees and those with disabilities), Australian Pay Classification Scales (award minima) and casual loadings as a result of these reviews. In essence then, the wage decisions of the AFPC form the wages of the Australian Fair Pay and Conditions Standard (Waring et al. 2005) which replaces the 'no disadvantage test' as the standard against which workplace agreements are measured and becomes the new and reduced safety net. Thus the decisions of the AFPC have an importance that stretches beyond regulating the low paid and extends to all those covered by AWAs and various certified collective agreements.

Section 23 of the consolidated WRA establishes the wage setting parameters for the AFPC. Pursuant to this section the AFPC must perform its wage setting function "to promote the economic prosperity of the people of Australia having regard to:

(a) the capacity for the unemployed and low paid to obtain and remain in employment

(b) employment and competitiveness across the economy

(c) proving 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".

These directions suggest that the AFPC is informed by the neo-liberal economic assumption that the wages of the low paid must be kept at levels which enables them to retain competitiveness in the labour market – in other words the price of labour must fall for supply to clear. While the AIRC was required under the former s 88B to adjust award wages 'having regard to the needs of the low paid', the AFPC parameters depart from

AIRC principles in that there is no requirement that the AFPC consider 'fairness' (see ss88B3[a], pre-reform WRA).

Interestingly, under s 24 of the WRA , the AFPC has full discretion as to (a) the timing and frequency of wage reviews, (b) the scope of wage reviews, (c) the manner in which wage reviews are to be conducted and (d) when wage setting decisions are to come in effect. This is a sharp departure from the previous AIRC safety net adjustments which were heard upon application from the industrial parties and whose public processes tested and scrutinized the submissions and evidence of the parties. Under the WC Act, the AFPC may consult with anyone or any organization and it may seek out commissioned research to assist it with its wage reviews. Moreover, there is no requirement that these consultations be made public although the final wage determination decision is required to be made public and reasons must be given for the decision (see s 24 [4]a, b c and s 26). Under s 25 the commissions wage setting powers are to be exercised by a fully constituted AFPC unless the chair believes, in circumstances where up to two AFPC commissioners are unavailable, that the AFPC can exercise its powers with a Commission constituted by the chair and no fewer then two commissioners. Section 24[4] indicates that the AFPC wage setting decisions are not legislative instruments but neither are they recommendations to the responsible Minister. The wage setting decisions of the AFPC are independent decisions of a statutory authority and ultimately enforceable by the Federal Court of Australia.

When asked when the first decision of the AFPC would be handed down, Minister Andrews commented that:

> The Australian Fair Pay Commission, being a new body to set the minimum and award wages in Australia, and we expect its first decision will be in spring of 2006 (sic), it obviously requires six or eight months of work not only to establish the commission itself but to also undertake the widespread consultation which I expect it will undertake as part of its responsibilities. (Andrews 2005b)

The full discretion of the AFPC and its chair, however, mean that it has been given extraordinary power to hold wage reviews whenever it chooses and clearly, if it believes that minimum wages are too high, then wage reviews may be both infrequent and quickly concluded.

The UK Low Pay Commission and the AFPC

In 'selling' its industrial relations reforms, the Howard Government has

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suggested that the proposals are moderate in the international context. In particular, the Prime Minister has asserted on a number of occasions that the passage of the reforms will still leave the Australian labour market more regulated than those of the United Kingdom and New Zealand (Howard 2005). In turn, the UK Low Pay Commission has been taken as a model for the AFPC. In this section we demonstrate that Australia is diverging from the UK in terms of the direction of its legislation and that the AFPC is in many ways very different from the UK's LPC. Similar claims can be made about the comparison with New Zealand (Waring et al 2005).

The UK has no equivalent to the AIRC in evaluating and setting the terms and conditions of employment codified in collective agreements, and collective agreements are not legally enforceable (though their terms and conditions may flow into the contract of employment). Rather, the role of the Advisory Conciliation and Arbitration Service (ACAS) is largely confined to mediating in disputes, and that of the Central Arbitration Committee (CAC) confined to matters of union recognition and de-recognition and to information disclosure pertaining to the bargaining process (Lewis et al 2003). Both Australia and the UK have similar trade union densities, at 25-30 per cent of the workforce. However, collective bargaining coverage in the UK is low, at approximately only one third of the workforce in 2000, as opposed to over 80 per cent for Australia (OECD 2004: 145).

Against this, in the absence of national bargaining benchmarks, the UK over the last 10 years has experienced an increasing role for statute law in shaping the employment relationship. It is here that the role of the European Union (EU) has taken precedence over national legislation, with UK governments increasingly transcribing EU directives into national law. Under the former Conservative government this was done begrudgingly – usually as a result of judgements brought down by the European Court of Justice, or the House of Lords (Morgan et al 2000: 97). An example here is the 1977 Transfer of Undertakings Directive: protecting employee rights upon a change of ownership and employer, being incorporated into UK law in 1991 and extended to public sector workers in 1993 (Morgan et al 2000).

However, this process accelerated under the Labour government. The Social Chapter of the EU's 1992 Maastricht treaty establishing a single market for goods and services was ratified and enshrined in UK law (the previous Conservative government had refused to endorse the social measures outlined in this treaty). The Social Chapter provided for 12 basic

rights for workers: including freedom of association, gender equality, *improvement* of working conditions and *adequate* protection of employment and remuneration (Lewis *et al* 2003: 197, emphasis added). These measures were put forward by the EU in order to allay worker fears about the adoption of a single market across the EU. Indeed, the EU's championing of international labour standards – now endorsed by the UK - represents an invaluable countermeasure to the increased mobility of capital brought about by the steady dismantling of trade barriers. In addition, a national minimum wage has been introduced for the first time in the UK (Addison and Siebert 2002), and there has been ratification of EU directives on working time, consultation and information provision in the workplace and an end to multiple contract renewals for fixed-term employees.

In addition, in the lead up to the 2005 general election, the UK government and the trade union movement agreed on a set of policies and reforms (EIRO 2004) expected to feature in upcoming legislation, under the so-called 'Warwick Agreement.' This would entail legislation providing for:

- ratification of the proposed EU Directive granting agency workers equal rights to regular employees;
- bank (public) holidays no longer counting towards employees' 4 weeks' statutory annual leave entitlement;
- increasing family-friendly measures in the workplace, including flexible working for parents and carers;
- widening protection under the Transfer of Undertakings Regulations to pensions; and
- more employee representatives on the boards of trustees managing pension funds.

Furthermore, in contrast to the Howard government's proposals, all employees in the UK with a minimum of 12 months' continuous service may claim for unfair dismissal at an employment tribunal. This was reduced from 2 years by the Blair government during 1999. Indeed, the 1999 Act specifically raised the maximum penalty awarded by a tribunal for unfair dismissal from £12,000 to £50,000, and in certain cases up to £68,000 (Addison and Siebert 2002: 23). This is particularly prescient in the Australian context because the majority of tribunal claims in the UK are filed by employees who have worked in small businesses: 33 per cent of applications were received from those who worked in firms with less than 10 employees. In contrast, only 20 per cent of employment tribunal applications in the late 1990s were from those working in establishments

with more than 100 employees (DTI 2002: 7). In this context, all UK employees who perceive that they are subject to a bad bargain have ready recourse to having their grievances addressed through a formal, fair, process: internally through a grievance resolution procedure and externally through tribunals.

Thus, contrasting with the Australian trend towards exclusion, the UK since 1996 has embarked on *extending* the platform of employment rights, incorporating conditions into the contract of employment. Also in sharp contrast to Australia, where casual and temporary workers are largely excluded from statutory entitlements, the UK's adherence to EU directives on part-time and temporary work grants a minimum range of employment rights, regardless of employment status. Underpinning this tentative shift in industrial relations culture have been notions of 'rights and responsibilities' and 'partnership' (i.e., cooperative employer/union relationships) in the workplace, as emphasized in the Blair government's 1998 *Fairness at Work* paper. The Government's commitment to extending the statutory framework and supporting consultative and participatory mechanisms with employees in the workplace points to a reversal of the unbridled managerial prerogative that characterised the UK in the 1980s and 1990s. Hence, it is apparent that 'fairness' and 'fairness at work' in the UK is consistent with the Social Chapter's emphasis on basic human rights.

Whilst considerations of 'fairness' and 'equity' formed an important plank of the Blair government's espousal of the Low Pay Commission, the dominant arguments centered on the manifest failure of the low-wage, low-skill UK economy to generate productivity dividends during the 1980s and 1990s (Thornley and Coffey 1999: 528). The Low Pay Commission is a statutory (non-departmental) body and its role is to advise the UK Government (i.e., the Prime Minister and the Secretary of State for Trade and Industry) on the implementation of the National Minimum Wage (Metcalf 2002). This is conducted through research and consultation with employers, workers, unions and employer representatives. As such, the Low Pay Commission takes written and oral evidence from a wide range of organisations and regularly conducts fact-finding missions. The nine members of the Commission constitute a mix of members from employer, union and academic backgrounds. The Low Pay Commission can thus be regarded as a corporatist, or "social partnership" body (ibid.) that typically seeks to make recommendations to government on the basis of a consensus (or compromise) position, after having taken into consideration the effects of the National Minimum Wage on employment, productivity, living

standards and profitability.

The National Minimum Wage was introduced in April 1999 and was initially set at an adult rate of £3.60 per hour (LPC 2005: vi). It currently stands at £5.05 per hour, following a Low Pay Commission recommendation in October 2005. Separate sub-minimums were set for those between 18-21 years of age and those between 16-17 years of age inclusive. Individuals in training for the first 6 months of their job, and those who receive accommodation from their employer, were also paid a lesser rate (Dickens and Manning 2004: 624). In part, the establishment of a National Minimum Wage can be seen as compensating for the decline of traditional mechanisms for promoting fair pay and reducing wage inequality, namely the decline in collective bargaining coverage and the erosion of the real value of welfare benefits (indexed to prices rather than wages since 1983) (Dickens and Manning 2004: 614). As such, it has been particularly prescient for workers who lack bargaining power, with females comprising over three quarters of those benefiting by the initial imposition, and employees in the wholesale/retail and hospitality sectors comprising over half (LPC 2003; cited in Metcalf 2002: 568).

The Low Pay Commission is a tripartite organisation, the AFPC is not. The Low Pay Commission is a new body that arose out of a situation where there were no statutory minimum rates of pay and with the presence of external obligations to the EU social charter. Brown (2005) has stated that the Low Pay Commission "is a belated acknowledgement that largely unregulated collective bargaining has failed to protect the wages of those in greatest need of protection". The AFPC replaces an existing body with established expertise and a long history of minimum wage determination.

Implications of the AFPC

The unparalleled discretion granted to the AFPC and its inaugural chair to determine its own processes and methods mean that its final institutional imprint is yet to take shape. What is clear though is that its creation is fundamentally designed to create a lower safety net than that managed by the AIRC. The explanatory memorandum which accompanies the *Work Choices Act* candidly contends that the previous safety net of award minima was not a 'genuine safety net' because 'unions invariably make ambit claims to raise award wages and conditions above the level which represents a real and effective safety net' (Explanatory Memorandum 2005: 4). Thus it is claimed that the previous safety net has acted as 'a disincentive to bargaining'. But we would argue that a reduced safety net (in the form

of the AFPCS) and the prospect of reduced minimum wages over time will do little to stimulate further bargaining. When employers have the capacity to hire workers on just five minimum conditions and fill in any gaps with managerial prerogative, the utility of agreement making quickly vanishes. In short, why bother bargaining?

The transfer of minimum wage setting powers from the AIRC to the AFPC also signals that the rigorous evidentiary procedures and the judicial scrutiny of claims and counter-claims that featured in the AIRC's living wage case decisions will not be part of the AFPC's processes. The absence of a requirement for the AFPC chair to possess legal qualifications and Minister Andrews' wish to remove minimum wage determination from an adversarial context, suggests that the AFPC will not be an equivalent forum for the testing and questioning of economic evidence and assumptions.

The stripping away of the ACTU's capacity to bring minimum wage claims further serves to de-legitimise the trade union movement and effectively erodes trade union member's rights to be collectively represented. Moreover, the exclusion of the ACTU directly contradicts assertions of the Howard government that the AFPC is modeled from the UK's tripartite Low Pay Commission.

As a new institution in an increasingly complex industrial relations system, the AFPC and its decisions will be subject to a great deal of academic and other scrutiny in the years to come. Every sign to date however, points to an institution that will oversee far smaller wage increases for the low paid than has historically been granted through the AIRC.

Implicitly the reasoning behind the AFPC accepts that there is a pool of low paid and low skilled jobs just waiting to be filled if the supporting legislation governing minimum wages is right. Similar reasoning lay behind claims for removing unfair dismissal protection, that small businesses would create tens of thousands of jobs with the removal of unfair dismissal protection (Waring et al 2005). There is an implied high employment elasticity with respect to wages, a recognition of this fact will generate lower wage increases (as compared to the ill informed AIRC) and generate many more jobs. This remains a largely contested area of economic analysis (Freeman 2005) and can be seen in ongoing dispute regarding elasticity estimates in the submissions to safety net wage cases.

The Work Choices legislation has to be placed in a context in which there is a simultaneous change in welfare provision and access that tightens up on access and entitlements. At the same time there is a workfare type regime (Burgess et al 2000) that includes 'work for the dole' programs and forces job seekers into accepting work under threat of benefit exclusion.

The government has indicated that unemployed people on benefits must accept available job offers, regardless of the lack of conditions, entitlements or choice over working hours – or lose welfare benefits (Seccombe 2005). If, as we suspect, the legislation will effectively reduce conditions through the AFPCS and real wages through time by the AFPC for the low paid, there needs to be in place a process that ensures that welfare is neither an attractive or accessible option for the low paid. The current welfare reforms will create a pool of single parent and disabled job seekers who will be forced to seek part-time work (State and Territories Submission 2005). The industrial relations legislation will presumably be the catalyst for creating the pool of required jobs. By creating a context of a low pay underclass there will be pressure on welfare groups to meet the needs of the working poor (Morris 2005) and there will be problems in sustaining productivity growth across the economy in the context of low wage employment. We view the Work Choices legislation as an attack not only on the low paid, but also on all employees through the potential for employment terms and conditions to be changed unilaterally by employers through the various mechanisms provided by the AFPCS where it seems that standards and conditions will decline with the abolition of the 'no disadvantage test' governing new agreements (Waring et al. 2005).

Overall we would expect wage dispersion to increase in Australia and the real wages of the low paid to stagnate. In conjunction with welfare reforms and through the AFPC this will place pressure on the living standards of the low paid. The supply side emphasis of the government in introducing many of its reforms has more chances of success in a growing economy with expanding job vacancies (not all of these are for low paid workers). When economic growth declines and unemployment increases the only way such a program can progress is through real wage cuts for the low paid and/or further restrictions on welfare support. The AFPC has an important function to perform in this context.

Conclusions

With the creation of the Australian Fair Pay Commission, the Howard Government has signaled its belief that the Australian Industrial Relations Commission is incapable of determining minimum wages to its satisfaction even with altered legislative directions. Only time and experience will tell if the faith the government has placed in the new institution and its inaugural chair will result in wage and employment outcomes that it finds more pleasing. However, as this article has asserted everything from the

government's rhetoric to its legislative reforms and choice of Chair of the AFPC indicates that over time, the living standards of the low paid will placed under pressure.

For the Howard government, keeping minimum wages low is justified by the neo-liberal economic assumption that the price of labour must be kept low so that the unemployed are not priced out of the labour market. While this is a highly contested proposition in the economic literature, there is little debate that lower wages also dovetails nicely with the interests of Corporate Australia for higher profits.

What is known about the structures and processes of the AFPC also indicates that it is unlike the UK's Low Pay Commission in many respects despite the government's efforts to claim they are similar. The Low Pay Commission did not replace another wage setting authority and is a tripartite body. By contrast, the AFPC seems designed to lead to the further erosion of the authority of the AIRC and the ongoing attempt to marginalize trade unions, especially the ACTU.

The development of the AFPC might be seen as consistent with the Howard Government's strategy of creating new institutions to take on industrial relations functions that the AIRC would otherwise have jurisdiction over. The establishment of the Office of the Employment Advocate in 1997 is an example of this. However, unlike the Office of the Employment Advocate the AFPC must publish its decisions with reasons and, as a new institution in Australian Industrial Relations, the logic and justice of these decisions will undoubtedly be closely scrutinized and compared with previous safety net decisions of the AIRC. It is through this close scrutiny that the AFPC's precise institutional imprint will begin to emerge.

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