The Wages Crisis: Revisited

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THE WAGES CRISIS: REVISITED

This report updates and supplements analysis originally contained in the book, *The Wages Crisis in Australia: What it is and what to do about it,* edited by Andrew Stewart, Jim Stanford, and Tess Hardy, originally published by University of Adelaide Press in November 2018. That original book contained 20 contributions from a wide range of Australian labour policy scholars and practitioners, documenting the extent, consequence, causes, and potential policy responses to the unprecedented stagnation of average wages in Australia visible since 2013. This report updates both the data and policy implications in light of continued weakness in Australian wages since then.

The full original book is available for free download from:

www.adelaide.edu.au/press/titles/wages-crisis

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The authors thank without implication Marilee Hou, Ashwini Ravindram, and Greg Jericho.

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Summary

For several years, nominal wage growth in Australia's economy has been unusually weak.

Beginning in 2013, the traditional pace of wage increases decelerated by roughly half: from around 4% per year prior to 2013, to an average of around 2% since then. The nine years since 2013 have thus represented the weakest sustained period of wage growth in Australia's postwar history.

Despite unprecedented disruptions in Australia's labour market during the COVID-19 pandemic, this weak trajectory in wages growth still predominates. Even with the unemployment rate falling to a multi-decade low as the economy re-opened after COVID lockdowns, wage growth has remained stubbornly slow. The consequences of wage stagnation are felt in numerous areas of the economy: including household financial pressures, restrained consumer spending, slower government revenue growth, and a shift in national income distribution away from labour and toward capital.

This report reviews the scale, likely causes, and potential remedies for the continuing weakness in Australian wage determination. The report is a sequel to a collection of original research published four years ago: *The Wages Crisis in Australia: What it is and what to do about it* (Stewart, Stanford and Hardy 2018).

This new report begins by providing a comprehensive empirical description of the wages slowdown, confirming by several indicators that the slowdown has continued in the years since our 2018 book was published – including through the unprecedented events of the COVID-19 pandemic and its aftermath. This evidence suggests that the wages slowdown does not seem to be the result of changes in supply-and-demand balances in the labour market, which did not substantially differ between the pre- and post-2013 periods. Instead, explanations for the slowdown are more likely to be found in the evolution of certain structural, institutional, and policy variables affecting wage determination.

The report then considers the dimensions of a healthy or 'normal' pace of nominal wage growth, suggesting that wages should grow faster than 4% per year in the medium-term in order to restore normal relationships to inflation, productivity growth, and distribution of national income between labour and capital. Incremental changes in tax policy (such as those advanced in the most recent Commonwealth budget) cannot replace the loss of normal wage increases in household finances or macroeconomic functioning.

The report then reviews a range of possible factors that have likely contributed to the sustained wage slowdown in Australia since 2013. We focus in particular on the institutions and rules governing the labour market, identifying nine distinct areas of policy and regulatory weakness:

- *Collective bargaining.* Enterprise-level negotiation is meant to be the main way of gaining a wage increase under the Fair Work Act 2009. As union member-ship has declined, however, so too has bargaining, to the point where only 11% of private sector employees are now covered by a current (non-expired) enterprise agreement. Rather than bolstering worker power, the Morrison government's 2020 'Omnibus Bill' sought unsuccessfully to weaken the better off overall test (BOOT), which protects employees from being disadvantaged under an enterprise agreement. A further proposal would allow employers to secure long-term 'agreements' on wages for major projects without union or worker consent.

- *Statutory wage-fixing.* In recent years, the annual wage reviews conducted by the Fair Work Commission have been one of the very few ways for Australian workers to gain significant wage rises. But the minimum wage 'bite' (its relationship to median earnings) remains at a historically low level. And there is no guarantee that the tribunal's recent willingness to lift minimum rates will continue. Much will depend on who is appointed as the President of the Commission to replace Justice Iain Ross, who is due to retire in January 2024.

- *Gender pay inequity.* There remains a persistent gap between male and female earnings, and there is little sign that the equal remuneration provisions in the Fair Work Act can be used to raise minimum wages in feminised industries.

- *Government wage policies.* Governments at all levels have been actively seeking to restrain wage growth, and not just for their own employees (through pay caps imposed on public servants). Compensation in large segments of broader public and non-government services has also been depressed by government funding and procurement policies. The aged care sector provides a clear example of how damaging those policies can be, with the Royal Commission into Aged Care Quality and Safety recommending that wage increases should become an explicit policy objective of aged care funding.

- *Wage underpayments.* The underpayment of employees (or 'wage theft') has become endemic, harming workers and allowing unscrupulous employers to reap a competitive advantage. The Omnibus Bill proposed in various ways to strengthen the Fair Work Act's compliance and enforcement framework. But the Morrison government dropped these reforms, despite strong support for them in the Senate.

- *Migrant workers.* The number of temporary migrant workers fell dramatically during the pandemic, but will rebound in coming months as the international border is reopened. Temporary visa holders remain extremely vulnerable to wage theft. Little has been done to implement recommendations of the Migrant Workers' Taskforce that sought to address some of the significant drivers of this exploitation.

- *Fragmented business structures and organisational models*. Businesses have increasingly found ways to avoid directly employing workers, whether through subcontracting, labour hire or franchising. Such arrangements not only reduce the chances of workers being organised and engaging in meaningful collective bargaining, they can be used to create competition amongst suppliers that drives down wages. The same can result from government outsourcing. Little has been done to counter this trend by involving lead firms in supply chain or network bargaining, or by imposing liability for underpayments beyond the employment relationship.

- *Sham self-employment and freelancing*. The proportion of workers who earn their primary income from supplying services as an independent contractor has been fairly stable over the past two decades. But that may be about to change, with two landmark High Court decisions in February 2022 rewriting the rules on determining employment status. It should now be much easier for organisations to draft contracts that present workers as being self-employed, even if in reality there is little to suggest they have a business of their own. This has obvious implications for attempts to regulate the burgeoning 'gig economy'.

- *Other forms of precarious work*. Some forms of insecure work have not grown lately, or have fluctuated according to changes in the economy. But there have been notable increases in the rates of both multiple job-holding and underemployment. And casual employment continues to be overused, with far too many workers in this category performing work that is not in reality temporary, irregular or uncertain. Far from addressing this problem of 'permanent casual' employment, the Morrison government's legislative reforms have entrenched it.

In our conclusion to the 2018 book, we set out a five-point plan to address these various concerns. We remain convinced that important and sustainable improvements in wage growth could be achieved through focused, pragmatic action on each of these matters:

1. **End wage suppression by government**
   Governments at all levels should lift artificial caps on public sector wages, support decent wage growth in sectors affected by public funding and procurement, and make lifting wages a central goal of economic policy.

2. **Revitalise collective bargaining**
   The rules for the making and approval of enterprise agreements, and for the taking of protected industrial action, should be simplified. But it should also be harder for employers to block genuine collective bargaining, by addressing issues concerning unrepresentative voting cohorts and the termination of expired agreements. Consideration should be given to allowing industry-level or supply-chain bargaining in sectors or situations where there are practical constraints on enterprise-level negotiations. Competition laws should be reformed to enable self-employed workers to engage

in effective and meaningful collective bargaining. And governments, tribunals, unions and business groups should actively promote a more cooperative approach to workplace relations.

3. **Strengthen minimum wage regulation**

   The Fair Work Commission should be empowered to set a 'living wage' target, and encouraged to place greater weight on the needs of the low-paid when reviewing minmum wages. It should also be required to to look for and redress the undervaluation of work traditionally or predominantly performed by women, without needing to identify male benchmarks or comparators.

4. **Respond to business models that avoid or outsource employment responsibilities**

   To protect the integrity of minimum wage standards, there should be a statutory definition of employment. This should presume anyone who agrees to supply their personal labour to be an employee, unless there is clear evidence they have an independent business of their own. Lead businesses should also be included in bargaining and held responsible for underpayments where they exert sufficient influence or control over subsidiary employers in a supply chain or business network.

5. **Improve compliance with employment standards**

   To help tackle the systemic underpayment of wages, there should be increased funding for federal and State inspectorates and more severe sanctions, either in criminal or civil form. To strengthen deterrence and improve compliance with employment standards, there should be more emphasis on enhancing detection mechanisms, increasing the use of administrative sanctions, incapacitating repeat or egregious wrongdoers, and harnessing the resources and influence of key third parties, such as lead firms and unions. There must also be an accessible forum for the speedy recovery of backpay.

These proposals will no doubt spark dialogue and debate among labour market stakeholders, and will require further research and elaboration. But as the research compiled in this report confirms, the wages crisis is a pressing economic and social issue which demands action. These five initiatives – first advanced in our 2018 book, but just as timely and important now – would represent important steps toward this goal.

1. Introduction: Wages, Consumers and Recovery

For several years, Australia's labour market has experienced unusually slow increases in wages.

From traditional rates of wage growth of around 4% per year (sometimes stronger), that pace was cut roughly in half after 2013. Nominal wage growth has averaged just over 2% per year in the nine years since then. This unusually slow pace of income growth has sparked growing concern in several areas of economic policy. It has contributed to financial stress among households, and constrained consumer spending. It has weakened aggregate economic activity, and undermined the vitality of government revenue flows (from income taxes and the GST). It has made it difficult for monetary policy, led by the Reserve Bank of Australia (RBA), to achieve its target inflation rate. Indeed, from September 2014 through to June 2021, the year-over-year inflation rate fell below the RBA's 2.5% target for 27 quarters in a row,[1] by far the longest-lasting one-sided 'miss' in the history of Australian inflation targeting.

For all these reasons, concern over the unprecedented and sustained weakness of wage growth has been mounting for years. But that concern took on a new urgency as a result of the COVID-19 pandemic, the subsequent recession, and then economic recovery. When the economy began to reopen from the extraordinary initial lockdowns, the mantle of economic leadership rested squarely on the shoulders of the Australian consumer. Impatient to spend after weeks of health restrictions, and with wallets bulging with extra savings accumulated during the lockdowns, consumers burst from the gate when shops and restaurants opened again – sweeping the whole national economy along on a giant shopping spree. Retail sales grew 16% in May 2020 in a single month, and double-digit gains were maintained as the year went on. By the end of 2020, total spending for the year was up more than 6% from 2019, despite the pandemic. Ironically, for the

[1] From Australian Bureau of Statistics (ABS), *Consumer Price Index*.

year as a whole, 2020 marked the best growth in retail sales since 2007 – despite the unprecedented catastrophe of the pandemic.[2]

The resilience and exuberance of Australian consumers contrasted sharply with the relative weakness of other major economic engines, such as business investment, exports, and even public services. Continuing uncertainty kept business capital spending mired at postwar lows. Exports deteriorated in the face of global trade disruptions, even as imports poured in to meet the booming demands of Australian consumers. The result was a big deterioration in the trade balance. Even government expenditure on programs and capital was relatively subdued. The huge deficits incurred during the pandemic were mostly the result of transfer payments to individuals and businesses, through programs like JobKeeper and the Coronavirus Supplement to JobSeeker. In contrast, spending on public sector delivery and employment grew only modestly, as did public capital projects.[3]

As a result, consumers accounted for the lion's share of economic growth as the economy began to recover. In fact, through the first year of recovery from the initial lockdowns (from the June quarter 2020, the low point of the recession, to the June quarter of 2021), increased household consumer spending accounted for 80% of the total expansion in real GDP. Household spending on new residences accounted for another 15%.[4] All told, consumers thus carried 95% of the weight of post-COVID recovery.

Any mechanic knows that an engine can't run well on one cylinder. The failure of other critical drivers of economic growth (business investment, value-added exports, and government services and infrastructure) has produced a recovery that is still unbalanced and fragile. And even that one cylinder, working as hard as it can, needs fuel to keep working. Consumers can't ramp up purchases for long unless they have growing real spending power to pay the resulting bills. The initial burst of post-lockdown consumer spending was powered by pent-up demand, renewed optimism (interrupted by subsequent waves of COVID), and discretionary savings.[5] That initial burst soon petered out, however, and retail sales began to slow down. Pent-up demand dissipated, lockdown savings were spent, and confidence was shaken by new COVID variants. Making matters worse, after years of historically slow growth in wages, employment incomes (for those Australians who kept their jobs) grew during the pandemic at the slowest pace yet. In the face of all these headwinds, Australia's recovery stumbled. GDP declined again in the September quarter of 2021, before regaining positive ground at the end of the year.[6]

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[2] All data in this section calculated from ABS *Retail Trade, Australia.*

[3] Massive government transfer payments played a vital role in sustaining consumer confidence and spending through the pandemic. But the government sector's own consumption and investment (which shows up directly in GDP) grew just 6% in real terms in the year after the initial lockdowns, compared to the 15% increase in household consumer spending over the same period (data calculated from ABS, *Australian National Accounts,* Table 2).

[4] Counting investment in dwellings and related transfer costs; calculations from ABS *Australian National Accounts,* Table 2.

[5] Paradoxically, personal savings in Australia increased sharply during the pandemic: partly because restrictions on activity prevented spending, and partly because large government transfer payments more than offset (in aggregate) the decline in employment income. Not all households, of course, increased their savings; many that experienced job loss and/or were excluded from income support programs experienced dis-saving through the pandemic. Data on household savings from ABS *Australian National Accounts,* Table 20.

[6] ABS *Australian National Accounts,* Table 2.

However, the ongoing crisis in wages has now taken on a new and worrisome dimension, as a result of the sudden acceleration in consumer price inflation that followed post-lockdown re-opening. This has captured the attention and concern of working Australians and policy-makers alike. After seven straight years of falling below the RBA target, the rate of CPI inflation has surged since mid-2021, reaching 5.1% year-over-year by the March quarter of 2022. There is no evidence that rising prices are the result of wage pressures. To the contrary, nominal wage growth has remained subdued, in line with post-2013 rates of growth, despite a decline in the official unemployment rate (which fell to 4% by March 2022). Rather, the surge in inflation clearly reflects unique factors, largely external, related to the pandemic and other global shocks. These include disruptions in supply chains, shortages of some products (such as semiconductors and building supplies), and huge increases in energy prices following the Russian invasion of Ukraine. The implications for wages, however, are dire: real wages (measured by the ratio of nominal wages to inflation) fell by over 2% in the year to March 2022, and are poised to fall further in the next year.[7]

About the only silver lining from the previous decade's gloomy wage trends had been that consumer price inflation, most years, had been just as slow as, or even slower than wages – thus largely preserving the real purchasing power of wages. With the post-COVID surge in inflation, this is no longer true. Real wages have begun to fall, and quickly. And the failure of the labour market to produce any significant real wage gains in the preceding nine years has made that reduction in real living standards all the more painful. Without proactive wage-boosting policies, there is little reason to believe that nominal wage growth will suddenly and autonomously adjust to reflect accelerating inflation. So years of stagnant nominal wage growth set the stage for the present decline in real wages – a devastating development that will inflict tangible harm on most Australian households.

For all these reasons, the long-lasting crisis in Australian wages has taken on a new urgency, as the national economy grapples with the next stages of post-COVID adjustment and recovery. With continued uncertainty in business investment and exports, Australia's continued post-COVID recovery will need sustained support from consumer spending – which, after all, accounts for over half of total GDP. Even prior to the present surge in inflation, Australia needed stronger wage growth to validate the consumer spending that has been the dominant source of economic recovery. Now, with accelerating post-COVID inflation, workers need much higher nominal wages just to stand still.

In sum, the historic weakness in wages which has been experienced for almost a decade poses a fundamental threat to Australia's future economic and social success. Simply hoping that this crisis will somehow be automatically reversed – if only unemployment falls a little bit lower, or deficits are brought under control, or business confidence strengthens, or inflation is wrestled back down – hasn't worked for nine long years. Confronting and repairing the wages crisis will require a more honest and direct approach: first, by acknowledging that something has structurally changed in Australia's labour market and wage determination system to explain persistent stagnation in wages, and then by designing and implementing strong and proactive policy measures aimed explicitly at getting them growing again.

[7] Data in this section based on calculations from ABS *Consumer Price Index, Wage Price Index,* and *Labour Force, Australia.*

2. The Aims of this Report: Revisiting *The Wages Crisis*

In 2018, five years into the wages slowdown, we convened a workshop of leading scholars and employment relations practitioners, hosted by the Adelaide Law School.

Some 20 contributions were presented exploring the varied causes, consequences, and possible solutions to the wages crisis. Arising from that workshop, we put together a compendium of that research, supplemented by additional papers commissioned afterwards. This work was published by the University of Adelaide Press under the title *The Wages Crisis in Australia: What it is and what to do about it*, and made available open-access on the internet (Stewart, Stanford and Hardy 2018).[8]

Four years later, the wages crisis is still with us. Wage growth has remained historically weak, despite a lower unemployment rate and supposed labour 'shortages' arising in some industries, and repeated assurances by government that stronger wage growth would naturally reappear thanks to the workings of an efficient labour market. Now the COVID-19 pandemic, in complex ways, has made matters worse. As the national economy continues to recover, employers, trade unions, regulators, and policy-makers confront an uncertain and challenging employment relations landscape. We thus thought it timely and important to revisit the research we organised in the original *Wages Crisis* collection. How has the trajectory of nominal and real wage growth changed since the original publication of that work? Is there reason to believe the wages crisis will solve itself? And what policy responses are most appropriate and promising, in order to restore normal wage benchmarks and achieve a more desirable and sustainable income distribution in Australia's economy?

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[8] See www.adelaide.edu.au/press/titles/wages-crisis.

To that end this report, *The Wages Crisis: Revisited*, aims to update our findings from the 2018 workshop and book, and place them in the context of Australia's post-COVID recovery. The report is organised as follows. Section 3 provides a comprehensive empirical review of the course of Australia's wages, including a detailed analysis of wage changes during the initial lockdowns and subsequent recovery. It confirms that nominal wages have demonstrated a weaker structural tendency since 2013, growing consistently slower than would be expected given labour market conditions, inflation, monetary policy, and productivity trends. This has produced stagnant (and now, declining) real wages, consistent disinflationary pressures, and a decline in labour's share of GDP and total factor income.

Section 4 considers appropriate benchmarks for normal expected wage growth, to set a broad context for future wage-boosting policies. Section 5 queries whether the economic and distributional consequences of wage stagnation can be corrected by tax cuts, aimed at enhancing disposable income within the constraint of flat pre-tax incomes. The evidence is clear: tax cuts cannot offset the damage done by sub-par wage growth.

Section 6 revisits several of the policy decisions and regulatory failures that were identified in the 2018 book as having contributed to the sustained slowdown in wages. It considers what has happened (or in many instances not happened) in relation to collective bargaining, the setting of minimum wages, gender pay inequities, wage underpayments, and the treatment of migrant workers. It also examines the failure of governments to respond to the use of 'fragmented' business structures that distance workers from the businesses which ultimately profit from their labour, the potential growth of 'sham contracting' arrangements that deprive workers of employment rights and protections, and other forms of precarious work, such as the 'permanent casual' jobs which have become such an entrenched feature of Australia's labour market.

Finally, in Section 7 we revisit and update five key policy proposals that we outlined in 2018 as having the potential to revitalise wage growth to more normal and healthy levels. We conclude by calling on all stakeholders in Australian employment relations to place top priority on targeted, proactive measures to strengthen wage growth, as Australia's economy traverses the next stages of its post-pandemic recovery.

3. Charting the Wages Crisis

This section of the report provides a range of empirical data on the slowdown in nominal wage growth that has been experienced in Australia since 2013.

By several different measures, nominal wage trajectories experienced a structural break, shifting on a sustained basis to average annual growth rates about half the typical pace experienced prior to 2013. The implications of this slowdown for other related economic variables – including unit labour costs, national income distribution, and inflation – are also described.

3.1 Indicators of wage growth

The most commonly reported measure of wage growth in Australia is the wage price index (WPI), calculated quarterly by the ABS. The WPI aims to provide a measure of 'pure' wage inflation. By controlling for changes in the composition of employment (such as shifts in occupation, industry, or job status), it attempts to capture pure inflation in wages (paid to a fixed basket of illustrative workers). Because of this methodology, the WPI may misportray trends in actual realised labour incomes. For example, if the composition of employment is shifting toward lower-wage industries, occupations, or job statuses (such as part-time, casual, and other forms of insecure work), then the WPI is likely to overstate growth in realised labour incomes. On the other hand, if job quality is improving (with a shift toward higher-paid and more secure roles), then the WPI will underestimate improvements in received labour compensation.[9]

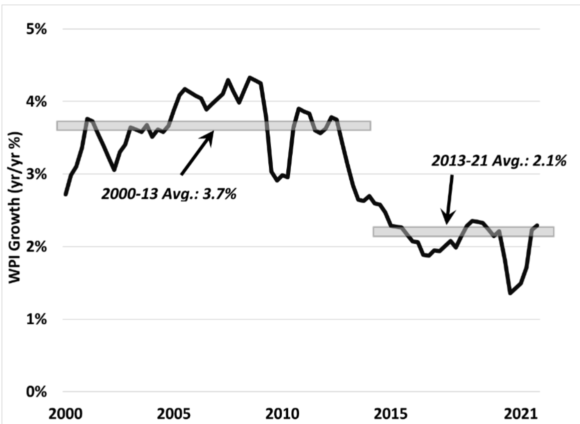
Figure 1 illustrates the trend in WPI growth (measured on a year-over-year basis, sea-

[9] This methodological aspect of the WPI is important to keep in mind when analysing changes in wages during the COVID-19 pandemic, as described below.

sonally adjusted) since the turn of the century. Nominal wages (adjusted for employment composition) grew at an average of 3.7% per year through the first years of the 21st Century – and in some years faster than 4%. This pattern was interrupted by a sharp but temporary deceleration during the global financial crisis (GFC) of 2008–09, when wage growth slowed to 3%; but wages then quickly recovered to pre-crisis rates of increase. After 2013, however, wage growth slowed more dramatically and persistently. Year-over-year WPI increases fell to 2% by 2016–17. Nominal wage growth picked up slightly after that (reaching 2.35% by late 2018), but then declined sharply again during the COVID-19 pandemic and resulting recession. Wage growth fell to 1.36% year over year (and less than 1% on an annualised quarter-to-quarter basis) in mid-2020. After the initial reopening (interrupted by the Delta and Omicron waves), WPI growth recovered to its pre-pandemic pace (just above 2%), but remained well below normal pre-2013 patterns.

Figure 1.

Wage price index, 2000-2021

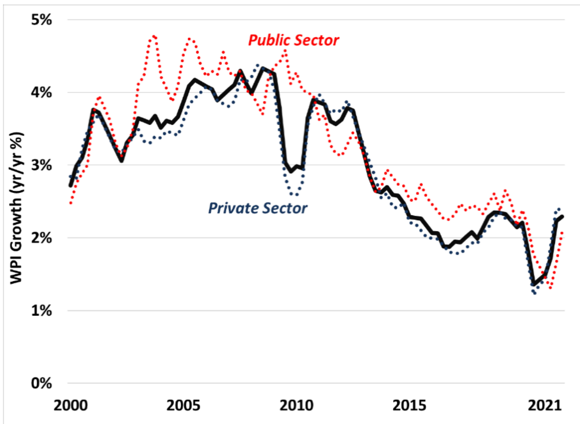


Source: Calculations from ABS Wage Price Index, Table 1

Figure 1 suggests a clear structural break in the pattern of nominal wage growth that occurred around 2013. From 2000 through 2013, WPI growth averaged 3.7% per year. Since then it has averaged 2.1% per year. This bifurcation of wage trends is visible in other indicators as well, as discussed further below.

Figure 2.

Wage growth by sector, 2000-2021



Source: Calculations from ABS Wage Price Index, Table 1

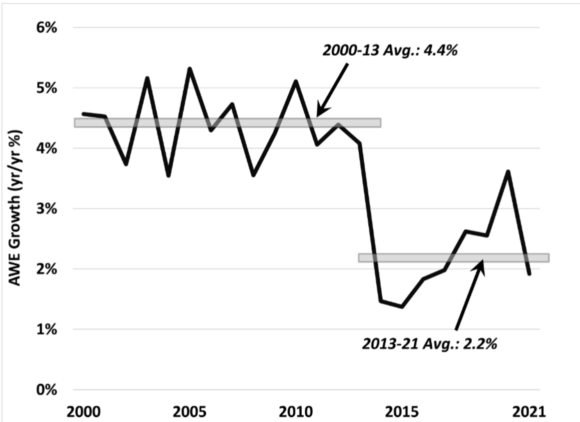
WPI data is also available by industry and sector. We consider industry-level trends further below. Figure 2 compares wage trends in private sector and public sector workplaces. In general, nominal wage growth was weaker in the private sector throughout the entire period since 2000, and the deceleration of private sector wage growth after 2013 clearly preceded a subsequent slowdown in public sector wages. This is consistent with the institutional and political reality of wage determination in public sector settings. Governments at all levels have pointed to weak wage trends in the private sector as justification for the imposition of wage caps and other forms of compensation restraint in public sector workplaces, as discussed below in section 6.4. By 2021, however, wages were growing even more slowly in the public sector than in the private sector.[10]

[10] A similar but temporary pattern was visible in 2012–13, when governments (grappling with deficits in the wake of the GFC) imposed wage restraint in public sector compensation – just as private sector wage growth was recovering from its previous but temporary downturn. See Henderson (2018) for more discussion of the impact of this post-GFC public sector wage restraint on the subsequent path of broader wage growth.

In addition to the WPI, several other measures of wage growth are published by the ABS, using different methodologies. These measures more directly capture realised changes in labour incomes, since they do not attempt to control for changes in the composition of employment (as does the WPI). For example, the ABS series on average weekly earnings (AWE) provides semi-annual data on realised earnings by industry, and for different categories of workers and compensation. Trends in this series will reflect both 'pure' wage inflation, and the impact on wages of changes in the composition of employment (such as increases or decreases in the proportion of part-time and casual employment). The year-over-year growth in AWE for all workers is illustrated in Figure 3.

Figure 3.

Average weekly earnings, 2000-2021



Source: Calculations from ABS Average Weekly Earnings (annual averages)

The AWE series is more volatile than the WPI, in part because it reflects changes in employment composition, overtime earnings, bonuses, and other factors that are filtered from the WPI's measure of narrow wage inflation. But the trend in AWE is similar to the bifurcated pattern evident in the WPI series. From 2000 through 2013, AWE grew at an annual average rate of 4.4%. That is faster than the average growth of the WPI over that same period (3.7%), indicating wage-boosting shifts in employment composition (toward higher-paying industries and better jobs) during that period, as well as strength in supplemental compensation (such as overtime and bonus payments). The subsequent deceleration in average weekly wages after 2013 was initially more severe than the decline in the corresponding WPI measure. Growth in AWE fell to barely 1% by 2015. This suggests that coincident with the slowdown in pure wage inflation after 2013, realised wage incomes were also suppressed by a shift toward part-time, casual, and lower-paid jobs. A partial recovery in the growth of average weekly wages was experienced in 2018 and 2019, reflecting some incremental improvements in average job quality.

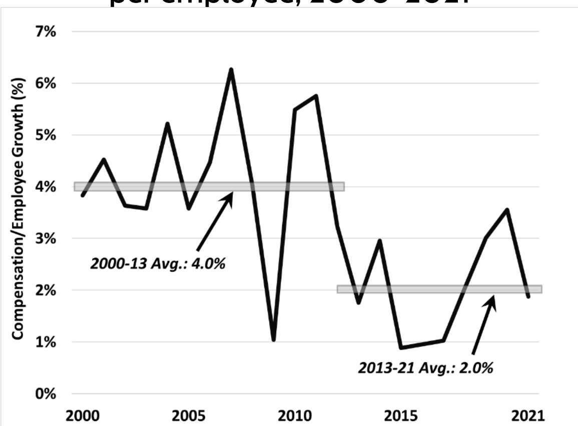
Then, with the onset of the COVID-19 pandemic, average weekly wages suddenly jumped by over 5% (on a year-over-year basis). This was due to a shock in the composition of employment during the initial lockdowns. Because lower-paid part-time and casual workers bore a disproportionate share of job losses, the average wage for those who remained employed shifted upward.[11] However, once the economy reopened and those lower-wage workers (in generally insecure jobs) were rehired, the average weekly wage fell. Despite this volatility during the pandemic, the trend in AWE confirms the post-2013 structural shift in wage patterns. In fact, by this measure that shift was more severe (with a 2.2 percentage point deceleration in average annual wage growth) than according to the WPI series (1.6 percentage points).

[11] The impact of the COVID-19 pandemic on nominal and real wage growth will be considered in further detail below, and is also documented by Stanford (2021).

Another useful measure of wage trends can be derived from the ABS's quarterly national income statistics. In the course of measuring GDP by income, the ABS tallies total labour compensation accruing to employees. This can be compared to the number of employees working each quarter to generate a measure of average compensation per worker.[12] This series shows even more dramatic fluctuations, due to changes in its various (separately measured) components (see Figure 4). Since it portrays aggregate employee compensation for all jobs, it captures the impact of changes in employment composition and job quality (similar to the series on AWE). A shift toward more part-time employment, for example, obviously reduces compensation per employee – both because of the fewer hours worked by part-timers, and the lower hourly wages paid.

Figure 4.

Average labour compensation per employee, 2000-2021



Source: Calculations from ABS National Accounts, Table 24 (annual averages)

Over the 2000–2013 period, nominal compensation per employee increased at an annual average rate of 4%. Again, this is faster than the average growth in the WPI during this period, reflecting the impact of wage-boosting changes in employment composition (excluded by design from the WPI). A shortlived slowdown in average compensation per employee during the GFC was quickly reversed, and compensation rebounded during the subsequent two years at a robust rate (over 5%). Growth in average compensation then fell sharply after 2013, to just 2% on average from 2013 through 2021. A spike in compensation growth in the initial COVID lockdowns (for similar compositional reasons as described above for AWE) was quickly reversed as the economy reopened. Again, this series confirms that nominal compensation growth for Australian employees was halved after 2013: from 4% per year in 2000–2013, to 2% per year since then.

Workers covered by a collective agreement fared better during the post-2013 wage slowdown,[13] although a lasting deceleration of wage growth is also clearly visible in negotiated wage increases. Figure 5 illustrates annualised average wage increases (AAWI) in federally-registered enterprise agreements.[14] The black line shows the average across all current enterprise agreements (that is, those which have neither expired nor been terminated); the red line shows the average in newly approved agreements. Since 2013 average wage gains in newly approved deals usually fell below the average for all current agreements, hence pulling down the overall AAWI (as newly approved agreements, with

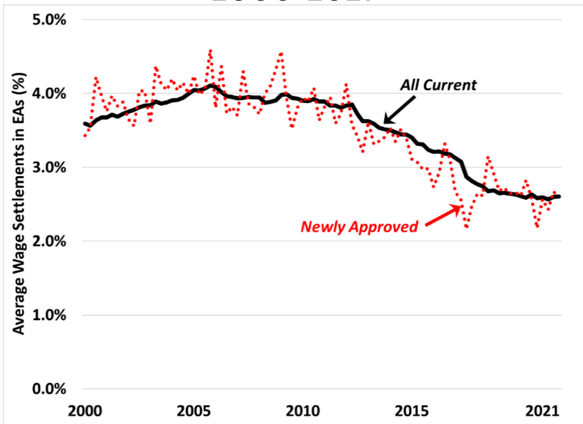
12 This series, appropriately, considers only waged employees, not self-employed workers whose income is accounted for in GDP statistics as mixed income.

13 As discussed below in section 6.1, the share of workers covered by a current enterprise agreement has declined rapidly since 2013, and the erosion of collective bargaining has certainly been an important factor in the overall wage slowdown. Kylon (2018) discussed this issue in our initial collection.

14 Figure 5 excludes non-quantifiable wage provisions (such as those tied to CPI or minimum wage changes) and enterprise agreements regulated by State governments (primarily State-level public service agreements in States other than Victoria).

Figure 5.

Wage gains in enterprise agreements, 2000-2021



Source: Attorney-General's Department, Trends in Federal Enterprise Bargaining (federally registered agreements only)

lower wage increments, gradually replace older expired agreements). From average wage gains of 4% in the latter 2000s, wage increases in enterprise agreements have slowly flattened, reaching 2.6% in 2020 and 2021. As with the WPI, negotiated wage gains have generally been slightly stronger for public sector deals (which now account for over one-third of all enterprise agreement-covered workers in Australia). In 2020 and 2021, however, public sector wage gains fell below private sector trends due to wage caps and other restraints imposed by federal, State and Territory governments.

Table 1.

Indicators of wage growth, Australia, 2020-2021

	2000-2013 (%/yr)	2013-2021 (%/yr)	Change (%pts)
WPI	3.65%	2.11%	-1.54%
AWE	4.36%	2.17%	-2.19%
Compensation per employee	4.03%	2.03%	-2.00%
Average wage gains in enterprise agreements	3.87%	3.01%	-0.86%

Source: Calculations from ABS Wage Price Index, Average Weekly Earnings, and National Accounts; Attorney-General's Department, Trends in Federal Enterprise Bargaining

According to all four of these indicators, therefore, Australia experienced a marked deceleration of nominal wage growth that began around 2013. From average annual rates of around 4% (and sometimes higher), wage growth fell by about half: to around 2% on average since 2013. Workers covered by enterprise agreements have fared somewhat better – but there, too, average wage growth is slipping steadily. Table 1 summarises the broad averages for these four wage indicators across the two sub-periods of our analysis.

The ABS initiated its WPI series in 1997, and hence it does not permit a longer-term view of the evolution of wage trends. However, other ABS series are available over longer time periods, and they confirm that the sustained post-2013 slowdown in nominal wage growth has been historically unique. For example, AWE data is available in various formats dating back to 1949.[15] From that point through 1990, AWE in Australia grew at an average annual rate of almost 9% – and even faster during the 1970s (13% per year). In 1992, in the wake of a painful recession and deliberate wage restraint measures, annual wage growth temporarily slowed to below 1% – but wages quickly rebounded as the economy recovered, recovering to 4% by 1994. The ABS's average compensation per employee measure extends back to 1978. From 1978 through 2000 that indicator of compensation grew at an annual average

[15] A composite historical series on average weekly earnings can be assembled from several overlapping sources, including the ABS *Average Weekly Earnings* series (which dates back to 1994, with a series break in 2012); previous ABS series 6302.0, 6304.0, and 6350.0; and historical data from the RBA (1997).

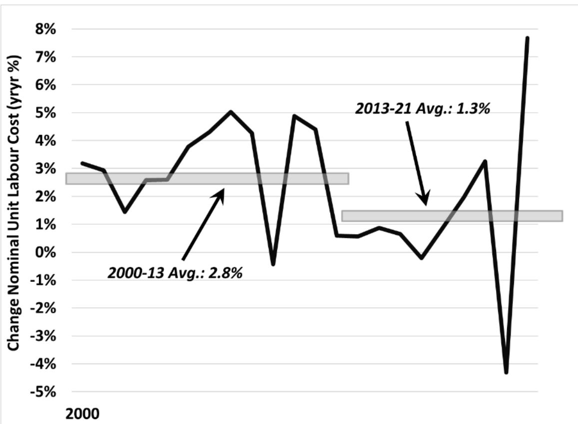
rate of 6.2%. Both these longer-term empirical series confirm therefore that the post-2013 wage slowdown has been by far the most severe and sustained in the entire postwar era.

3.2 Other measures of labour costs

In addition to the four direct measures of wage compensation reviewed above, other indicators further confirm the sustained deceleration of wage growth and labour costs after 2013. The ABS national accounts system reports changes in nominal labour costs for employers (including superannuation and other employment-related expenses), adjusted for changes in the productivity of workers. This ratio is defined as the unit labour cost, and indicates how labour costs are changing relative to the value of output. It is thus an important indicator of the impact of wage changes on overall production costs, prices, and factor income shares. Figure 6 illustrates the year-over-year growth in nominal unit labour costs, as reported quarterly by the ABS. The series is volatile, driven mostly by significantly changes in estimated productivity (which itself is a ratio of separate estimates of total output and total employment).

Figure 6.

Nominal unit labour cost, 2000-2021



Source: Calculations from ABS National Accounts, Table 42 (annual averages)

Nominal unit labour costs are a useful measure of the underlying inflationary pressure arising from labour costs (which are the most important single cost of production in most industries, and in the economy as a whole). In general, nominal unit labour costs should increase at approximately the same pace as the Reserve Bank's inflation target (2.5%), thus providing an underlying foundation for inflation at the desired pace. In the first portion of Figure 6, covering the 2000–13 period, nominal unit labour costs grew at an average pace very close to target inflation (2.8% per year). That fell within the RBA's target band.[16] Not coincidentally, overall CPI inflation in this period followed a similar trend, with consumer prices also rising 2.8% per year on average. After the post-2013 deceleration in nominal wage growth, however, nominal unit labour costs slowed to less than half that pace: rising at just 1.3% per year, barely half of the RBA's inflation target and well below its band. CPI inflation in Australia also fell below the RBA's target range for most of this period, averaging 1.8% per year from 2013 through 2021. The RBA has indicated that the unusually slow growth of wages and nominal labour costs has been a major barrier to its efforts to achieve the desired 2.5% inflation target (Lowe 2018).

Figure 6 reveals the sharp fluctuations in nominal unit labour costs that were experienced during the COVID-19 pandemic. Initially unit labour costs fell dramatically – in large part due to the effect

[16] The RBA tries to keep inflation within one-half percentage point either direction of its 2.5% target – in other words, between 2% and 3% per year.

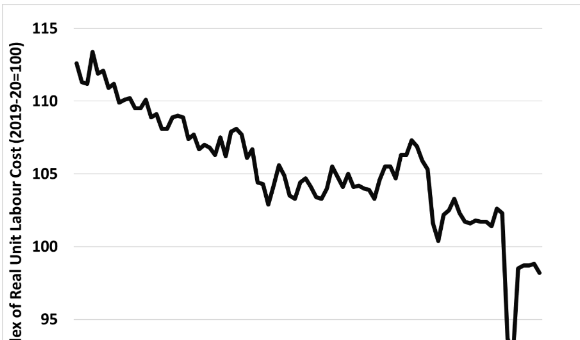
of powerful wage subsidies (through the JobKeeper program) offered by government to encourage employers to retain employees who were not needed in light of health restrictions on many businesses. Nominal unit costs then bounced back rapidly with economic reopening and the cancellation of those subsidies. Considered over the whole period of the pandemic, however, nominal unit labour costs have increased at the restrained, pre-pandemic pace. They grew at an annual average rate of 1.75% from the end of 2019 through the end of 2021 – still below the RBA's target band. There is no evidence in the pattern of nominal unit labour costs, therefore, that the current surge in consumer prices can be attributed to labour costs – which have clearly lagged, not led, the acceleration of inflation.

Another perspective on labour costs is provided by ABS data on real unit labour costs. This series adjusts both wages and productivity for changes in prices, and thus provides an indicator of both inflation pressures and distributional trends. If real wages are growing more slowly than real labour productivity on average, then real unit labour costs will decline. This implies a decline in the labour share of total output.[17] That creates economic space for increased profits, even without changes in the rate of inflation. Similarly, if real wages grow faster than real labour productivity, then real unit labour costs increase, labour's share of total output increases, and firms may feel pressure to increase prices (to protect profit margins).

As indicated in Figure 7, real unit labour costs have declined steadily through most of the last two decades. Even before the deceleration in nominal wages after 2013, real wages were already increasing more slowly than real labour productivity. Real unit labour costs flattened for several years after the GFC in 2008–09 – mostly because of a reduction in productivity growth following the 2009 economic slowdown. But real unit labour costs declined again in the latter half of the 2010s, and even further during the COVID-19 crisis. Real unit labour costs first dropped steeply during the initial COVID lockdowns (reduced again by JobKeeper subsidies), and then partially rebounded as the economy reopened. By the end of 2021 they had settled at a level significantly below their pre-pandemic starting point.[18] By late 2021 real unit labour costs were 10% lower than at the turn of the century. This continues a longer-run decline in real unit labour costs (and labour's share of total output) that dates back to the 1970s.

Figure 7.

Real unit labour cost, 2000-2021



Source: ABS National Accounts, Table 42

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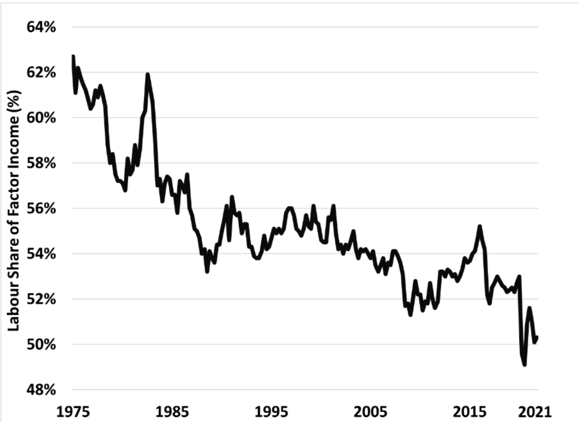
[17] Indeed, when measured in percentage terms (rather than as an index, as in Figure 7), real unit labour cost is equivalent to the labour share of output.

[18] The sharp swings in both nominal and real unit labour costs during the pandemic also reflected big changes in recorded labour productivity. Apparent labour productivity increased significantly during the lockdowns (because a disproportionate share of job losses were initially experienced in low-productivity service industries like retail and hospitality), and then declined as economic activity recovered after re-opening (see ABS *Australian National Accounts*, Table 24). That produced an initial decline in both nominal and real labour costs, reversed when the economy re-opened.

If real labour productivity is growing faster than real wages (and hence real unit labour costs are declining), this implies an erosion in the share of total national output received in the form of labour compensation (including wages, salaries, superannuation, and other forms of compensation). This is confirmed by separate ABS data on the distribution of national income between factors of production. It shows a sustained redistribution of income away from labour toward capital. As illustrated in Figure 8, labour's share of total factor income in the economy[19] has declined markedly since the mid-1970s, falling by about 12 percentage points of the total (from 62% to just 50% by 2021).

Figure 8.

Labour share of factor income, 1975-2021



Source: ABS National Accounts, Table 24

The labour share of total factor income depends not only on trends in wages, but also on returns to other factors – most notably profits on capital. The decline in profitability of some Australian industries following the 2014 downturn in global commodity prices temporarily boosted the labour share in subsequent years. That was reversed as corporate profits recovered.

The labour share then declined again with the COVID-19 pandemic and resulting recession: partly because labour compensation weakened (due to reduced employment), and partly because corporate profits increased strongly during the pandemic. The labour share hit post-war record lows during the pandemic.

3.3 Wages and labour market conditions

Evolving wage trends are commonly attributed to changes in supply and demand conditions in the labour market. If there is not enough labour demand arising from employers, and willing workers are unable to find work, then wages will supposedly moderate to facilitate a better balance between supply and demand. The reverse should be true if labour demand is strong and unemployment is low. This conventional understanding views the labour market as essentially similar to markets for other commodities: competitive forces should cause price adjustments (in this case, changes to the price of labour) that push the market toward equilibrium.

Unfortunately, however, conventional supply-and-demand analysis does not shed much light on the visible deceleration in wage growth in Australia that occurred after 2013. Broad macroeconomic and labour market conditions did not differ significantly across the two periods considered in our analysis. Yes, Australia experienced a significant recession (its first in three decades) in 2020 during the COVID-19 pandemic. But the employment recovery after the lockdowns ended was

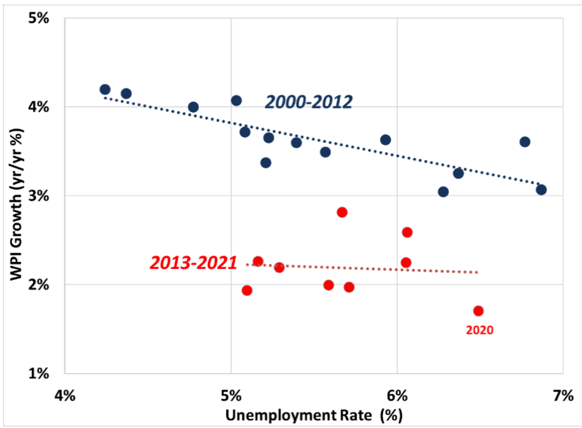
[19] Factor income equals the sum of income received by factors of production (labour and capital). It equals GDP less indirect taxes net of subsidies on production and imports. Capital income includes operating surpluses for incorporated businesses, and a share of the mixed income of unincorporated businesses (held to reflect return to proprietors' capital, rather than their work).

swift. And Australia had also experienced a major slowdown and near-recession during the previous period (namely, the 2008–09 GFC), with negative but temporary effects on wage growth. On average, macroeconomic indicators differ little between the two periods defined above. Average unemployment was only slightly higher across the 2013–2021 period (5.7%) than in the preceding dozen years (5.4%).[20] It seems doubtful that the historic deceleration in wages after 2013 can be blamed on a change in supply and demand balances in the labour market.

The case for a structural shift in wage determination patterns after 2013 is strengthened by an analysis of the relationship between nominal wage growth and unemployment. In the conventional 'Phillips Curve' understanding, there should be a predictable negative relationship between the two: lower unemployment leads to faster nominal wage growth, and vice versa. Monetary policy is informed by this understanding, with the goal (in an inflation targeting regime) being to keep unemployment at or above a rate (the Non-Accelerating Inflation Rate of Unemployment, or NAIRU) consistent with stable inflation at or near the central bank's target.[21] Comparing unemployment rates and wage inflation (measured by yearly average WPI growth) in the 2000–2012 period indicates a modest Phillips-type relationship (indicated by the blue line in Figure 9). Wage growth was somewhat stronger in the latter 2000s (up until the GFC), when unemployment was at or below 5%. Wage growth was somewhat lower in most years when the unemployment rate exceeded 6% (particularly in the early 2000s). Even before 2013, this Phillips Curve relationship was imperfect, and explained only a small portion of wage growth. Even when unemployment was high, for example, nominal wage growth never fell below 3%.

Figure 9.

Wage growth and unemployment, 2000-2021



Source: Calculations from ABS Wage Price Index, Table 1, and Labour Force, Table 1

After 2013, however, this Phillips Curve shifted downward (so that wage growth was lower at all levels of unemployment) and lost all of its explanatory power (as indicated by the red line of Figure 9). In fact, were it not for a single observation associated with COVID lockdowns (2020), the relationship between wage growth and unemployment has been perversely *positive* since 2013: in other words, lower unemployment was generally associated with *slower* wage growth during this period. So while reducing unemployment remains a vital economic and social priority, this evidence suggests that Australians cannot rely on tightening labour markets alone to solve the wages crisis. More direct measures are necessary to strengthen wage growth, regardless of prevailing unemployment levels.

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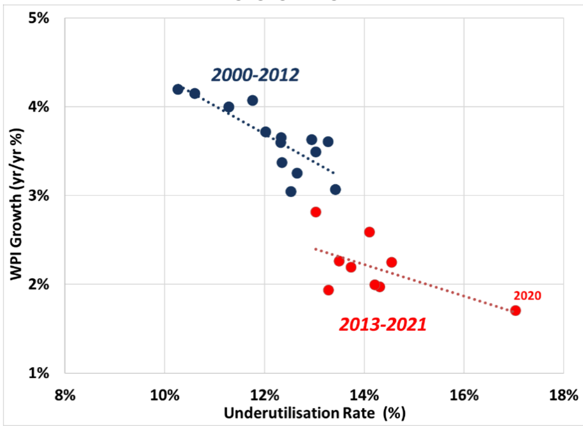
20 Calculations from ABS *Labour Force, Australia*.

21 See Richardson (2019) for a theoretical and empirical critique of the conventional NAIRU model as practiced in Australia.

Some researchers (such as Lewis 2017, Eslake 2021, and Jericho 2022a) have suggested that the traditional unemployment rate is no longer an accurate indicator of the true state of overall labour market slack. Changes in working arrangements have produced other pools of underutilised labour that are not captured in the conventional unemployment rate – such as individuals who are employed but working fewer hours than preferred (known as underemployment). The ABS generates a broader alternative measure of underutilisation which includes both unemployment and underemployment. It is plotted against annual WPI growth in Figure 10.

Figure 10.

Wage growth and underutilisation, 2000-2021



Source: Calculations from ABS Wage Price Index, Table 1, and Labour Force, Table 22

This figure also suggests a structural break in wage determination after 2013. Until then, a stronger negative relationship between wage growth and underutilisation is visible – although even at the highest underutilisation experienced before 2013 (over 13%) wage growth never fell below 3%. But after 2013 the curve shifts downward (so that wage growth is significantly slower for any given utilisation rate than in the earlier period), and loses much of its predictive power.[22]

We believe the longer-term increase in underemployment in Australia is indeed relevant to the slowdown in wage growth, albeit for reasons that differ from the conventional conception of underemployment as an indicator of supply-demand imbalance. Most underemployment is experienced by individuals in non-standard and generally quite insecure work arrangements: including casual jobs, part-time roles, and precarious forms of self-employment (especially unincorporated own-account small businesses, in which the proprietor has no employees). Few individuals in conventional full-time permanent positions report they would like to work more hours (hence being considered underemployed), and they account for only a small share of total underemployment. In this context, underemployment may be more relevant as an indicator of employment precarity, rather than supply-demand imbalance; this conclusion is reinforced by the fact that underemployment has increased steadily over recent decades, largely regardless of the cyclical condition of the macroeconomy.[23] Workers in casual, part-time, and other non-standard positions are typically anxious to work more hours, but they face continuing insecurity in their employment tenure; this undermines their bargaining power in seeking higher wages. In this context, even the weak relationship between underutilisation and wage growth

[22] Again, the outlying observation for 2020 (when underutilisation was very high due to JobKeeper subsidies and other measures which kept workers on the payroll even with sharp reductions in hours worked) imparts much of the apparent Phillips-type trend to the data during the post-2013 period.

[23] Figure 21, in section 6.9 of this report, illustrates this secular rise in underemployment.

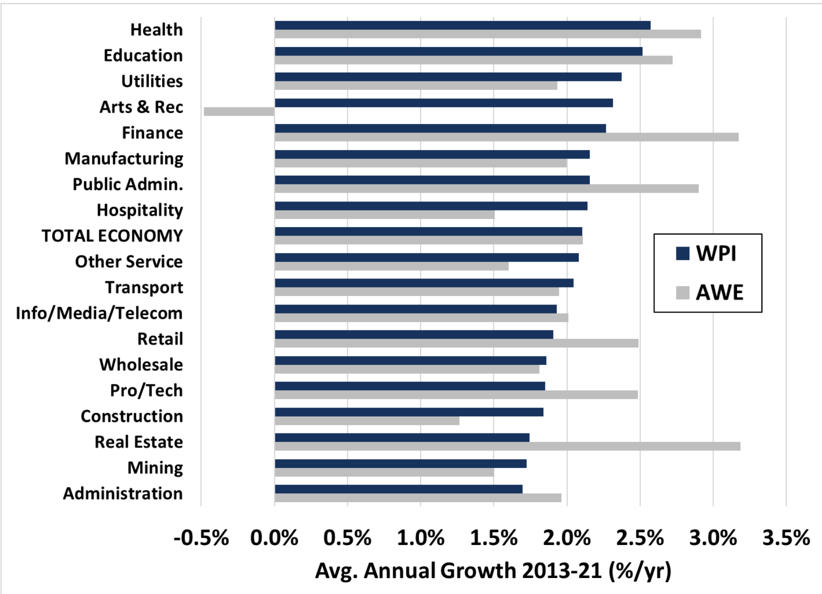
portrayed in Figure 10 is more likely a symptom of structural changes in the nature of employment, rather than the working of traditional supply-and-demand adjustments.

3.4 Industry-level perspectives

The deceleration of wage growth in Australia after 2013 was experienced universally across the broader labour market, affecting all industrial sectors and most occupations. Among the broad industrial sectors tracked by the ABS (18 sectors at the 2-digit level of disaggregation), every one recorded a marked reduction in nominal wage growth after 2013 compared to the preceding period. In some sectors, that deceleration was significantly larger than the downward shift in WPI growth recorded for the overall labour market. Recall from Table 1 that average annual WPI growth was 1.6 percentage points slower after 2013, compared to the 2000–12 period. The mining and construction industries experienced a larger nominal wage deceleration (of over 2 percentage points). Surprisingly, another industry with a worse-than-average reduction in average wage growth is the professional and technical services sector – even though this industry experienced among the fastest employment growth of any industry. In contrast, the industry experiencing the smallest WPI deceleration, perhaps counter-intuitively, was the hospitality industry, which saw wage growth slow by just 0.8 percentage points after 2013. This likely reflects the importance of the minimum wages set by modern awards in this sector, which as noted in section 6.2 have recently grown at a higher rate than average wage outcomes across the labour market.

Figure 11 illustrates the average pace of wage growth across these 18 industries since 2013, reporting the growth in both WPI (dark bars) and AWE (light bars) for each sector.[24] Sectors dominated by public-sector provision (health care, education, utilities, and public administration and safety) recorded relatively strong wage growth – reflecting the superior wage gains achieved (until recently, anyway) in more unionised public sector settings. But even in these sectors, average WPI growth averaged just 2.5% over this period: well below previous historical trends. Industries with the weakest WPI growth during this period

Figure 11.
Average annual wage growth by industry, 2013-2021



Source: Calculations from ABS, Wage Price Index, AWE

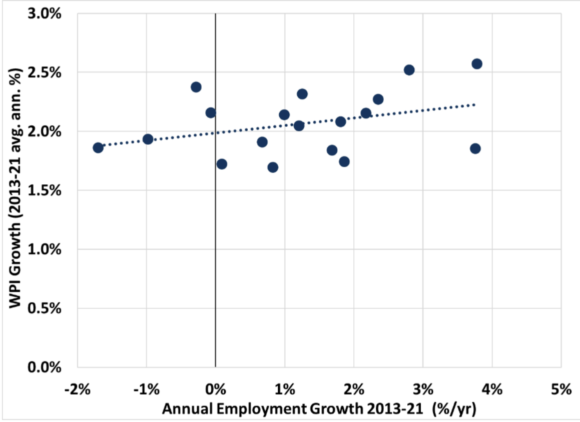
24 The sectors are organised in Figure 11 according to declining average WPI growth.

include private administration, mining, real estate, construction, and professional services. Increases in AWE in some industries have been significantly stronger than the pace of WPI growth. This is especially clear in sectors (like finance, real estate, and professional services) which rely more heavily on bonuses and other forms of variable compensation. By the same token, AWE in some private service sectors (including arts and recreation, hospitality, and other services) have grown more slowly than suggested by the WPI. In the case of arts and recreation, nominal weekly earnings actually declined since 2013.[25] This indicates a shift toward more part-time and precarious jobs in these sectors, and/or a decline in overtime and bonus payments.

It is striking that there is little correlation between relative wage growth across industries and the state of job creation in each sector. Some industries which have experienced relatively strong hiring in recent years (such as construction and professional services) also recorded below-average wage growth. By the same token, some sectors with weak employment patterns (including utilities and wholesale trade) nevertheless experienced above-average wage growth. As illustrated in Figure 12, there is virtually no correlation between the rate of growth in sectoral employment, and the rate of growth of wages. This further attests to the importance of institutional and structural factors in shaping wage trajectories, rather than market forces and supply-and-demand conditions.

Figure 12.

Industry wage growth and employment growth



Source: Calculations from ABS, Wage Price Index and Labour Force Detailed

3.5 Wages, inflation and productivity

The deceleration of nominal wage growth since 2013 has kept average growth in nominal compensation below the RBA's target for price inflation. However, inflation also decelerated during this time, although not as dramatically as wages did. Hence real wages increased slightly over the post-2013 period. As indicated in Figure 13, nominal wage growth (measured by the WPI) stayed slightly ahead of consumer prices in most years, even as both series trended downward after 2013. The significant upsurge in CPI at the end of Figure 13 (beginning in mid-2021, as the economy reopened after COVID-19 lockdowns) represents the most significant instance of wages falling behind prices.[26]

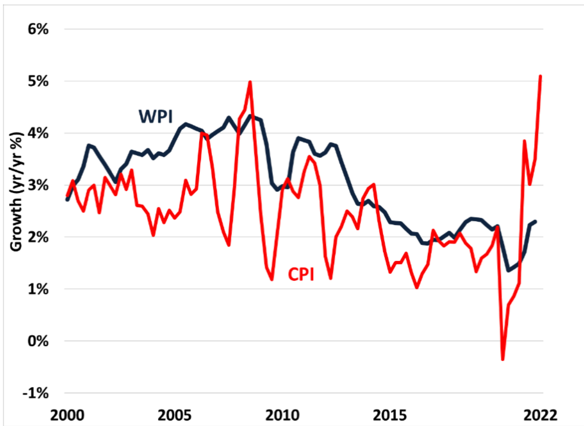
It could be argued that lower rates of inflation somehow 'justified' the slower pace

[25] The negative average growth in nominal weekly earnings in arts and recreation is largely due to the particularly severe impacts of the COVID-19 pandemic in this sector. Up to 2019, nominal weekly earnings growth had been weak, but positive.

[26] The behaviour of wages and prices during the COVID-19 pandemic is considered in more detail below, in section 3.6.

Figure 13.

Wage growth and consumer prices, 2000–2021



Source: Calculations from ABS Wage Price Index, Table 1, and Consumer Price Index, Table 1

of nominal wage growth since 2013 – and that so long as workers' wages kept pace with consumer prices there was no reason for concern. This view is erroneous on several counts. First, rather than explaining or justifying slower wage growth, the downturn in consumer price inflation since 2013 is more the consequence of slower wage growth. Labour is the largest single input to production costs, and so if labour costs are rising more slowly than overall prices, that should impart a downward tendency to prices. Indeed, as shown in Figure 6 above, the growth in nominal unit labour costs over the 2013–2021 period (just 1.3% per year on average) was slower than both target inflation (2.5%) and average actual inflation (1.8%). This left room for businesses to maintain and even increase profit margins, despite charging lower prices for output – and hence was a powerful factor in the deceleration of inflation (until 2021).

Moreover, the fact that inflation fell persistently below the central bank's target is not an outcome to be celebrated: rather, it is a sign of chronic macroeconomic disfunction. That 2.5% target reflects the judgment of policy-makers regarding an optimal rate of inflation for the economy. It aims to capture the useful benefits of moderate inflation in lubricating relative price adjustments and reducing the real impacts of debt burdens, while still providing reasonable certainty for investors and other economic agents regarding long-run expected price levels.[27] In other words, the RBA's inflation target is a desired outcome, not a ceiling: missing the target from below is just as serious as missing it from above.

RBA leaders, and other leading policy-makers, have spoken repeatedly of the difficulty of meeting their target without stronger nominal wage growth, and of the potential for wages to grow much faster than they have in recent years without sparking inflationary pressures. For example, in 2018 Dr Philip Lowe, Governor of the RBA, indicated that wage growth should follow a trend equal to the sum of the bank's inflation target plus real productivity growth (Lowe 2018):

> *I think wages in Australia should be increasing at three point something. The reason I say that is that we are trying to deliver an average rate of inflation of 2½ per cent. I'm hoping labour productivity growth is at least one per cent—and I'm hoping we can do better than that—but 2½ plus one equals 3½.*

More recently, Lowe (2021) restated the same logic:

[27] The validity of this approach to monetary policy can be debated (see eg Richardson 2019, and Lavoie and Seccareccia 2020), but in the present discussion what matters is that this is the clear policy directive that has been given to the RBA – and weak wage growth has been preventing it from fulfilling that mission.

> *Unless labour productivity growth is very weak, it is likely that wages will need to be growing at 3 point something per cent to sustain inflation around the middle of the target band.*

Dr Stephen Kennedy, Secretary of the Treasury, has hinted wages could grow even faster without causing inflationary pressure, so long as productivity growth was reasonably robust (Kennedy 2022):

> *At full employment, and if we can achieve productivity growth of 1.5 per cent, then nominal wages can grow at 4 per cent and put no pressure on inflation.*

By locking in price inflation well below the RBA's target, wage stagnation since 2013 has perpetuated a downward wage-price spiral that even the central bank considers damaging. Once weak wage growth (and correspondingly below-target inflation rates) became embedded in the expectations of labour market participants (including employers, workers, unions, and governments), it became all the harder to shift nominal wage growth back to a normal and desired trajectory. Indeed, what was once considered normal and even desirable – nominal wage growth in the range of 4% per year – is now interpreted by some as unusual and dangerous.

Indeed, warnings of a 'breakout' of wage-led inflation have been issued recently by government ministers and business leaders alike. Commonwealth Jobs Minister Stuart Robert warned that '[h]igher wages without productivity growth is simply higher inflation' (Commins and Chambers 2022). And the Chief Executive of the Australian Chamber of Commerce and Industry, Andrew McKellar, warned darkly of a return to a darker past: "We cannot delude ourselves that if we have unrealistic wage demands not backed up by productivity, that it won't lead us back into an unsustainable wage inflation price spiral, then it's welcome back to the 1970s" (ibid). Warnings like these routinely fret that the problem of inflation arises from wage growth outstripping productivity growth. As described in detail below, however, the reality is that real wages have been growing significantly and consistently slower than labour productivity, creating a disinflationary trend in unit labour costs. Moreover, trend productivity growth has remained above 1% per year through the post-2013 period of wage stagnation.[28] So even under the traditional formula, nominal wages should be growing at 3.5% per year or more just to meet the inflation target.

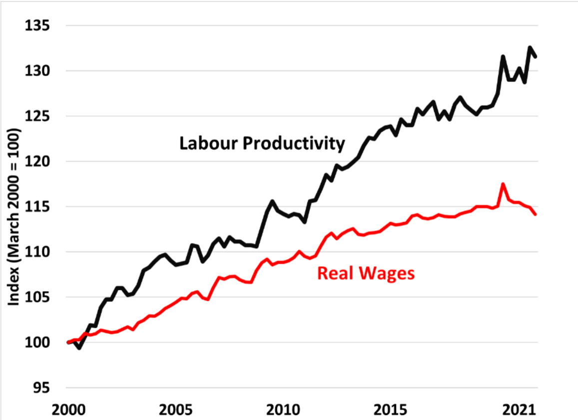
At any rate, the assumption that wages simply need to 'keep up' with price inflation (thus preventing an erosion of real purchasing power) also denies the normal and healthy relationship that should prevail between productivity growth and rising real wages. Real wages are not meant to be static over time – with nominal wages merely keeping up with consumer prices. Rather, real wages should increase in line with the growth of real labour productivity (reflecting new technology, capital accumulation, higher skills, and innovation). That not only underpins legitimate improvements in workers' standard of living over time. It also validates the macroeconomic expansion of output resulting from improved productivity. If wages are not growing proportionately with productivity, then consumer spending and hence aggregate demand (financed largely from wages) will lag total output, and the

[28] Calculations from ABS *Australian National Accounts*, Table 1.

economy will experience chronic deflationary pressures.

Figure 14.

Real wages and labour productivity, 2000–2021



Source: Calculations from ABS Wage Price Index, Consumer Price Index, and National Accounts data (CPI adjusted for introduction of GST in 2000)

As shown in Figure 14, this is exactly what has occurred in Australia over the last two decades. This figure compares the expansion of real labour productivity (measured by real value added per hour of work, blue line) against the much slower rise in real wages (represented by the growth in WPI deflated by consumer prices, red line). Over the full period since the turn of the century, productivity has grown twice as fast (31% cumulatively) as real wages (15%). But that gap has widened significantly since 2013, after the deceleration of nominal wage growth and resulting stagnation of real wages. Between the end of 2012 and the end of 2021, real labour productivity grew more than 5 times faster (10.4% cumulatively) than real wages (up just 1.9% cumulatively).

The failure of wages to keep up with productivity has contributed to a litany of economic and social problems. It produces enhanced financial stress for Australian households. It undermines the rationale for and dynamics of productivity growth: if workers are not being rewarded for improved productivity, why should they participate in trying to achieve it? It skews the distribution of national income even further toward profits and capital income (appropriated disproportionately by the wealthy). And it undermines the aggregate purchasing power required to validate and sustain future economic growth. For all these reasons, and more, stimulating stronger wage growth must become a national economic priority. In his contributions to our 2018 volume, Eslake (2018) also considered the consequences of the 'wage underhang' resulting from wages consistently lagging behind productivity.

3.6 Wages and the COVID-19 pandemic

The COVID-19 pandemic imposed an unprecedented and painful shock on Australian society and the economy, and the labour market was not spared from its impact. Employment declined by over 850,000 jobs (or 7%) in just the first two months of the pandemic. And official employment numbers did not tell the full story, since hundreds of thousands of other workers remained employed but worked few if any hours as workplaces closed due to health restrictions. As lockdown rules eased, employment rebounded surprisingly quickly: by March 2021, just one year after the onset of the pandemic, Australia had regained and exceeded its pre-COVID employment peak. But the course of the pandemic remained rocky, with subsequent outbreaks (including the Omicron variant) interrupting the recovery in employment.[29]

The impact of the pandemic on wages in Australia has been complex. The huge

[29] Data in this paragraph from ABS, *Labour Force, Australia*, Table 1.

impact of lockdowns on employment was not felt equally across the labour market. Women, young people, workers in frontline service industries, and workers in insecure jobs (including part-time and casual roles) all suffered relatively severe job losses. As summarised in Table 2, for example, 63% of total job losses in the first wave of lockdowns (March through May 2020) were borne by workers in casual positions – not surprisingly, since employers can generally downsize casual staff without notice or compensation.[30] Almost half of all job losses in the first wave were experienced among part-time workers. This concentration of job losses among workers in insecure positions was even more marked in the later wave of lockdowns resulting from the Delta variant (from May through August 2021): casual jobs accounted for almost 70% of all job losses in that period, and part-time workers for two-thirds. Conversely, most of the jobs re-created during the intervening period of economic reopening also consisted of part-time and casual positions.

The disproportionate impact of the pandemic on employment among vulnerable segments of the labour market produced significant changes in the composition of total employment. Workers in more secure, permanent positions, as well as those in jobs that could more easily be performed from home (including managers and professionals), were more likely to keep their jobs through the pandemic. Since they earn significantly higher wages than other workers, this meant that average incomes for employed workers rose significantly during the initial period of the pandemic: not because they received healthy wage increases, but because lower-wage workers were losing their jobs. As indicated by the red line in Figure 15, average compensation per worker (which reflects these changes in employment composition) shot up 5% year-over-year during the first lockdowns. Then, when the economy reopened and part-time and casual workers were hired back, average compensation retreated. By June 2021, year-over-year compensation growth fell into negative territory.

Because it adjusts for these changes in employment composition, the WPI provides a more stable and informative portrayal of

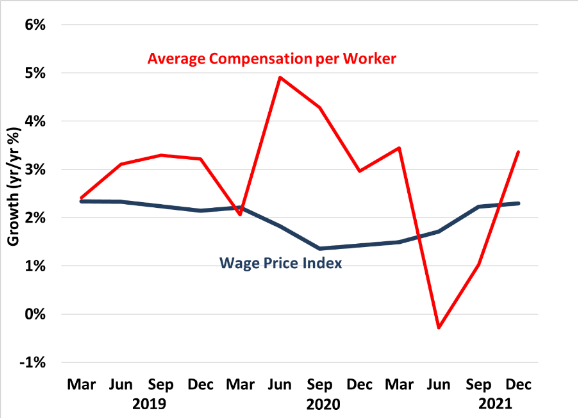
Table 2.
COVID job losses by employment status

	Job losses (000)		Share of total job losses (%)		Change in jobs (%)	
	Feb–May 2020	May–Aug 2021	Feb–May 2020	May–Aug 2021	Feb–May 2020	May–Aug 2021
Total employment	-860.7	-255.3	100.0%	100.0%	-6.6%	-1.9%
Casual jobs	-540.4	-176.6	62.8%	69.2%	-20.6%	-6.8%
Part-time employment	-412.9	-169.8	48.0%	66.5%	-10.1%	-4.0%
Casual part-time jobs	-355.2	-183.8	41.3%	72.0%	-20.4%	-10.3%

Source: Calculations from ABS Wage Price Index, Average Weekly Earnings, and National Accounts; Attorney-General's Department, Trends in Federal Enterprise Bargaining

30 The fact that many casual workers (those who had been with their current employer for less than one year) were excluded from Commonwealth JobKeeper supports also incentivised employers to downsize this portion of their workforces.

Figure 15.
Wage indicators during COVID



Source: Calculations from ABS Wage Price Index, Table 1, National Accounts, Table 24

actual movements in compensation for workers whose employment did not change. In contrast to the surge in average compensation per worker, growth in WPI slowed during the initial lockdowns. Year-over-year growth in the index fell to 1.36% for the September quarter of 2020 – the lowest in the history of the series. On an intra-quarter basis, the WPI grew just 0.07% that quarter (or 0.3% on an annualised basis). The slowdown in the WPI during 2020 reflected several contributing factors: private sector employers were reluctant to provide any wage increases at all given the economic disruption of the pandemic; governments imposed even tighter wage caps on public sector workers; the Fair Work Commission (FWC) decided in its 2020 national annual wage review to defer any wage increase for several COVID-affected sectors; and people stopped changing jobs (a form of mobility typically associated with wage increases). With reopening, WPI growth gradually returned to a rate typical of the post-2013 period, at slightly above 2%.

Economic reopening and a decline in unemployment may lead to some upward pressure on the WPI – arising from workers' demands for catch-up wage increases, and staffing disruptions and shortages faced by employers in some sectors. There is no evidence yet, however, that wage growth is poised to fundamentally rebound from its post-2013 malaise. By the end of 2021, even with the unemployment rate at multi-year lows, the WPI increased just 2.3% on a year-over-year basis. In the absence of deliberate actions to boost wage growth, the Commonwealth Treasurer's optimistic forecast (contained in the 2022–23 budget) that WPI growth will rebound to 3.25% this year, and 3.5% by 2024,[31] seems unlikely. Indeed, the poor record of past government wage forecasts, which have missed their projections from below almost every single year since 2014,[32] gives little confidence that these wage projections represent anything more than politically motivated optimism.

Another disruptive factor in the post-COVID wage outlook for Australia's labour market is the significant swings the pandemic has produced in consumer price inflation. Through most of the last decade Australia's inflation rate languished significantly below the RBA's target range. Prices then slipped into outright deflation during the first lockdowns, with the CPI falling outright for the first time since 1998. Once economic activity reopened, however, prices began to increase quickly: partly to recoup price declines during the lockdowns, and partly on the strength of pent-up consumer demand. Price adjustments were accentuated by disruptions in global and domestic supply chains resulting from the

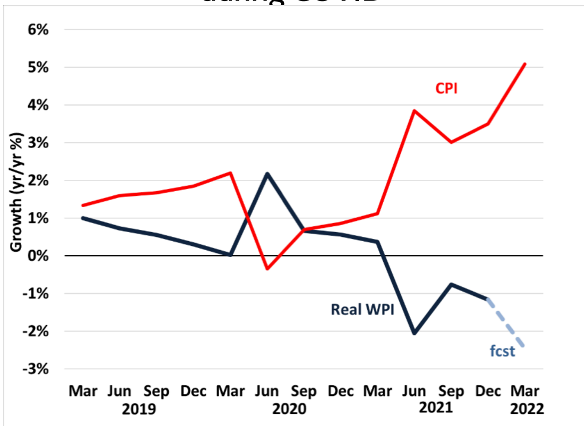
31 See Treasury (2022), Table 1.1.

32 See Centre for Future Work (2019), Figure 1, and ACTU (2022), Figure 17, for comparisons of actual wage growth to successive budget forecasts.

pandemic. Year-over-year CPI inflation rose to 5.1% by early 2022. The fall and rise of price inflation through the pandemic is illustrated by the red line in Figure 16.

Figure 16.

Consumer prices and real wages during COVID



Source: Calculations from ABS Consumer Price Index, Table 1, and Wage Price Index, Table 1

Those sharp shifts in the pace of consumer price inflation produced mirror-image movements in real wages – represented in Figure 16 by the change in the WPI deflated by movements in the CPI (dark blue line). Despite the slowdown in nominal wage growth, real wages counterintuitively increased during the initial lockdowns (by over 2% year-over-year in the June 2020 quarter) as consumer prices fell. But real wages then returned to earth when CPI inflation rebounded after reopening. By late 2021 real wages had fallen below their level at the beginning of 2019. The surge in inflation following the Russian invasion of Ukraine and other global shocks in early 2022 will produce further real wage deterioration.[33] Depending on whether the post-COVID acceleration in prices is 'transitory' or more sustained, and in the absence of immediate measures to boost nominal wages, additional declines in real wages for Australian workers are likely in the short- and even medium-run future.

3.7 Australian wages in international comparison

Many countries around the world have experienced similar structural changes in employment patterns, and similar downward pressures on nominal wage growth, as are visible in Australia. And it is often claimed that slow wage growth is a universal experience across industrialised countries. This claim, however, is false. In fact, wide variation in wage outcomes is visible across other OECD countries, and no uniform trend of wage deceleration is evident. In the period since 2013, Australia's performance has fallen below the average wage trajectory of other industrial countries. During the 2000–2013 period, in contrast, Australia posted wage growth that broadly matched the pattern of other industrial countries: slightly faster than the OECD average in nominal terms, and slightly slower in real terms. By either indicator, Australia recorded the 14th fastest wage growth among the 35 OECD countries reporting data in that period.

Since 2013, however, Australia's nominal wage growth has decelerated more than in other industrial countries: wage growth fell by 2.2 percentage points per year on average, versus 1.2 points across the entire OECD.[34] And the slowdown in real wage growth (which declined by almost 1 full percentage point in Australia) contrasts sharply with other countries: for the OECD as a whole, there was no change in the pace of real wage growth between the two periods. The deceleration in real wage

[33] WPI data for the first quarter of 2022 was not available at the time of writing. The dotted line on Figure 16 indicates the path of the real WPI if WPI growth equals 2.5% year-over-year for that quarter. In its most recent Monetary Policy Report (RBA 2022), the Reserve Bank forecasts a cumulative 6% decline in real wages from 2020 through 2023. Ironically, despite this the Bank cited as-yet undocumented upward pressure as a reason for its decision to begin increasing interest rates.

Table 3.
Australian wage growth in global perspective

	Australia	OECD Average[1]	Australia Rank
Nominal wage growth			
2000–13 (%/yr)	3.99%	3.87%	14
2013–20 (%/yr)	1.84%	2.63%	21
Change (% pts)	-2.15%	-1.23%	26
Real wage growth			
2000–13 (%/yr)	1.33%	1.38%	14
2013–20 (%/yr)	0.40%	1.37%	22
Change (% pts)	-0.93%	-0.01%	30

1. Unweighted average of 35 OECD countries reporting data.
Source: Calculations from OECD Employment and Labour Market Statistics, 'Annual Average Wages'

growth in Australia after 2013 ties with France for the worst of any major industrial country. In contrast, in several countries both nominal and real wage growth *accelerated* after 2013: including the U.S., Germany, and Japan. So Australia's experience cannot be reasonably attributed to global or universal pressures. And since Australia's employment and unemployment conditions were relatively robust compared to many other OECD countries over this same period, this uniquely poor wage performance reinforces the conclusion that policy and institutional factors explain this deceleration, rather than supply-and-demand conditions in labour markets.

3.8 Summary

The major findings of this review of the empirical dimensions of the wage slowdown in Australia are summarised in Table 4. Measured by several indicators, nominal wage growth – which averaged around 4% per year in the first dozen years after the turn of the century – was cut roughly in half after 2013, to around 2% per year since then. The last several years have recorded the weakest sustained wage growth of any period in Australia's postwar history. Wage gains for workers in negotiated enterprise agreements have averaged about 1 percentage point higher than economy-wide averages since 2013. But a clear (if more gradual) deceleration is clearly visible in those provisions, too. Growth in nominal unit labour costs – a key indicator of cost inflation – was consistent with RBA targets until 2013, after which it fell well below the RBA's target band. Real unit labour costs, and the labour share of total compensation, have both declined throughout this period, hitting record postwar lows by 2021. Overall supply-demand balances in labour markets did not differ greatly in the period since 2013 than before, and in general it does not seem that this shift in wage trajectories can be ascribed to competitive labour market pressures. Nor do cross-industry or international comparisons indicate any clear correlation between wage trends and labour

[34] The OECD data reported in Table 3 reports cross-national comparisons in average compensation per worker that are analytically similar to the data presented above in Figure 4. In our origianl volume, Kinsella and Howe (2018) also reviewed international evidence on wage trends, and similarly found that Australia's performance was relatively weak.

demand. Instead, it would seem that structural and institutional factors (such as endemic insecure work arrangements and the erosion of collective bargaining) are more likely explanations for the marked deceleration of wage growth.[35] The COVID-19 pandemic and resulting recession further disrupted wage determination in Australia, producing large swings in average wages, productivity, and inflation. As the pandemic progressed, there was little prospect of a recovery of nominal wage growth to pre-2013 levels, and real wages are now falling rapidly in the wake of accelerating consumer price inflation.

Table 4.

Measures and determinants of wage growth, 2000–2021

	Avg annual growth 2000–2013 (%)	Avg annual growth 2013–2021 (%)	Change in avg growth (% pts)
WPI	3.65%	2.11%	-1.54%
AWE	4.36%	2.17%	-2.19%
Compensation per employee	4.03%	2.03%	-2.00%
Average wage gains in EBAs	3.87%	3.01%	-0.86%
Nominal unit labour cost	2.82%	1.30%	-1.52%
Consumer price inflation	2.89%	1.81%	-1.08%
Real labour productivity	1.43%	1.04%	-0.39%
Unemployment rate[1]	5.40%	5.68%	+0.28%
Underutilisation rate[1]	12.11%	14.20%	+2.09%

1. Average levels (not growth rates), averages for 2000–12 and 2013–21.

Source: Calculations from ABS, various sources

This empirical review confirms that Australia faces a serious and continuing crisis in its system of wage determination – one that is not likely to be resolved by normal labour market or macroeconomic functioning. For nine years, wage growth has fallen well below historic norms, and well below a pace consistent with macroeconomic and social objectives (such as target inflation and a stable distribution of income between factors of production).

This worrisome pattern has continued regardless of whether unemployment was relatively low or high, or whether economic conditions were uncertain or exuberant. The consequences of inadequate wage growth are significant: both for individual households, hard-pressed to meet normal expenses, and for national economic performance. This fundamental problem clearly requires active policy attention. Simply hoping (let alone explicitly predicting, as the Commonwealth government has repeatedly but erroneously done) that wage growth will soon return to 'normal' has not worked for nine consecutive years … and that losing streak will not be broken of its own accord.

[35] These policy factors will be considered in detail in Section 6 of this report.

4. How Fast Should Wages Grow?

The preceding review of the empirical dimensions of Australia's historic wage slowdown since 2013 also provides important perspective regarding the extent to which wage growth needs to be revitalised in future years.

A starting point for estimating adequate future wage growth is the inflation-targeting regime that presently governs monetary policy in Australia. The RBA is charged with maintaining price inflation at or near 2.5% as a long-run benchmark. That is a target, not a ceiling. With stable factor shares in production, this implies an equivalent pace of increase in nominal unit labour costs.[36]

Since labour becomes more productive over time, wages need to grow at a faster rate than target inflation to ensure a match between unit labour costs and desired inflation. Long-run labour productivity growth has varied over time in Australia. Since 2000 it has averaged 1.2% per year.[37] Productivity tends to grow more quickly when the economy is robust, thanks to benefits of improved capacity utilisation and other pro-cyclical effects. It usually grows more slowly when the economy is sluggish, and can even decline during economic downturns (since employers cannot usually reduce employment as quickly as output falls, resulting in lower output per worker).[38] Productivity growth is also

[36] As noted above, nominal unit labour costs have grown more slowly since 2013 than both target and actual inflation, creating space for larger profit margins.

[37] Calculations from ABS *Australian National Accounts*, Table 1.

[38] Curiously, during the COVID lockdowns of early 2020, the opposite occurred. Average labour productivity increased sharply in the June quarter of 2020, largely because of the disproportionate concentration of job losses in low-productivity private service industries (like hospitality, retail, and personal services), which lifted the average productivity of the jobs remaining (similar to the average-wage-boosting effect of the lockdowns discussed above). That effect was reversed when the economy re-opened. Through those ups and downs, productivity ended up 4% higher by the end of 2021 than when the pandemic started (calculations from ABS *Australian National Accounts*, Table 1), implying a significantly stronger rate of productivity growth.

influenced by wages themselves: if labour is inexpensive, there is less impetus for employers to conserve it through productivity-enhancing innovations in technology or work practices. In this regard, the somewhat slower productivity growth recorded in Australia after 2013 (averaging just over 1.0% per year since then, compared to 1.4% per year from 2000 through 2013) is itself, in part, a result of the slow wage growth experienced during this period.

At a minimum, therefore, nominal wages should be growing at least as quickly as the sum of desired inflation (2.5%) and long-run trends in real labour productivity – at least 1% per year or, preferably, more. Wages cannot be expected to precisely track year-to-year changes in either of those variables. But as a normal benchmark, this implies desired nominal wage growth of 3.5% per year or higher. This was indeed the pattern prior to 2013.

However, a reasonable case can be made that nominal wages in coming years in Australia should in fact grow faster than this, for two reasons. First, real wages have been undermined by the current surge in inflation (to a rate well above the RBA's target) experienced as the economy has re-opened after the COVID-19 pandemic. It remains to be seen whether that inflation will be sustained, or will dissipate as supply chains and spending patterns eventually adjust to normal. But given the already-suppressed starting point of real wages – not to mention as a recognition for the sacrifices made by workers in all industries through the pandemic – nominal wage increases for at least the next couple of years should aim to incorporate a faster rate of expected inflation than the RBA target. Based on the Commonwealth government's own budget forecasts (Treasury 2022), an extra 1% increase per year for 3 years would be required just to recoup the decline in real wages experienced during the 2020–21 and 2021–22 financial years.

Secondly, the erosion of labour's overall share of GDP and factor income (portrayed in Figure 8 above) could very well justify a period of catch-up – in effect, to recapture past productivity gains that were not translated into real wage gains, and restore a more balanced and sustainable distribution of income across factors. Real wage gains in excess of real productivity growth for some years would restore a more traditional share of national income to Australian workers. It would also enhance the incentive facing employers to implement productivity-boosting technology and work practices. In the medium-run, having wages growing faster than productivity need not result in accelerating inflation, either. Business profit margins grew substantially during the lengthy period when real wages lagged behind productivity growth (and they continued to widen during the pandemic),[39] so it is not unreasonable to expect that they could decline without dramatic impact on prices.

For all of these reasons, a reasonable benchmark for nominal wage growth in coming years would be at least 4% per year – in other words, twice as fast as wages have been growing since 2013. This revitalisation of wages would underpin stronger household finances, and support consumer spending and economic growth as the COVID-19 pandemic (hopefully) subsides. It would also restore a healthier and more sustainable distribution of

[39] The share of GDP going to business profits (measured by gross operating surpluses) doubled between the mid-1970s and present. During the pandemic, the profit share reached a peak of 32% of GDP, by far the highest in Australian history (calculations from ABS *Australian National Accounts*, Table 2). The rise in the profit share of GDP almost perfectly mirrors the decline in the share going to labour compensation.

national income. Boosting wage growth above 4% is an admittedly ambitious goal, contrasting sharply with recent practice. And it clearly will not occur on the basis of autonomous market adjustments. Even if the official unemployment rate falls further,[40] supply-and-demand forces alone will not solve this lasting wages crisis. If Australia wants an economy in which working people are reliably rewarded for the real productivity gains to which they contribute so centrally, wage growth must be restored as a central and deliberate priority in macroeconomic and labour market policy-making. In short, if we want higher wages, we have to make it happen directly.

[40] Recent research by the Commonwealth Treasury and the RBA suggests they now believe the NAIRU to have declined below 5% – in contrast to previous estimates that it was 7% or even higher (Ruberl et al 2021).

5. Tax Cuts Cannot Replace Wage Gains

We have stressed above the importance of stronger wage growth in underpinning continued growth in consumer demand, given the importance of household spending in leading Australia's recovery from the COVID-19 pandemic and recession.

As an alternative to a wage-led consumer recovery, government leaders have suggested that tax cuts could strengthen consumer disposable income and hence spending power. Could tax cuts constitute an adequate alternative strategy for strengthening consumer demand and reinforcing economic recovery?

There are several reasons why tax cuts could not have more than a fleeting and incremental impact on aggregate consumer spending. Mathematically, wage growth generates more powerful and sustained increases in incomes than are possible from tax cuts: wage increases are compounded each year, with subsequent gains applied to a larger base. In contrast, tax cuts – especially if applied to a tax wedge that is shrinking as a result of previous tax cuts – have a diminishing absolute impact on incomes.

Moreover, for most consumers, the scale of tax cuts on offer is very small relative to the incomes foregone as a result of sustained wage stagnation. For example, the pre-election 2022–23 budget proposed a one-time $420 tax reduction, based on the expansion of a Low and Middle Income Tax Offset (LMITO) – which itself is a temporary measure, scheduled for elimination in 2023.[41] That $420 one-time payment pales in significance to the ongoing and compounding reductions in income that result from sub-par wage gains. In contrast,

[41] Perversely, taxes under this plan will increase for the median wage earner by about 3% when the LMITO is removed. See Jericho (2022b) for more discussion of the LMITO and its effects, and Treasury (2022) for details on its planned elimination.

a worker on average full-time earnings at the end of 2021 (equal to $94,260 per year) loses $1885 from just one year of nominal wage growth at 2% – compared to the pre-2013 average of 4%. That is over 4 times as much as the value of the one-time $420 expansion in the LMITO. Worse yet, the income losses from sub-par wage increases compound over time: by the third year of a future government, that worker's annual pre-tax income is $6000 lower as a result of sub-par wage increases. The cumulative loss of income over a three-year term of government equals $11,770.[42]

More significant tax reductions (worth a combined $15 billion per year) are on offer through proposed 'Stage Three' tax reductions scheduled to come into effect in 2024. But the largest share of savings under that plan will be received by those with incomes over $200,000 per year; Australians with incomes below $45,000 per year receive nothing from the Stage Three cuts (Grudnoff 2022). Yet those higher-income households have the lowest propensity to spend incremental income of any income category, so the value of these tax cuts in stimulating consumer spending and hence macroeconomic activity is diluted.

Finally, in the long-run tax cuts must be reflected proportionately in reductions in the public services and income supports which are financed from tax revenues. So any incremental boost to private consumer spending provided by tax cuts will be ultimately offset through reductions in both private and public expenditure as a result of the corresponding retrenchment of public sector expenditures.

For all these reasons, it is not convincing to imagine that government could somehow offset the loss in aggregate demand resulting from sustained wage stagnation with its own permanent program of stimulus through tax cuts. This would amount to an effort by government to subsidise the failure of the labour market to deliver normal wage increases (in line with the combination of target inflation and trend productivity growth). The only way to boost incomes and consumer spending, in a sustained and economically sustainable manner, is to enhance the rate of growth in pre-tax incomes. And that requires deliberate wage-boosting policy interventions.

[42] Calculations based on ABS *Average Weekly Earnings*, Table 1.

6. Policy and Regulatory Weaknesses

As section 3 demonstrates, conventional supply and demand factors in labour markets cannot explain the sustained deceleration in Australian wage growth since 2013 – and nor do they hold much promise as the main mechanism to reverse that stagnation and reignite normal wage trajectories.

Instead, it is more promising to consider the range of non-market forces which also clearly influence wage trends. In reality, of course, the labour market does not function like other commodity markets – whether for home appliances, pork bellies, or non-fungible tokens. Labour markets do not generally 'clear' (in the sense of supply matching demand). To the contrary, labour markets are actively managed to maintain the existence of a 'desired' cushion of unemployment (the NAIRU) to restrain wage inflation at acceptable levels. Labour markets are regulated by powerful institutional forces (including minimum wages, collective bargaining, and public sector pay policies) which must be considered in any comprehensive analysis of wage determination. Social and cultural factors (like pay norms, expectations, gender differences, and others) also fundamentally shape wages. Instead of trying to explain the wages crisis in conventional supply-and-demand terms, therefore, and instead of waiting for market forces to fix the problem, it is useful to contemplate how those structural and institutional factors may help to explain the historic erosion of wage growth over the last nine years.

Not all of the reasons for the weakness in Australian wage growth since 2013 have to do with the institutions and rules governing the labour market.[43] But when we examined the problem in 2018, we were convinced that many of them did – and that was plainly a

[43] For other attempts to explain the sustained deceleration of wage growth in Australia since 2013, see eg Bishop and Cassidy 2017; Treasury 2017; Isaac 2018; Gilfillan 2019.

belief shared by many of our other contributors. In many instances, the problem was one of regulatory failure, whether through an unwillingness to address issues of longstanding concern or to counter emerging strategies by employers, or by not doing enough to enforce existing rights and protections for workers. But the 2018 book also highlighted various ways in which governments at all levels and of all political complexions had adopted policies that actively sought to hold down wages, at a time when the precise opposite was needed to kickstart economic growth and address the growing imbalance between capital and labour.

In this section, we revisit many of the key issues discussed in our earlier work, to see what has or hasn't changed since 2018. As we will see, little has been done over that period to address the regulatory weaknesses we and our contributors identified. And in some respects, such as in relation to the spectre of sham contracting, the problems have worsened. We start our review, however, by looking at what has happened to collective bargaining – the process that is meant to be the primary means by which workers gain wage increases.

6.1 Collective bargaining

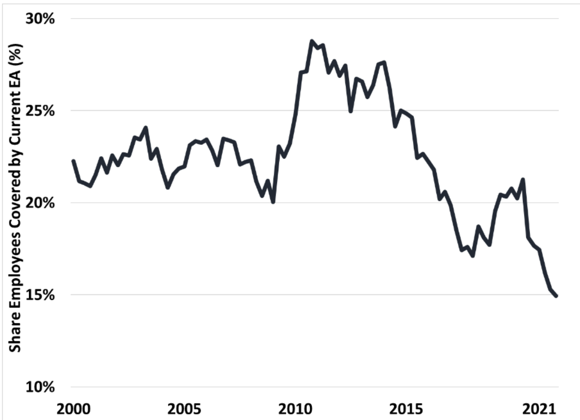
When the Fair Work legislation was introduced by the Rudd Government, with its new emphasis on 'good faith bargaining', the system of collective agreement-making for which it provided was claimed to be 'essential to maximise workplace cooperation, improve economic productivity and create rising national prosperity' (Gillard 2008). But more than a decade on, that system is unquestionably in decline.

Collective bargaining, particularly in the private sector, has eroded significantly in Australia since 2013 – closely matching the deceleration of wage growth. After an initial surge in the number of enterprise agreements registered under Part 2-4 of the Fair Work Act 2009, the total number of current (that is, non-expired) agreements fell by more than half between end-2013 and 2021 (from 23,500 agreements to 10,000). And the number of workers covered by current federally-registered agreements also plunged by one-third in the same period, from over 2.5 million to 1.6 million. The decline was more severe in the private sector.

Because employment has been growing at the same time as enterprise agreement coverage has fallen, the share of workers covered by a current EA has eroded even more sharply. As Figure 17 shows, the proportion of employees in Australia covered by a current enterprise agreement made under the Fair Work Act has declined from an average of 27% of employees in 2012, to just 15% by late 2021.[44] In the private sector, only about 11% of employees are covered by a current agreement. Fewer

Figure 17.

Coverage of current federally registered enterprise agreements, 2000–2021



Source: Calculations from Attorney-General's Department, Historical Trends Data, and ABS Table 6291.0.55.001

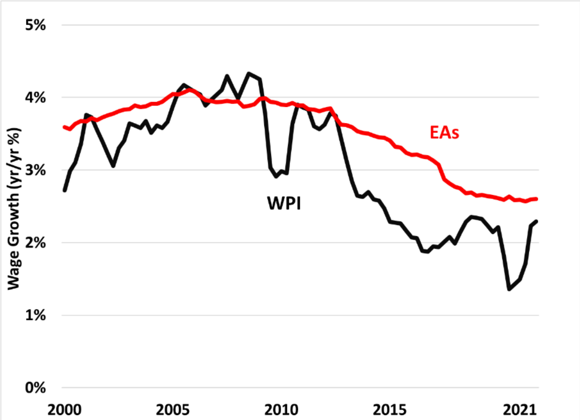
[44] Adding the proportion of employees covered by State-registered collective agreements produces a higher level of coverage, closer to 20% of all employees, but does not alter the strongly negative trend evident since 2013.

workers thus have the bargaining power that comes with collective negotiations, and this will inevitably result in slower wage growth.

In terms of the size of wage increases obtained, collective bargaining still offers above-average pay rises. But as already explained in section 3.1, and summarised in Figure 18, there has nonetheless been a steady decline over the past decade in the wage increases obtained under enterprise agreements.

Figure 18.

Wage growth in enterprise agreements and broader labour market, 2000–2021



Source: Calculations from Attorney-General's Department, Historical Trends Data, and ABS Wage Price Index, Table 1

As Pennington (2020: 86) points out in her valuable exploration of the scope and implications of the collapse in enterprise bargaining, 'the noble intentions of the [Fair Work] Act to support collective bargaining as a crucial avenue for regulating income distribution, supporting wages, and facilitating collective voice have been left starkly unfulfilled'.

One reason for this is the failure of the legislation to do enough to bolster worker power. As Peetz (2018) highlighted in his contribution to *The Wages Crisis* in Australia, the legislation places significant obstacles in the way of both multi-employer bargaining and the use of industrial action. The fact too that 'agreements' can be struck with unrepresented workers, a form of 'collective bargaining' almost unheard of elsewhere in the world (McCrystal and Bray 2021), continues to be exploited by certain businesses. Unions have had some success in challenging agreements made with small and often unrepresentative groups of workers, as a prelude to being applied to what may ultimately be a much larger workforce.[45] But others are still being approved.[46] Employers continue as well to seek or threaten the termination of expired enterprise agreements, in order to push workers onto much lower award conditions, or obtain concessions in bargaining for a new agreement.[47]

A further reason for the decline in enterprise bargaining, by contrast, appears to be related to a key aspect of the Fair Work Act that does seek to protect workers. This is the better-off overall test (BOOT) in section 193, which seeks to ensure that an enterprise agreement leaves each affected employee in a better position than if they were employed under the minimum conditions set by a relevant award.

[45] See eg *One Key Workforce Pty Ltd v Construction, Forestry, Mining and Energy Union* [2018] FCAFC 77; *Broadspectrum (Australia) Pty Ltd v United Voice* [2018] FCAFC 139; *Construction, Forestry, Maritime, Mining and Energy Union v Karijini Pty Ltd* [2021] FWCFB 4522.

[46] See eg *Thiess Pty Ltd v Construction, Forestry, Mining and Energy Union* [2018] FWCFB 2405; *Communications, Electric, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia v Fredon Industries Pty Ltd* [2021] FWCFB 3190; *Construction, Forestry, Maritime, Mining and Energy Union v Mechanical Maintenance Solutions Pty Ltd* [2022] FCAFC 15.

[47] A high-profile example of this strategy was the application by Qantas to terminate its enterprise agreement with international flight crews, in the course of negotiating a new agreement with the unions representing them. This strategy culminated in eventual worker approval of significant cost reductions in the renegotiated agreement (Marin-Guzman and Baird 2022). For discussion of the legal issues behind this tactic, see McCrystal 2018.

In 2016, the Fair Work Commission tightened its procedures for applying the BOOT, in the wake of a successful challenge to the validity of an agreement negotiated by Coles and the shopworkers' union.[48] Like many other deals struck by major retailers and fast food providers, this had lifted base rates of pay, but significantly disadvantaged the many workers reliant on evening or weekend penalty rates. The agreement did offer various leave entitlements and other non-monetary benefits not available under the retail award, but these were not widely accessed and thus had limited value. Since section 193 makes it clear that all affected employees must be better off, not merely some of them, this was enough to sink the approval of the agreement. The tribunal also then cracked down on the use of simplified or 'loaded' pay rates, which set a single rate of pay that is meant to include all allowances, loadings and penalties. To be lawful, these rates must be high enough to ensure that employees are not short-changed for working overtime or at antisocial hours.[49]

Since these decisions, employer groups have repeatedly and vociferously complained about the 'impractical' and 'absurd' outcomes that flow from such a strict application of the BOOT. They see changes to the test as being essential to prevent the enterprise bargaining system from 'withering on the vine' (Workplace Express 2022a; Hannan 2022a). The fact is, however, that any unintended or unlikely disadvantages from a proposed agreement can easily be ruled out by the employer guaranteeing that employees will not earn less than they would have done under the relevant award. But the very fact that undertakings of that type are frequently sought by the Fair Work Commission is presented by business representatives as evidence of the enterprise agreement system being 'impractical and unreliable' (Workplace Express 2022a). It could just as easily be concluded that some employers are only interested in enterprise bargaining if they can use it to cut wage costs, as some had previously been able to do when the tribunal's scrutiny was more lax.

Perhaps unsurprisingly, it was this alleged 'failing' of the enterprise agreements system that the Morrison Government principally sought to address in its 'Omnibus Bill', the Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Bill 2020.

The Bill had its origins in what was initially a highly consultative process of labour law reform. For a period of some months in 2020, the government's response to the COVID pandemic was marked by a very positive working relationship with the ACTU, including over the drafting of the JobKeeper legislation (Grattan 2020). This carried over into the establishment of a series of tripartite working groups to examine potential changes to the Fair Work Act, albeit on issues that reflected government and employer policy priorities, rather than those of the labour movement (Forsyth 2020).

The working groups initially ran smoothly. But after certain employer representatives became unhappy about the Business Council of Australia's willingness to negotiate changes to the enterprise bargaining system with the ACTU (Hannan 2020), the government was persuaded to revert to its usual approach of bilateral discussions. The

[48] *Hart v Coles Supermarkets Australia Pty Ltd* [2016] FWCFB 2887.

[49] *Loaded Rates Agreements* [2018] FWCFB 3610.

Bill eventually tabled in Parliament in December 2020 reflected its pre-pandemic policy agenda – and there was little sign of any meaningful compromise with the labour movement (Stewart et al 2021).

Schedule 3 of the Bill did contain one or two changes that the ACTU had sought, such as a sunset (automatic termination) date for 'zombie' agreements made under previous legislation. But the bulk of the changes were designed to make it harder for unions to challenge the approval of agreements, give more weight to the views of the employer and employees involved, and 'free up' the application of the BOOT in various ways.

Among other things, the Bill would have required the Fair Work Commission, in assessing a proposed agreement, to ignore unlikely work patterns and to consider the possibility of non-monetary benefits to employees offsetting any financial disadvantages (something the tribunal is already free to do). But the most substantial proposal was a new exception to the BOOT that would have allowed the tribunal to approve agreements with below-award conditions, even in the absence of exceptional circumstances. It would have been enough for approval not to be contrary to the public interest, taking account of the impact (if any) of COVID-19 on the enterprise, the views of those involved in making the agreement and the extent of employee support. Opposition to the proposed exception, which had not been raised with the working groups, was so strong that the government was forced to drop it before the Bill had even passed the lower house (Bonyhady 2021).

In the result, the Morrison Government opted in March 2021 to join with One Nation and the Centre Alliance in voting down all of the proposals in its own Omnibus Bill, aside from those dealing with casual employment (Lowrey, Baker and Dalzell 2021).[50] There has been talk of reviving the jettisoned parts of the Bill (Kelly 2022), though not, it seems, the reforms proposed to the BOOT (Thompson 2022a).

What is clear is the current government's determination to resuscitate the proposals in Schedule 4 of the Omnibus Bill. These concern 'greenfields' agreements, made for new enterprises before the engagement of employees to work on them. The reforms would have allowed agreements for certain 'major projects' to have a nominal duration of up to eight years, twice the normal maximum, so long as they provided annual increases to base rates of pay. While greenfields agreements normally require union consent, the Fair Work Act was amended in 2015 to permit an 'agreement' to be registered in the terms unsuccessfully proposed by an employer, provided (among other things) it provides for pay and conditions that are consistent with industry standards.[51] Scott Morrison has promised the resources sector that the major project reform will be reintroduced, albeit with agreements to have a maximum duration of six rather than eight years, and with a requirement for annual wage increases to match those granted by the Fair Work Commission in its annual wage review (Ramsey and Giannini 2022). Even with that provision, it could still be expected that long-term 'agreements' approved by the tribunal without union or worker consent would well and truly undercut the wage levels that genuine collective bargaining would have produced.

[50] Those reforms to the regulation of casual employment are discussed below, in section 6.9.

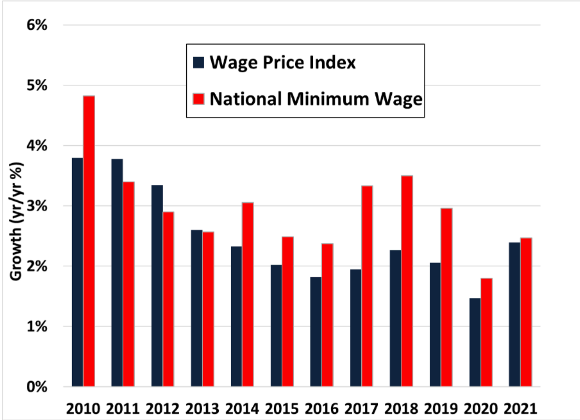
[51] Fair Work Amendment Act 2015 Sch 1 Pt 5.

6.2 Statutory wage-fixing

In recent years, the annual wage reviews conducted by the Fair Work Commission under Part 2-6 of the Fair Work Act have been one of the very few ways for Australian workers to gain a significant wage rise. Since 2013, annual increases to the national minimum wage and to the basic rates set by modern awards have averaged a relatively modest 2.7%, compared to 3.5% per year over the previous dozen years. Despite this lower rate of growth, however, the annual wage review has remained an important source of support for overall wage trends, during a period when wage growth (especially for workers on individual employment contracts) has been even weaker.[52] For example, Reserve Bank research has shown that during years (such as 2017 and 2018) of particularly weak wage growth, workers covered by modern awards received higher wage increases than those covered by either collective agreements or individual contracts (Bishop and Cassidy 2019). Indeed as Figure 19 demonstrates, the percentage adjustment made by the Fair Work Commission has outstripped average wage growth in every year since 2014.

Figure 19.

Minimum wage adjustments and broader wage growth, 2010–2021



Source: Calculations from ABS Wage Price Index, Table 1, and Fair Work Commission. Refers to average wage growth and national minimum wage adjustment for financial year beginning in each indicated year.

Some qualifications are necessary here, however. In both 2020 and 2021, the tribunal's Expert Panel opted to delay any increases for certain awards by several months, in recognition of the exceptional impact of the COVID-19 pandemic on sectors such as aviation, tourism, recreation services, entertainment, accommodation, food services, and some types of retail.[53] Between 2017 and 2020, many award-reliant workers in the retail and hospitality sectors were negatively affected by the phasing in of cuts to Sunday penalty rates.[54] During the pandemic, there were also instances of awards being temporarily varied to allow employers to reduce previously agreed hours of work (Murray, Schaffer and Shribman-Dellmann 2021). The Morrison Government subsequently proposed a mechanism for part-time employees working at least 16 hours per week and covered by certain awards to agree to work extra hours without overtime pay, as part of Schedule 2 of the 2020 Omnibus Bill. But the proposal failed to pass.

More generally, the annual wage increases ordered by the tribunal may only directly benefit the minority of employees who are paid in accordance with awards. The ABS (2022) currently estimates that figure to be 23% of the workforce. But given the widespread non-compliance with minimum wage obligations exposed in recent years, and discussed further below, there is reason

[52] Stanford (2019) discusses the growing importance of minimum wage adjustments to overall wage trends in Australia.

[53] *Annual Wage Review 2019–20* [2020] FWCFB 3500; *Annual Wage Review 2020–21* [2021] FWCFB 3501.

[54] *4 Yearly Review of Modern Awards – Penalty Rates – Transitional Arrangements* [2017] FWCFB 3001.

to question whether even that many will see any annual increase.

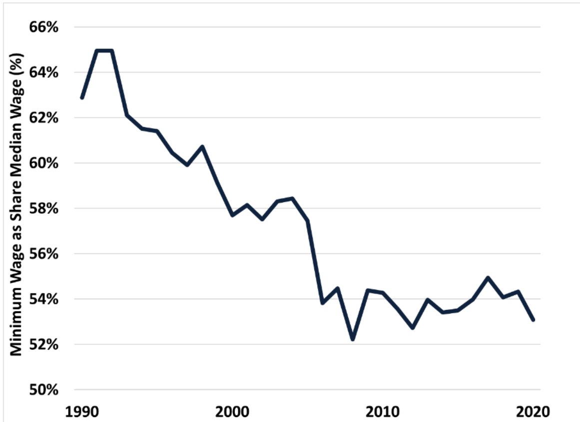
The relative generosity recently shown by the FWC also needs to be seen in a broader historical context. In writing for the original book, Lyons (2018) charted how the shift in the 1990s away from centralised wage fixation, in favour of negotiated pay increases, had eroded the egalitarian nature of Australia's labour market. Where Australia had once been an international outlier with strong minimum wages, and relatively low income inequality as a partial result, the shift to viewing awards as a 'safety net' has seen a significant decline in the relative value of the wage rates they set. Australia's minimum wage 'bite', expressed as a proportion of median earnings, is still sitting at just 53%, far removed from the much higher values recorded at the beginning of the 1990s (see Figure 20). The recent increases to the minimum wage have not even lifted its relative value back to where it was prior to the Howard Government's 'Work Choices' reforms in 2005–06.

Furthermore, there can be no guarantee that the tribunal's recent willingness to lift minimum rates will continue. The Fair Work Commission's Expert Panel contains three part-time members appointed (for fixed terms of up to five years) by the federal government. But more importantly, it is headed by the President of the tribunal, who also chooses which full-time members of the Commission take the other three spots on the seven-member Panel. The current President, Justice Iain Ross, reaches the compulsory retirement age of 65 in January 2024. If there is no other change to the structure or operations of the Commission before then, whoever is chosen to replace him will be in a position either to maintain or reshape the tribunal's current approach to wage fixation.

In exceptional cases, it is possible for award-covered workers in particular sectors to obtain wage rises over and above the general increases typically granted as

Figure 20.

Minimum wage 'bite': Minimum wage as share median wage, 1990–2020



Source: COECD Labour Market Statistics, 'Minimum wages relative to median wages'

part of the annual wage review. For example, the Commission can vary the minimum wage rates set in modern awards on 'work value' grounds.[55] This involves reassessing the skills or qualifications required to perform a particular job and determining whether the wage rate set for it is appropriate. Historically, it was necessary to show that something about the work or the environment in which it was performed had changed since the last time the work had been formally valued by the tribunal. But the tribunal has noted that there is 'no datum point requirement' in the current Act. If work can be shown to be undervalued, for whatever reason, the relevant rates can be increased.[56] Two recent examples of this either happening or being sought, in relation to childcare and

[55] See Fair Work Act 2009 ss 156(3), 157(2).

aged care workers, are mentioned below. A further and rather different adjustment has also just taken effect in the horticulture industry, ensuring that fruit and vegetable pickers paid on a piecework basis receive at least a minimum hourly rate (Howe 2021).[57] Once again, however, there can be no expectation that such sector-specific wage improvements will be sought for other employees, much less obtained.

6.3 Gender pay inequity

According to the Workplace Gender Equity Agency (2022) the 'gender pay gap' between average male and female full-time earnings has remained fairly steady since 2018, rising slightly during the pandemic before falling back again to its current level of 13.8%. That puts it in the same range (of between 13 and 19%) that has become the norm over the past 20 years. There has been a steady fall over the past decade in the gender gap between the pay rates reported to the WGEA by larger non-government organisations. But the latest figures still show full-time female employees at those organisations having base salaries of 14.6% less than men. And that gap rises to just under 20% if total remuneration (including bonuses) is counted.

Research conducted for the WGEA has shown that where companies consistently implement a suite of gender equality measures, they are likely to see significantly faster improvements in their gender pay gaps. In particular, the use of gender pay gap audits is effective in narrowing gaps in managerial pay (Cassels and Duncan 2021). But the growth in such audits has slowed, and organisations ceasing to conduct them have reported an increase in their gender pay gap for managers. This is part of what the researchers describe as a growing 'apathy among Australia's biggest organisations when it comes to progressing gender equality' (ibid: 8). A lack of equity is also apparent in the disparities between male and female pay for work undertaken through digital labour platforms (Williams et al 2021), a burgeoning part of the labour market to which we return in a later section.

In terms of regulatory measures to address gender pay inequity, beyond the reporting required under the Workplace Gender Equality Act 2012, little has changed to the picture painted by Charlesworth and Smith (2018) in their contribution to our original book. A manager was recently able to establish unlawful discrimination by her employer when it refused to grant her pay rates higher than those prescribed by an enterprise agreement, as it had done for male co-workers.[58] But such individual litigation is costly to run and limited in its effect.

At a State level, there has been at least one new example of a more generalised equal remuneration claim succeeding in the New South Wales Industrial Relations Commission, resulting in pay increases of 11% for education support workers.[59] Western Australia has also followed New South Wales and Queensland in strengthening its laws on pay equity. The changes made by the Industrial Relations Legislation Amendment Act 2021 (WA) include a new power for the State's Industrial Relations Commission to make

[56] *Equal Remuneration Decision 2015* [2015] FWCFB 8200.

[57] See *Application to vary the Horticulture Award 2021* [2021] FWCFB 5554.

[58] *Tsikos v Austin Health* [2022] VSC 174.

equal remuneration orders, as well as a requirement to issue an equal remuneration principle as part of each annual State Wage order.

However, State laws of this kind cannot apply to national system employers – those who are covered by the federal Fair Work Act and who employ around 85% of Australian employees. For those workers, Part 2-7 of the Fair Work Act envisages orders being made by the Fair Work Commission to ensure 'equal remuneration for men and women workers for work of equal or comparable value'. But as Charlesworth and Smith explained, the tribunal has interpreted these provisions to mean that it is not enough to show that predominantly female work has historically been undervalued for reasons that are linked to gender. An applicant must demonstrate that the work is comparable in nature to that performed by a group of predominantly male workers who are paid more.[60]

The difficulty of meeting this criterion is demonstrated by the failure of applications for equal remuneration orders brought by three unions on behalf of childcare workers. In each case the Commission ruled that the necessary comparisons had not been established with the likes of manufacturing workers, male primary school teachers or professional engineers.[61] At the suggestion of the tribunal, the Independent Education Union sought a work value adjustment instead on behalf of early childhood teachers. That claim eventually succeeded, with increases of 13.6% being awarded.[62] But the very fact that what was indisputably an equal pay claim had to be pursued under something other than the provisions of the Fair Work Act intended to address that issue underscores the need for the legislation to be reformed.

6.4 Government wage policies

One of the most powerful themes explored in our 2018 collection of essays was the way in which government policies have contributed to the problem of wage stagnation. Little, if anything, has changed in that regard. For example, a recently updated report from the McKell Institute identifies 'seven deliberate policy choices' on the part of the current federal government that have contributed to wage suppression (Cavanough 2022: 9):

1. *Support for a reduction in penalty rates;*
2. *Overseeing a surge in work visas for low-paid temporary migrant workers;*
3. *Inaction on wage theft and underpayment;*
4. *Opposition to increases in minimum wages;*
5. *Public sector wage freezes;*
6. *Changes in the composition of the Fair Work Commission; and*
7. *Allowing a sharp expansion of the gig economy without adequate regulation.*

59 *Crown Employees (School Administrative and Support Staff) Award* [2019] NSWIRComm 1082.

60 *Equal Remuneration Decision 2015* [2015] FWCFB 8200. The tribunal rejected the approach taken in this respect by an earlier Full Bench in *Equal Remuneration Case* [2011] FWAFB 2700; [2012] FWAFB 1000. That case, which saw significant pay rises being awarded to social and community services workers, remains the only instance in which an equal remuneration order has been made under the Fair Work Act.

61 *Re Application by United Voice* [2018] FWCFB 177; *Re Independent Education Union of Australia* [2021] FWCFB 2051.

62 *Re Independent Education Union of Australia* [2021] FWCFB 6021.

Arguably, however, that list does not fully document the various ways in which the Morrison Government has sought to hold down wage growth (ACTU 2022). For example, it fails to consider the steps taken to entrench rather than reduce the incidence of 'permanent casual' employment, or the lack of action in the face of arrangements that seek to avoid direct (or any) employment and drive down wages through the outsourcing or subcontracting of labour needs – topics to which we return below in sections 6.7–6.9.

It is also important to consider the contribution of State and Territory governments, and take a broader view of the indirect impacts of government wage policies. It is certainly true that the Morrison Government has acted to hold down wage outcomes for those directly employed by the Commonwealth. Its current policy caps pay rises for government employees by reference to movements in private sector pay, even if they average less than the 2% limit imposed by its previous edict (Australian Public Service Commission 2020; Hannan 2022b). During the early days of the pandemic, it also imposed a six-month wages freeze (Dingwall 2020).

However, the Commonwealth has not been alone in seeking to restrain wage growth in the public sector. New South Wales has had legislation in place since 2012 to ensure that the State's Industrial Relations Commission cannot grant wage increases beyond a government-imposed cap of 2.5%.[63] In the early months of the pandemic, what was then the Berejiklian government announced a wage pause, to allow it to direct funds into infrastructure projects instead.[64] The Commission subsequently granted a derisory 0.3% wage increase to the workers affected by this policy.[65] The pause has since been lifted, but the 2.5% cap remains (NSW Department of Premier and Cabinet 2021). The Perrottet Government is currently embroiled in pay disputes with nurses, paramedics and teachers, who are each seeking rises above the cap to reflect (among other things) the severe impact of the pandemic on their workloads, and the erosion of real wages due to inflation (Rose and McGowan 2022).

Labor governments too have imposed wage caps, with a 1.5% per year limit currently in place in Victoria,[66] and 2.5% in Western Australia (McGowan and Dawson 2021). The Northern Territory has imposed a 'wage freeze' for the 2021–24 period, though its bargaining policy does also provide for a $4000 lump sum payment to each employee on approval of a new enterprise agreement, plus a $2000 lump sum payment annually thereafter (Office of the Commissioner for Public Employment 2021). Elsewhere, it is harder to find evidence of specific limits, but nor is there any indication of a State or Territory government seeking to differentiate itself by offering larger wage rises.

Active restraint of public sector wages by government has several consequences for wage trends across the broader economy. Public sector jobs constitute around 15% of total employment, so anything that reduces

63 Industrial Relations Act 1996 (NSW) s 146C; Industrial Relations (Public Sector Conditions of Employment) Regulation 2014 (NSW) cl 6(1)(a).

64 For critical analysis of the benefits of this move, see Dennis, Grudnoff and Richardson 2020.

65 A union challenge to the validity of that decision was unsuccessful: *Public Service Association and Professional Officers' Association Amalgamated Union of NSW v Industrial Relations Secretary of NSW* [2021] NSWCA 64.

66 'Moving to the new Wages Policy 2022', www.vic.gov.au/moving-new-wages-policy-2022.

wage growth in the public sector will automatically have a compositional impact on economy-wide averages. More powerfully, the imposition of wage caps by governments (who are the largest single employers in the whole economy) sends a strong signal to participants in the broader labour market. Companies that sell goods and services to government will naturally feel pressure to restrain their own wages in line with these new targets. And private employers more generally will feel increasingly empowered to demand similar wage restraint on the part of their own employees. It is no coincidence, therefore, that the imposition of wage restraint by governments has been accompanied by a parallel deceleration of wage growth in the private sector.

As an extension of the last point, what is often not appreciated is just how large the wages 'footprint' of governments in Australia really is — or how actively governments have worked to suppress wages in the private and (especially) not-for-profit sectors. In our original book, Henderson (2018) traced the effect of austerity policies on wage levels both within and beyond the public sector. Although waves of privatisation have reduced the nominal size of the public sector, many outsourced services are supplied under tendering arrangements that induce firms or associations to cut labour costs in order to win and maintain government contracts. Funding agreements often explicitly or implicitly prohibit suppliers from rewarding their staff with above-award rises or paying higher wages to attract new workers. As Macdonald and Pegg (2018) explained, government contracting and funding models have persistently stifled wage growth in the social and community services sector, at a time when it needs not just to retain good staff but attract new workers. There is an urgent need in these sectors to rethink the role of the state in job quality, wages and conditions (Macdonald and Charlesworth 2021).

There is no better demonstration of this than the aged care sector. In its final report, the Royal Commission into Aged Care Quality and Safety (2021) catalogued the lengthy list of problems plaguing the delivery of aged care services. Among other things, it found that the system was understaffed, and its workers underpaid. Among its most important recommendations was that (ibid: Vol 1, 129):

> *...wage increases should be an explicit policy objective of aged care funding. As part of the new aged care funding system we propose, we are recommending the establishment of a Pricing Authority to set prices for high quality and safe aged care. We consider that an important part of that work will be to price aged care at a level that enables workers to be remunerated to reflect what similar workers are paid in similar sectors, such as health and disability. In setting prices for aged care, the Pricing Authority should take into account the need to attract sufficient staff with the appropriate skills to the sector, noting that relative remuneration levels are an important driver of employment choice.*

More immediately, it urged the federal government, aged care providers and unions to collaborate on an application to the Fair Work Commission seeking a wage increase on work value grounds, noting approvingly that the Health Services Union had already lodged such an application in respect of various workers involved in residential aged care (ibid: vol 3A, 415–17). The claim, which is seeking pay increases of 25%, has since been expanded to include workers in home-based care as well, while the Australian Nursing and Midwifery Federation has lodged its own application in relation to nurses working in the sector.[67]

In December 2021 a Consensus Statement, signed by the unions, employer groups and other stakeholders, was filed with the tribunal. It agreed that wages in the sector had been historically undervalued and called for any pay rises to be fully funded by the Commonwealth.[68] Contrary to the recommendation of the Royal Commission, however, the Morrison Government refused to take part in the discussions that produced this statement. Nor has it given any commitment that it will fund any pay rises ultimately granted by way of variation to the aged care, nursing or social and community services awards (Butler 2022).[69] Strictly speaking, as the President of the Fair Work Commission has pointed out, the 'affordability' of any wage increases may not factor into the tribunal's thinking as to what would be an appropriate (r)evaluation of the work in question. But even if that proved to be correct, the availability of government funds to help pay for those increases could still make a big difference to how quickly the Commission might be prepared to phase in the higher rates (Workplace Express 2022b). It remains to be seen then just how quickly (if at all) wage levels in the sector can be improved.

6.5 Wage underpayments

The integrity of the safety net – and the capacity to raise and sustain the wages floor – hinges on employers complying with the regulatory framework (Belser and Rani 2015). However, there is mounting evidence to indicate that regulatory evasion of minimum labour standards is not just routine, but seemingly relentless. Systemic underpayment of wages has implications far beyond the workers who are directly affected. It creates an uneven playing field whereby unscrupulous employers are able to reap a competitive advantage over their compliant counterparts – so much so, that a recent Senate inquiry recommended that the government consider characterising 'wage theft' as an anti-competitive practice (Senate Economic References Committee 2022). It also shortchanges governments, in that they collect less payroll tax, and are forced to pick up the wages tab when businesses go bust. A failure to fully remit superannuation – which is almost inevitable when wages are not properly paid – places a greater burden on the aged pension system. Combined, these factors place downward pressure on wages across the private and public sectors.

Prior to the onset of the pandemic, tackling the issue of wage theft was viewed as a top priority of both major parties. In 2017, the then Turnbull Government introduced the Fair Work Amendment (Protecting Vulnerable Workers) Act 2017, which was designed to crack down on the systematic and deliberate exploitation of workers. Amongst other things, the 2017 Act increased the maximum penalties available for so-called 'serious contraventions', reversed the burden of proof where employment records were absent, and extended liability to franchisors and holding companies for certain contraventions

67 See www.fwc.gov.au/hearings-decisions/major-cases/work-value-case-aged-care-industry.

68 Aged Care Sector Stakeholder Consensus Statement, 17 December 2021, www.fwc.gov.au/documents/sites/work-value-aged-care/submissions/am202099-subs-stakeholders-171221.pdf.

69 The Morrison Government did announce the payment of two $400 bonuses in February and May 2022, to help encourage aged care workers to stay in the sector. But as of April 2022, more than half of all eligible workers were still yet to receive any payment (Ransley 2022).

committed by subsidiary firms in their respective networks.

Notwithstanding these reforms, and the efforts of the main federal regulator,[70] underpayment scandals have continued to grow in both scale and number (Cavanough and Blain 2019; Senate Economic References Committee 2022), including at major employers such as Woolworths (Elmas 2022). The final report of the Migrant Workers' Taskforce (Fels and Cousins 2019), together with two consultation papers issued by the Morrison Government (Attorney-General's Department 2019, 2020), signalled an appetite for more far-ranging reforms in this space. This was echoed by Fitzpatrick (2018), who strongly criticised the efficacy of the civil penalty regime and advocated for the introduction of criminal penalties. As set out in our original book, Fitzpatrick (2018) argued that the threat of jail time, combined with the prospect of automatic disqualifica-tion from managing corporations, would spur on deterrence and promote compliance amongst the most egregious violators of wage and hour laws.

In late 2020, the Morrison Government introduced the Omnibus Bill, Schedule 5 of which set out an ambitious suite of proposals relating to enforcement. They included a new criminal offence for dishonest and systematic underpayment, increasing the maximum penalties available for 'remuneration-related contraventions', and streamlining the wage recovery system by (among other things) funnelling small claims into the Fair Work Commission for conciliation (Stewart et al 2021: 163–6). Facilitating the quick and easy recovery of backpay is another initiative which the ACTU (2022) believes will help stem wage theft and support wage growth. However, this Schedule was pulled from the Bill by the government at the final hour, despite strong support for it in the Senate (Stewart et al 2021: 140). Since then, there has been little mention of further reforms to the compliance and enforcement framework by the incumbent government, notwithstanding the damning findings, and bold recommendations, set out in the final report of a long-running Senate inquiry into unlawful underpayment (Senate Economic References Committee 2022).

In the meantime, a number of States have stepped into this policy vacuum. New sanctions, such as administrative notices and enforceable undertakings, have been made available to State-based wage inspectorates – which have also enjoyed fresh funding and renewed political support.[71] A number of jurisdictions have established labour hire licensing schemes, to ensure that those who on-hire workers are 'fit and proper' to do so.[72]

Most notably, and controversially, Victoria and Queensland have introduced criminal wage theft offences in the past two years,[73] while the incoming Labor Government in South Australia has also indicated an intention to do the same (Malinauskas 2022). By way of example, the Victorian legislation introduces three primary offences: 1) dis-

[70] In response to the recommendations of the Migrant Workers' Taskforce, the Fair Work Ombudsman has exponentially increased the use of compliance notices, which has meant that more employers are being sanctioned on a more regular basis. This has the dual benefit of facilitating the speedy recovery of backpay, and delivering deterrence, without having to initiate resource-intensive, and drawn out, litigation (Workplace Express 2021).

[71] See eg Industrial Relations Legislation Amendment Act 2021 (WA).

[72] See Labour Hire Licensing Act 2017 (Qld); Labour Hire Licensing Act 2017 (SA); Labour Hire Licensing Act 2018 (Vic); Labour Hire Licensing Act 2020 (ACT).

[73] See Wage Theft Act 2020 (Vic); Criminal Code and Other Legislation (Wage Theft) Amendment Act 2020 (Qld).

honestly withholding employee entitlements; 2) falsifying employee entitlement records; and 3) failing to keep employee entitlement records. The maximum penalty for each of these offences is 6,000 penalty units (currently, $1,090,440 in the case of a corporation) or 10 years' imprisonment. The term 'employee entitlements' is broadly conceived and includes wages or salary, allowances, annual leave and long service leave payments, and superannuation contributions – regardless of whether they are derived from a federal or State statute, an industrial instrument or a contract of employment.

The Victorian Wage Theft Act also incorporates a due diligence defence – that is, a body corporate is taken to be criminally responsible for the conduct of their officers, unless it can show that it has exercised 'due diligence to prevent the commission of the offence'. This is an important regulatory innovation, in that it encourages companies to take proactive steps to prevent and remedy underpayment.

While these regulatory efforts may be well-intentioned, the ultimate impact of these activities is likely to be constrained by a range of factors, not least of which include constitutional limitations. The Omnibus Bill would have amended the Fair Work Act to expressly override the application of State wage theft laws to national system employers. But even in the absence of an express provision, it is likely to be argued that the State laws are inconsistent with the Fair Work Act, and therefore inoperative, to the extent they purport to add to the sanctions for breaching the obligations created by the federal statute. Any attempt to prosecute a national system employer under the new State laws may well, therefore, prompt a constitutional challenge.

6.6 Migrant workers

In the pre-COVID era, there was a longstanding practice of addressing labour shortages by providing temporary migrants to Australia with work rights. While there are a variety of visa types, the largest group of temporary migrant workers has been drawn from international students, of which there are about 316,000 within Australia (down from almost 613,000 prior to the border closures in March 2020). In addition, there are around 19,300 working holiday makers (down from 149,000 in the pre-pandemic period), while workers who have been issued visas as part of the Seasonal Worker Programme have increased in number over the past few years. In December 2021, there were about 15,200 such workers, up from 3,300 in September 2020 (Senate Economic References Committee 2022). However, as Campbell (2018) underlined in the original book, the fluctuating number of temporary migrant workers present in Australia – and their impact on labour supply – only tells part of the story when it comes to wages.

The continuing reliance on temporary migrant workers to fill gaps in the labour market has the potential to jeopardise efforts to lift wages across the board. In relation to temporary skilled workers, wage stagnation has been perpetuated by the fact that the Temporary Skilled Migration Income Threshold, which is designed to protect skilled workers from exploitative employment practices, has been frozen at the same salary level for almost a decade. As Howe (2018) pointed out, by failing to index the Threshold, the government has effectively frozen the salary floor of temporary skilled workers. This has led to an ever-growing gap between the pay packets of those workers and the annual average salaries for Australian workers.

Another factor which is stemming wage growth – and one that was considered by both Campbell and Howe in their respective contributions – was the propensity for temporary migrant workers to be subject to serious and systemic forms of wage theft. This issue has only worsened in the post-pandemic period. For example, a 2021 survey found that almost 65% of migrant workers had experienced wage theft and almost one in four had experienced some other form of labour exploitation, such as being required to work without enough breaks (Migrant Workers Centre 2021). Further, even when workers knew they were being paid below the legal minimum, they were reluctant to complain as they felt lucky to have a job (Reilly et al 2017).

Indeed, the widespread job loss precipitated by the pandemic was catastrophic for many temporary migrant workers, given that they were excluded from JobKeeper and JobSeeker and were unable to make a living as a result of lockdowns and restrictions (Senate Economic References Committee 2022: [1.14]; Berg and Farbenblum 2020). The lack of government support for temporary migrant workers stood in stark contrast to the approach adopted by other countries, such as the United Kingdom, which provided wage subsidies to temporary migrants (Chaudhuri and Boucher 2021). This appears to have exacerbated the pre-existing conditions for exploitation. For example, a survey undertaken by Berg and Farbenblum (2020) in July 2020 found that around one in five respondents reported a reduced hourly wage since the onset of COVID-19 and one in ten did unpaid work.

In late 2021, the Morrison Government introduced the Migration Amendment (Protecting Migrant Workers) Bill 2021, which was intended to address several recommendations by the Migrant Workers' Taskforce (Fels and Cousins 2019). Similar in many ways to the Protecting Vulnerable Workers Act, the Bill was designed to strengthen protections for migrant workers by enhancing deterrence mechanisms. For example, the Bill proposed to introduce new criminal offences and civil penalties for employers, labour hire intermediaries and others who coerce or exert undue influence or pressure on a migrant worker to accept or agree to a work arrangement in breach of visa conditions. It would also have imposed restrictions on so-called 'prohibited employers' from engaging temporary migrant workers if they had previously been found to have contravened specified labour and immigration laws. The federal election was called before this Bill was passed into law. In any event, it may have done little to curb the exploitation of migrant workers. While it would have served to strengthen the sanctions that are available to relevant government agencies, the Bill failed to address some of the most significant drivers of exploitation, such as visa rules which permit differential treatment of temporary migrant workers and the practical and institutional barriers that prevent workers from reporting abuse (Senate Economic References Committee 2022: [2.5]; Clibborn and Wright 2020).

A further proposal from the Migrant Workers' Taskforce was that a national registration system be established for labour hire agencies in four 'high risk' sectors: horticulture, meat processing, cleaning and security. Despite having agreed before the 2019 election to act on this recommendation, the Morrison Government has not progressed further than preparing a 'draft report' on harmonising the State and Territory schemes mentioned above in section 6.5 (Workplace Express 2022d).

6.7 Fragmented business structures and organisational networks

In Australia, labour is routinely sourced via subcontracting, franchise networks, labour hire arrangements, freelancing or a combination of these models. The shift away from direct employment may be driven by a host of factors, including the reorganisation of capital and the growth in financialisation – a phenomenon that Peetz (2018) explored in the original book.

Whatever the underlying drivers, the proliferation of fragmented business networks and the rise of what Peetz termed the 'not there' employer can have important consequences for wages and working conditions (see eg Hardy 2016). First, it is far more challenging to organise workers, and engage in meaningful collective bargaining, across splintered and dispersed organisations, which often operate at the margins of industrial capital (Peetz 2018: 112). Second, by offloading employer responsibilties to subsidiary firms, the lead firm may effectively create a highly competitive market amongst suppliers and providers, which can reduce the costs of production and drive down wages. At the same time, the lead firm sits mainly outside the collective bargaining regime and remains largely insulated from legal liabilities associated with employment-related matters, but 'still calls the shots' (Bornstein 2018: 163). These structures may deliver better outcomes for consumers, bigger dividends for investors and a boon in executive salaries, but rarely do they boost the wages of workers.

As Sheehan (2018) pointed out in our original collection, the structure and vesting of executive bonuses and variable pay can create an almost insatiable corporate desire to adopt a 'transformation strategy'. This may involve the wholesale reduction of non-executive wages through offloading services to subordinate entities. This creates a paradox – the monetary rewards enjoyed by management are contingent on keeping a lid on workers' wages and papering over potential violations. While investors may also be keen to expand their own slice of the profits, Shepherd and Heard (2018) have suggested that a blind focus on maximising company value, without any regard to the checks of the market or the interest of other stakeholders, may trip up boards and derail listed corporations.

Further, as Bornstein (2018) noted, these problems are not confined to the private sector, but have leached into the public and not-for-profit sectors. Core government functions are frequently outsourced, key services are contracted out and precarious work is the norm. The marketisation of public services is present in a range of sectors from information technology to telecommunications, but, as Macdonald and Pegg (2018) pointed out in their contribution, it is perhaps most pervasive and perverse in the social and community services sector. In their chapter, they argued that the wages of an already low-paid workforce were being stifled by complex contracting arrangements and cutthroat funding models.

Recent regulatory developments have targeted a number of these business models. As already noted, labour hire arrangements have come under scrutiny in several States and led to the introduction of licensing schemes, although promised federal action has not eventuated. In addition, franchise networks – which have been linked to some of the most notorious wage theft scandals – have been in the statutory firing line both under the Fair Work Act and the Competition and Consumer Act 2010 (Hardy 2020). However, it remains to be seen whether these measures will make any difference for workers.

For example, since the introduction of the Protecting Vulnerable Worker Act in late 2017, it has been possible to hold franchisors liable for underpayment violations committed by their franchisees. However, more than four years after these amendments passed into law, there is yet to be a single case filed against a franchisor under these provisions. Further, following a comprehensive inquiry into the franchising model, the Franchising Code of Conduct has been strengthened, a class exemption for small business collective bargaining has been introduced, and further reforms to the unfair contract terms regime are on the table.[74] Broadly, these developments are designed to address some of the issues caused by information asymmetry and bargaining inequality between big and small businesses. They are also intended to mollify the almost absolute power of a lead firm to unilaterally determine the terms and working conditions of independent contractors (Bornstein 2018: 165). However, it is not yet clear whether reforms designed to assist vulnerable businesses will also serve to bolster the power and position of vulnerable employees.

6.8 Sham self-employment and freelancing

Most of the rights and protections created by the Fair Work Act (and statutes like it) apply only in relation to employees, not those who contract to supply their services on a commercial basis. The same is generally true of legislation dealing with matters such as superannuation contributions and insurance against work-related injury or illness (Stewart 2021 ch 3). This gives businesses an obvious incentive to misclassify workers as independent contractors, in order to externalise costs and shift risks. The chances of being able to do this are assisted by the absence of any clear statutory definition of employment. A worker's employment status is determined by reference to a common law (that is, judge-made) test that is impressionistic in nature and capable of producing very different results, depending on the approach taken by whichever court, tribunal or agency is called upon to decide the matter (Stewart and McCrystal 2019: 6–8; Bomball 2021).

The proportion of the workforce engaged as independent contractors in their main job has stayed relatively constant since the turn of the century, at around 8-10% of the workforce (ABS 2021). However, there is reason to think that the number of contractors may be about to increase, unless legislative action is taken in response to two High Court rulings handed down in February 2022.

Until recently there had been a clear trend, at least in cases brought in the federal courts, for judges to look at the substance rather than the form of work arrangements and classify workers as employees if there was no objective indication of them running a business of their own.[75] But in *Construction, Forestry, Maritime, Mining and Energy Union v Personnel Contracting Pty Ltd*[76] and *ZG Operations Australia Pty Ltd v Jamsek*[77] decided in February 2022, five out of the seven High Court judges took a different view. They held that a person's employment

[74] Hardy and McCrystal 2022.

[75] See eg *ACE Insurance Ltd v Trifunovski* [2013] FCAFC 3; *Fair Work Ombudsman v Quest South Perth Holdings Pty Ltd* [2015] FCAFC 37.

[76] [2022] HCA 1.

[77] [2022] HCA 2.

status must be determined strictly by reference to the contractual terms on which they agree to work, not the reality of their working arrangements. In *ZG Operations*, for example, the fact that two truck drivers had worked exclusively for the same lighting business for four decades, on terms and at times dictated by their 'client', was not considered to be relevant. The requirement to own and maintain their vehicles, their practice of contracting through partnerships with their wives, and their notional freedom to work for other customers, were enough to make them legally self-employed.

In *Personnel Contracting*, an unskilled labourer sent by a labour hire firm to work on a building site was found to be an employee of the agency, despite his contract describing him otherwise. But this was only because there was enough in the remaining terms of the contract to suggest the degree of control and subordination typically associated with an employment relationship. What seems clear from these decisions is that it will now be much easier than before to draft contracts that describe a worker as an independent contractor and expect to have them stand up to any legal challenge. So long as an agreement maximises the appearance of autonomy for a worker, it should not matter that those freedoms are illusory and that the worker is expected in practice to work strictly as directed. This would not be 'sham contracting' of the type prohibited by provisions such as section 357 of the Fair Work Act – because an organisation using this approach would not be misclassifying its workers, but rather quite lawfully treating them as contractors. It would simply be exercising what is in effect now a freedom to contract out of labour standards. Judges with any sensitivity to the protective purpose of labour legislation would not allow this. But as the High Court made abundantly clear, it does not see the need to be concerned with such matters.

The High Court's rewriting of the rules for determining employment status – or perhaps more accurately, its preference for an application of those rules that privileges form over substance – should be of special comfort to the digital labour platforms whose apps or websites connect 'gig workers' with customers seeking their services. A few platforms employ the workers they supply. But the great majority insist that they are not employers, and accordingly are not obliged to pay the minimum wages required by the Fair Work Act. Some have indeed acknowledged that their business models would not be viable if they had to meet the costs associated with award compliance, workers compensation, superannuation contributions, and so on.[78]

Where platforms operate purely as intermediaries, and do little to direct performance or control compensation of the work in question, they are unlikely to be found to be employers of the 'freelancers' who register with them. But for transport or delivery businesses such as Uber or Deliveroo, the matter is much less straightforward – or at least it has not been up to now, as the mixed results of previous cases regarding the status of platform

[78] One food delivery business, Menulog, has attracted publicity by employing a small number of its riders and drivers as a 'pilot'. But it has also insisted that an employment model is only workable if a new and more 'flexible' award is adopted to regulate food delivery work, rather than the Road Transport and Distribution Award 2020 (Thompson 2022b). The latter was found by the Fair Work Commission to be applicable in *Re Menulog Pty Ltd* [2022] FWCFB 5, although the tribunal is yet to rule on whether this is fatal to Menulog's application for a new instrument (Workplace Express 2022c).

workers would suggest.[79] In light of the High Court decisions, however, these and other platforms that skirt the line between employment and contracting will now feel more confident about being able to draft and defend contracts that insist their workers are self-employed.

According to a national survey conducted prior to the pandemic, 7% of adult Australians (or around 1 million people) had earned income through some form of on-demand platform work in the previous 12 months. Some of those workers will also have been performing other paid work at the same time; and some gig workers (but not all) are captured in conventional employment data (usually as self-employed). Nevertheless, platform work constitutes another important form of insecure work in the Australian labour market — and one which may well have grown during the pandemic, especially with the increased use of delivery services. Due both to the high level of insecurity experienced by most gig workers, and the monopsonistic price-setting power enjoyed by the major digital platforms which presently dominate that type of business, most gig workers experience relatively little meaningful opportunity to push for higher wages.

As Peetz (2019: ch 6) notes, in discussing the resilience of the employment relationship, there are practical limits on the extent to which organisations can use online marketplaces to source their labour needs, while maintaining the supervision necessary to ensure that work is undertaken as required and to a suitable level of quality. Nevertheless, even if platform work is never likely to overtake employment, the potential it offers for new and cheap ways of electronic control and surveillance makes it 'the biggest challenge to the employment relationship' (ibid: 176).

The question then is how, if at all, to regulate such work. There has been some support, including from a number of platform businesses, for the idea of recognising an 'intermediate' category of worker, with some but not all of the rights and protections available to employees. Arguably, however, this would lead to a net loss of rights and protections for workers, given the incentive businesses would have to 'downgrade' employees to intermediate status (Stewart and McCrystal 2019).

The most substantial Australian inquiry to date on the issue, undertaken by former Fair Work Ombudsman Natalie James for the Victorian government (James 2020), recommended that labour statutes be amended to clarify and strengthen the definition of employment, while making it easier to get official rulings about the status of a particular arrangement. Even for those not working as employees, there should be standards of fair treatment and better access to prompt and affordable forms of dispute resolution. It was also proposed that the Competition and Consumer Act 2010 be amended to make it lawful for unions to engage in collective bargaining over the pay and conditions of self-employed platform workers, something that at present is only permitted to a limited extent, even after recent reforms (Hardy & McCrystal 2020).

[79] Uber has to date successfully defended proceedings asserting that it is an employer: see eg *Kaseris v Rasier Pacific VOF* [2017] FWC 6610; *Gupta v Portier Pacific Pty Ltd* [2020] FWCFB 1698. But it chose to pay a substantial amount to settle an unfair dismissal claim in the second of those cases, rather than risk a successful Federal Court challenge (Bonyhady 2020). By contrast, claims by food delivery riders succeeded in *Klooger v Foodora Australia Pty Ltd* [2018] FWC 6836 and *Franco v Deliveroo Australia Pty Ltd* [2021] FWC 2818. Deliveroo's appeal against the latter ruling was postponed, pending the outcome of the High Court cases just discussed: *Deliveroo Australia Pty Ltd v Franco* [2021] FWCFB 5015.

To date, the federal government (to whom many of those recommendations were necessarily directed) has shown no interest in addressing these issues. Between them, the Fair Work Act and the Independent Contractors Act 2006 limit the extent to which States or Territories can seek to regulate working conditions for either employed or self-employed workers. Nevertheless, the Andrews Government has expressed a willingness to implement the recommendations in the James Report (Victorian Government 2021a). It has commenced consultation over a proposed set of standards for platform work, which would include a commitment to 'fair and decent remuneration' (Victorian Government 2021b). In Queensland, the Palaszczuk Government has agreed to implement a more limited recommendation from a review of the Industrial Relations Act 2016 (Qld) that would see the State's Industrial Relations Commission having the power to set pay and other conditions equivalent to award entitlements for 'independent couriers and riders' (Lavarch and Thompson 2021: 50–3).

While these reforms may be appropriate, they cannot and should not substitute for a more general examination of the need for a broad statutory definition of employment – or at least for a presumption of employment, where the reality of a work arrangement suggests it.[80] Such a definition or presumption is badly needed to prevent organisations from taking advantage of the gaping loophole that the High Court has opened in Australia's system of labour standards – and one that seems certain to create yet another form of downward pressure on wages.

6.9 Other forms of precarious work

Australia has come to have 'a labour market dominated by insecure and unreliable employment patterns, in which the ability of working people to find and keep reliable work is increasingly in question' (Carney and Stanford 2018: 19; and see also Senate Select Committee on Job Security 2022). There is room for debate on both the scale of 'non-standard' employment and the reasons for it increasing (Laß and Wooden 2020). Nevertheless, where many jobs used to involve permanent full-time employment, the 'standard employment relationship' is now the exception rather than the rule.

Mention has already been made of the precarious position of temporary migrants and misclassified contractors. **Part-time employment** has become more common, often with hours that are irregular or less than the employee would prefer, or both (Carney and Stanford 2018: 7–9). Part-time employment has risen by over 2 percentage points of total employment since 2013, and has remained elevated at close to one-third of all employment (ABS 2021). In 2021, Australia had the fourth highest rate of part-time employment of any OECD country.[81]

Around a quarter of all Australian employees (and many part-timers) work as **casuals**, with reduced leave and severance entitlements that are meant to be

[80] This is a key feature of a proposal from the European Commission (2021) for a new Directive on improving working conditions in platform work. The proposed Directive is also intended to improve the transparency and oversight of 'algorithmic management'. Among other things, platforms would be obliged to inform and consult workers and their representatives if they intend to introduce new forms of automated monitoring or decision-making, or to make substantial changes to their existing systems.

[81] OECD Employment and Labour Market Statistics (https://www.oecd-ilibrary.org/employment/data/oecd-employment-and-labour-market-statistics_lfs-data-en), Part-Time Employment Rate.

compensated by a 25% loading. The incidence of casual employment fluctuates in line with macroeconomic and labour market conditions. It fell dramatically in the early months of the COVID-19 pandemic, as casual workers were much more likely to lose work during the initial lockdowns. But it then rebounded as quickly as the economy reopened – and employers hired back workers disproportionately into casual rather than permanent positions (Stanford 2021).

The lax definition of casual employment in awards and many enterprise agreements, combined with the absence (until recently) of any statutory definition, has meant that it has come to be used not just for temporary or irregular work, but for ongoing positions. Many workers in this category are, in effect, 'permanent casuals'. These employees may experience little if any variation in their working hours, and often remain in their jobs for years rather than weeks or months. Yet they do not always receive the loading that is meant to compensate them for their lack of job security or access to paid annual or personal leave (Peetz 2020).

An opportunity to rectify this situation (although it could and should have been addressed much earlier) arose as a result of two well-publicised Federal Court decisions. These found that workers deployed by the labour hire firm Workpac to work full-time in the mining industry, on rosters set well in advance, were not truly casuals, despite having been engaged and paid on that basis. To be casual, the court ruled, employment must lack any 'firm advance commitment' as to the duration of the engagement or the hours of work. Objectively, there was such a commitment here. Accordingly, the employees were entitled to claim unpaid annual leave and other entitlements. In the second case, it was also held that Workpac could not 'set off' or recover the casual loading it had mistakenly paid the misclassified employee.[82]

Not surprisingly, business groups were alarmed at the prospect of billions of dollars in unpaid leave or severance payments being owed to workers who had been engaged under a system that had seemed to give employers complete freedom to designate them as casuals (see eg Australian Industry Group 2018). As it turned out, they need not have worried so much. In August 2021 the High Court upheld an appeal by Workpac and ruled that there had been no misclassification. The court accepted that casual employment must be identified by reference to the presence or absence of a firm advance commitment to ongoing work. But in a precursor to the approach it would take in the *Personnel Contracting* and *ZG Operations* decisions, discussed above in section 6.8, the judges insisted this must be assessed strictly by reference to the contractual terms on which the worker had been engaged – not the reality of their working arrangements.[83]

By then, however, the Morrison Government had introduced and secured passage of legislation to address employers' concerns. Set out in Schedule 1 of the 2020 Omnibus Bill, the reforms were passed as the Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Act 2021. The centrepiece is a new (and retrospectively applicable) definition of 'casual employee' in section 15A of the Fair Work Act. This identifies a person as a casual if they accept an offer of employment 'on the basis that the employer makes no firm advance commitment to continuing and

[82] *Workpac Pty Ltd v Skene* [2018] FCAFC 131; *Workpac Pty Ltd v Roassato* [2020] FCAFC 84.

[83] *Workpac Pty Ltd v Roassato* [2021] HCA 23.

indefinite work according to an agreed pattern of work'. Crucially, however, and just as the High Court would go on to rule, the presence or absence of that commitment must be determined on the basis of the original offer and acceptance of work, not 'any subsequent conduct of either party'. Nor is a regular pattern of hours to be taken as suggesting any commitment by the employer to ongoing work.

The precise meaning and effect of the new definition is far from clear (Stewart et al 2021: 144–8). But the intent behind it is apparent. Employers who wish to engage employees as casuals, even to fill what are unquestionably ongoing jobs, can keep doing that – as long as they use the right wording when the employment is initially offered. Small and less organised businesses might well still get tripped up by the new definition, depending on how it is interpreted. But those firms were plainly never the government's concern.[84]

The difficulties caused by the *Workpac* cases could and should have prompted policy-makers to think about how to reduce the number of Australian workers who are unnecessarily engaged in long-term and legally insecure casual positions, when the jobs they are doing meet predictable and ongoing needs. That objective could have been achieved while at the same time protecting employers against being liable for having misclassified workers on the basis of what they had believed to be a settled legal position. As it is, the 2021 reforms have entrenched the problem of 'permanent casual' employment, not addressed it.

The amendments did impose new obligations on employers (accompanied by a considerable amount of red tape) to consider converting long-term casual employees to permanent employment.[85] But the history of such conversion rights tells us that few employees are likely to take up that option, given the immediate pay cut it generally entails, with the loss of any casual loading.

Another type of precarious work which has increased in recent years has been the preponderance of workers holding **multiple jobs** – often in an attempt to generate adequate income from a portfolio of part-time or irregular positions (ACTU 2021). By the end of 2021 the proportion of employed workers holding multiple jobs had reached 6.4%, the highest ever.[86] There then are **unpaid internships or job trials**. Most young people now undertake some form of unpaid work experience in order to improve their chances of finding a paid job. When involving 'real' work, and not done as part of an authorised education or training program, this can potentially be unlawful (Stewart et al 2018).

Whether non-standard work takes the form of part-time or casual employment, on-demand platform work, other forms of precarious self-employment, unpaid work experience or multiple job-holding, it potentially holds down wage growth. RBA research has confirmed a negative correlation between perceived job insecurity (measured by the expected likelihood of job loss in the coming year) and wage growth (Foster and Guttmann 2018).

84 On the day that the legislation passed the Senate, the Council of Small Business Organisations Australia announced an agreement with the ACTU on how casual employment could most effectively be regulated (Marin-Guzman 2021) – but this was ignored by the government. The dialogue and collaboration between those organisations is reported to have continued (Workplace Express 2022e).

85 Fair Work Act 2009 Pt 2-2 Div 4A. Many award-covered casuals were already entitled to request conversion, under provisions added by the Fair Work Commission in *4 Yearly Review of Modern Awards — Casual Employment and Part-Time Employment* [2017] FWCFB 3541, but now superseded by the new legislation.

86 Calculations from ABS, *Labour Account,* Table 1.

There is no single statistical indicator which captures the full extent and range of these various forms of insecure work, but there is little doubt that non-standard and precarious work has become an endemic feature of Australia's labour market, and that workers in those situations are relatively powerless in pushing for higher incomes, even as the unemployment rate declines. One indicator which indirectly captures the impact of non-standard work on job security and bargaining power is the ABS measure of underemployment, which considers the number and proportion of Australian workers who are working less hours than they would prefer.

Most workers reporting underemployment are in part-time, casual, or insecure self-employment positions. (It is possible for permanent full-time employees to report a desire for more hours of work, but relatively rare.) The proportion of workers reporting underemployment remained elevated during the period in which wage growth decelerated (see Figure 21). Underemployment averaged 7.1% of all employed people in the 2000–2012 period, rising to an average of 9.0% from 2013 through 2021. As a proxy for the general level of insecurity experienced, in multiple forms, by Australian workers, the underemployment ratio seems reasonably informative.

The causal factors driving the preponderance of non-standard work arrangements are complex, and include technological, economic, and regulatory determinants. And policy responses to the growth of insecure work are complex. Some reforms, such as the introduction of licensing requirements for labour hire businesses in certain States and Territories (Forsyth 2019), have tried to establish protections to limit the negative effects on job quality. But others (including the recent changes to the federal Fair Work Act which have cemented the freedom of employees to use casual employment arrangements in almost any role) have accelerated the shift to precarious work. There is little doubt that the general erosion of more predictable and secure employment relationships has contributed to the deceleration of wage growth in recent years. Understanding that relationship, and responding with measures that provide workers (even in insecure roles) with more institutional and bargaining strength to win higher wages, must be an essential element of any effective strategy to rekindle wage growth in Australia.

Figure 21.

Underemployment Ratio, 1980–2021

Source: ABS Labour Force.

7. An Agenda for Reform

In explaining Australia's wages crisis and thinking about how to tackle it, there were many points to emerge from our 2018 book.

But five themes that consistently came up, across multiple contributions, were:

- the critical role of government in controlling or influencing wages
- the loss (or lack) of collective power available to Australian workers
- shortcomings in Australia's system of wage fixation
- the impact of certain business models on wages and employee bargaining power, and
- the prevalence of wage theft.

In our conclusion to *The Wages Crisis*, we set out a plan to address each of those five matters. Our aim was to identify ways to boost wage growth that we considered to be obvious, powerful, and feasible, even within the existing social, economic and regulatory framework.

In the four years since preparing that agenda, nothing has happened to dispel our belief that important and sustainable improvements in wage growth could be achieved through focused, pragmatic action of the type outlined below.

In saying that, we do not mean to suggest that these are the only reforms that can and should be considered. For example, there is much that could be done to reduce the unnecessarily high proportion of Australians engaged as 'permanent casuals'. Over time, effective action on that issue (and other forms of insecure or precarious work, including gig work organised through digital platforms) could be expected to improve workers' bargaining power and have a positive effect on overall wage levels. But these problems are complex and will require careful consideration, and in some instances a transition period. In contrast, the steps outlined below are more straightforward and could be taken fairly promptly.

7.1 Ending wage suppression by government

Governments are the largest individual employers in the whole economy. And along with jobs in government-funded programs and agencies, the broader public sector accounts for 15% or more of total employment. So the direct importance of public sector wage trends to overall macroeconomic wage trends is undeniable. Moreover, government sends a crucial signal to other employers with its own wage policies, which are high-profile and influential. The contradiction between the hand-wringing of political leaders over the disappointing trajectory of wages, and their own conscious actions to directly suppress wage growth within such a large and important segment of the labour market, is both galling and counterproductive. How can workers and employers take seriously the urgings of leading figures like then-Treasurer Morrison or RBA Governor Lowe that wages should grow faster (Belot and Doran 2017; Lowe 2018, 2021), when the federal government itself remains determined to freeze or (in real terms) reduce the wages it pays to its own workforce?

We are proposing an end to public sector wage suppression as our first category of proposed reforms because it is something that governments at every level can do immediately, without any need for bigger structural or legislative changes. Governments should indicate, through their actions as well as their rhetoric, that reigniting wage growth is considered a positive and central goal of economic and fiscal policy. Most directly, this requires governments taking their feet off the brake pedal of wage growth in their own employment practices. The restrictive caps on wage increases that have been implemented since the GFC continue to undermine a return to more traditional wage growth, subverting principles of free collective bargaining, and sending a powerful signal to the rest of the economy that the problem with wages is that they are still somehow 'too high'.

But the influence of government wages policies extends well beyond the realm of the public service. Compensation in large segments of broader public and non-government services also depends centrally on government funding and procurement rules, as discussed in section 6.4. The fiscal structure established for broader public and community service provision (including in education, health care, disability services, long term care, employment services, and others) has powerful implications for wage determination in those sectors.[87] The introduction and regulation of competitive service delivery models in many of these sectors (such as under the NDIS) must be cognisant of the need to support decent wage growth, rather than being unduly shaped by a presupposition that constraining labour costs is the priority.

Simplest of all, the federal government in particular could indicate in a myriad of other ways its overarching desire that wage growth must be rekindled. Whether it is promulgating a long overdue increase in the Temporary Skilled Migration Income Threshold, or submitting arguments to the Fair Work Commission that it would welcome higher minimum wages, such action would help to establish a new common sense in Australian economic

[87] In our initial 2018 collection, Falzon (2018) linked the problem of wage stagnation to the restructuring of the welfare state during the neoliberal era – a process with painful and lasting consequences for both workers and participants in public service and income support programs.

policy that lifting wages — as opposed to restraining them — is once again a central goal of policy.

7.2 Revitalising collective bargaining

Recent decades have seen a precipitous decline in the membership and industrial power of trade unions. Although the coverage of collectively negotiated agreements held up for a time despite the decline in union membership, this too has now fallen. Even where unions are still able to negotiate on behalf of workers, their capacity to secure substantial wage increases has in many instances diminished.

There are no doubt a great many factors at work here. They include the loss of jobs in traditionally unionised industries, changing public attitudes to collective action, and the difficulty in organising workers in jobs that are insecure or spread across different organisations in complex business networks. Indeed, the prospects of a genuine and lasting resurgence in the union movement depend on it being able to develop strategies that can rise to these challenges and rebuild a sense of solidarity at work (see eg Forsyth 2022). The challenges created by financialisation and neoliberal policies, under both conservative *and* Labor governments, have also played their part.

Nevertheless, at least part of the explanation for the current wages crisis lies in a statutory framework for bargaining and industrial action that has either been hostile, or at best unsupportive, towards the effective exercise of collective power (McCrystal, Creighton and Forsyth 2018). The bargaining system has also become one that many employers and unions can find difficult to navigate.

Some of those problems could be quickly addressed, even without dramatically changing the framework established by the Fair Work Act. For example, it could be made harder for employers to block genuine collective bargaining by making agreements with small and unrepresentative groups of employees, or to use the threat of termination of existing agreements to secure concessions. Limits on the permissible content of agreements could be lifted. To meet concerns about the complex procedures currently required for making enterprise agreements, consideration should be given to simplifying them, provided appropriate safeguards for workers are maintained. Old (pre-Fair Work Act) agreements should be automatically terminated, as proposed in the Omnibus Bill.

The procedures for taking protected industrial action could be simplified, and the capacity for damaging (or, in other words, effective) action to be halted by the Fair Work Commission could be reduced. Where protracted bargaining does not result in a concluded agreement, it should be possible for the Commission to step in and arbitrate, even if there is no threat of significant harm to public safety or the broader economy.

Another issue to consider in future reform of collective bargaining in Australia is the prospect of facilitating multi-employer bargaining, whether across supply chains or business networks, or in sectors where enterprise-level negotiations may not be practicable (Kennedy et al 2021; Roberts 2021). In theory, this is already possible under Part 2-4 of the Fair Work Act, but with strict limits and conditions that make it unlikely in practice. Consideration of expanding the scope for broader-based bargaining, and specifying the conditions under which it could occur, should be part of future debates over the revitalisation of collective bargaining.

In the wake of the High Court decisions in *Personnel Contracting* and *ZG Operations*, and the real likelihood that more workers will be without access to bargaining rights under the Fair Work Act, it is worth also considering the limitation and potential of the forms of collective bargaining permitted under the Competition and Consumer Act 2010. The Australian Competition and Consumer Commission has recently introduced a 'class exemption' that permits small businesses to bargain together without breaching certain restrictions on anti-competitive conduct. While this is a critical development, we fear that this mechanism may not lead to significant wage gains for self-employed workers either in the gig economy or beyond. As Hardy and McCrystal (2022) have noted, bargaining remains voluntary, collective boycotts are largely out of the question, and there is no other obvious avenue for compelling targets to bargain. If the government is serious about achieving effective and meaningful collective bargaining in the commercial sphere, it is vital to ensure that essential bargaining supports are first put in place.

More generally, it is important that whatever measures are taken to extend or encourage collective bargaining, should be complemented with the active promotion by governments, tribunals, unions and business groups of a more cooperative approach to workplace relations. There has always been a tendency in Australia to default to adversarialism. Yet there is clear evidence that cooperation can deliver both improved organisational performance and benefits to employees. Research has revealed startlingly positive impacts from initiatives such as the Fair Work Commission's 'Cooperative Workplaces' (formerly 'New Approaches') program (Bray, Macneil and Stewart 2017). Even just having government and business leaders acknowledge that unions and collective bargaining are essential features of the labour market landscape, and that supporting a strong and efficient collective bargaining regime is crucial for ensuring the gains of economic growth are broadly shared, would be a big step forward. There was a brief and productive outbreak of tripartism in 2020, as Australia grappled with the challenges of the pandemic. That could and should have offered a foundation for a more constructive approach to managing the inevitable differences between business and organised labour. Unfortunately, that did not ultimately come to pass, as certain employer groups, and then other parties, retreated behind well-established battlelines.[88]

7.3 Strengthening minimum wage regulation

We reviewed above the importance of minimum wages in setting a floor for wage determination, and noted the erosion of the impact (or 'bite') of minimum wages relative to overall labour market averages; minimum wages are especially important for those groups of workers more likely to be concentrated in low-paid and insecure positions.[89] Australia is unusual amongst developed countries in having not just a single minimum wage, but a detailed system of minimum wage entitlements set by modern awards for almost all forms of non-managerial or non-professional

[88] Compare in this regard the ongoing dialogue and collaboration reported to have occurred between the Council of Small Business Organisations Australia and the ACTU (Workplace Express 2022e).

[89] For example, Cairnduff, Fawcett, and Roxburgh (2018), in their contribution to the original 2018 volume, highlighted the disproportionate concentration of young workers in casual and other low-paid positions, and the corresponding importance of direct mechanisms of wage regulation to future income opportunities for youth.

employment.[90] But aside from finding ways to tackle non-compliance with minimum wages (discussed in detail below), there are at least two ways in which the current system of wage regulation could be strengthened.

One is to give the Fair Work Commission the power it currently lacks to set medium-term targets that would increase the value of the lowest award wages over time. As pointed out in section 6.2, the 'bite' of the lowest adult minimum wage has significantly declined over recent decades. There are sound arguments, in our view, for lifting it over time to a 'living wage' level equal to at least 60% of median wages. But as the Fair Work Act stands, the Commission's Expert Panel is not permitted to adopt targets that would bind a future panel when conducting annual wage reviews. The tribunal has also taken the view that the present statutory objectives for wage-fixing preclude it from placing primary weight on the needs of the low-paid.[91] These are matters than can and should be addressed by legislative amendments.

The other proposal concerns the persistent gender pay gap discussed in section 6.3. There is no single solution to this problem, which is deeply rooted in social and cultural assumptions concerning the role and abilities of women. But one obvious step is to amend the Fair Work Act's 'equal remuneration' provisions to address the shortcomings exposed by attempts to use them to pursue pay equity for workers in feminised industries. As the Work + Family Policy Roundtable (2022) has proposed, those provisions should specifically require the Fair Work Commission to look for and redress the undervaluation of work traditionally or predominantly performed by women, without needing to identify male benchmarks or comparators.

7.4 Responding to business models that avoid or outsource employment responsibilities

We have noted the contribution to wage suppression made by business models that seek either to disguise what in functional terms are employees as 'independent contractors' or 'freelancers', or to pass the responsibility for employing workers off to another person or organisation. There is nothing new in the idea of sham contracting, or using other firms to supply the labour a firm needs for its business. But the recent High Court decisions in *Personnel Contracting* and *ZG Operations*, discussed in section 6.8, offer an open invitation to organisations to engage contractors and minimise labour costs, while in practice maintaining the control and subordination more characteristic of employment. Lead businesses also appear to have become more aggressive in avoiding unions and cutting costs by obtaining labour indirectly. Even where workers are employed, their wages may be driven down to or below the legal minimum, as their employers compete for contracts.

We are not suggesting that there is something inherently wrong with subcontracting, or labour hire, or franchising, or the facilitation of work through digital platforms. Nor do we believe that individuals should be denied the choice to establish genuine enterprises of their own. But if

[90] Some awards do in fact cover managerial and/or professional roles as well, although more typically they are excluded.

[91] *Annual Wage Review 2016–17* [2017] FWCFB 3500 at [32]–[36].

society is going to create minimum standards for employment, it is vital to ensure that those standards cannot be evaded by arrangements which disguise employment as something else. Lead businesses must also take appropriate responsibility for breaches of employment standards that they have helped to bring about.

To that end, we see two reforms as being essential. The first is to clarify and broaden the definition of 'employee' in statutes like the Fair Work Act. Anyone who agrees to supply their personal labour should be presumed to be an employee, unless there is clear evidence they have an independent business of their own.[92] This would not affect any 'gig' workers who quite genuinely operate as freelancers, or digital platforms that act purely as intermediaries to help those workers find work. But it would ensure that any business that is in substance and reality employing workers to deliver services to its clients, whether through a digital platform or otherwise, is required to comply with minimum wage laws and meet the other costs of employment. A new statutory definition could also be used to crack down on the use of unpaid internships or 'trial periods' to obtain free labour, at least when not appropriately connected to formal education or training.

A second reform would build on an important set of changes introduced in 2017 by what was then the Turnbull Government.[92] The Fair Work Act now provides that a holding company may be held responsible for breaches of certain employment standards by one of its subsidiaries. The same applies to a franchisor, in relation to a breach by one of its franchisees, provided the franchisor has significant influence or control over the franchisee's affairs. In each case, the franchisor or holding company must have known about the contravention, or could reasonably be expected to have known that such a contravention would occur. The holding company or franchisor will not be liable if they can show they had taken reasonable steps to prevent contraventions.

In principle, we can see no reason why provisions imposing secondary liability should not apply to other kinds of business model as well (Hardy 2017; Stewart and Hardy 2018). If parent companies and franchisors can be held to account for breaches affecting workers who are not directly employed by them, then why not firms which obtain workers through labour hire agencies, or subcontractors, or affiliated companies that are not technically subsidiaries? Why not a lead business at the top of a supply chain? It is especially important, we suggest, to hold such businesses to account where they contract to obtain services at a price that can only realistically be viable if employees engaged by a subordinate business are underpaid. The recent Senate inquiry into unlawful underpayment similarly concluded that the Fair Work Act should be amended to 'capture all parties and individuals that directly participate in wage theft, including those who knowingly or recklessly create an environment of wage theft'. Franchisors, advisors, head contractors and other third-party participants in supply chains were all expressly named as relevant in this context (Senate Economic References Committee 2022).

[92] For a detailed proposal to this effect, see Roles and Stewart (2012), pp. 279–80. Another possible reference point is the 'ABC' test now used by some American courts: see eg *Dynamex Operations West, Inc v Superior Court of Los Angeles County* 4 Cal 5th 903 (2018).

[93] Fair Work Amendment (Protecting Vulnerable Workers) Act 2017 Sch 1 Pt 2.

7.5 Improving compliance with employment standards

Effective enforcement of minimum wage laws and other employment standards continues to present a perennial challenge. More than seven years after the 7-Eleven underpayment scandal, we do not appear to be any closer to stemming employer non-compliance with workplace laws. In our original book, we called for increased and sustained funding of key federal regulators, such as the Fair Work Ombudsman and the Australian Tax Office. We continue to firmly believe that providing proper resourcing, and political support for strong enforcement, are essential for improving compliance with workplace laws and curbing systemic underpayment. However, we are also acutely aware that funding for government agencies remains limited, and it is extremely unlikely that the FWO will receive a significant injection of funds any time soon (Clibborn 2022). In any event, simply relying on government to fix the problem is never going to work, given the size and scale of the challenge. Instead, a multi-pronged strategy is required which harnesses the resources and capacities of key stakeholders.

As discussed above, one of the most influential regulatory players are lead firms. Making such firms liable for contraventions in their business networks is a critical first step. Another obvious method for boosting perceptions of deterrence – and perhaps the most politically expedient – is to strengthen the sanctions that are available. While policy-makers and public commentators have been fixated on the introduction of criminal sanctions and increasing the size of civil penalties, empirical evidence suggests that deterrence is about much more than the number of inspectors or the size and severity of the relevant sanction. Instead, it appears that targeted inspections, accompanied by administrative sanctions and adverse publicity, may elevate a firm's perception of risk and ultimately deliver far greater doses of deterrence (Hardy 2021). These elements should be a central focus of future reforms and regulatory efforts.

In addition, incapacitating those involved in the wrongdoing – via cancellation of an operating license or disqualification from holding directorships – provides an alternative method for reinforcing regulatory practice (and possibly preventing contraventions through the weeding out of shady operators).[94] In our view, labour hire licensing regimes – which have already been rolled out in certain States – should be extended to the federal sphere, as recommended by the Senate Select Committee on the Future of Work and Workers (2018: 81–3, 90–2).

Seeking to detect wrongdoing continues to be absolutely central to effective enforcement, and yet frequently overlooked. While ensuring that individuals can pursue complaints is important, it is even more critical that this does not come at the expense of proactive detection methods, such as robust auditing and in-depth inquiries. Encouraging and protecting whistleblowers is another innovative way to tap into insider knowledge and build sufficient evidence to secure a successful litigation or prosecution outcome (Lewis 2019; Senate Economic References Committee 2022).

[94] Prohibiting employers from engaging temporary migrant workers if found to have contravened labour or immigration laws, as proposed in the Migration Amendment (Protecting Migrant Workers) Bill 2021, is a further example of this approach.

In terms of detection, trade unions are in a pivotal position, given their ability to reduce information costs, their proximity to the workforce, their independence from employers and government, and their capacity to collectively agitate claims on behalf of a group of affected workers. They are also well-placed to amplify adverse publicity and enhance the ripple effects of the relevant regulatory intervention (Fitzpatrick 2018). Assuming that unions have the resources and inclination to perform this function, then it is critical that the legal framework facilitates performance of this role. There has been insufficient discussion about expanding union rights of entry, or otherwise supporting employee representatives to enforce the law.[95] This has been a missed opportunity.

Another possible reform could involve lifting the monetary threshold for small claims, waiving filing fees or otherwise allowing successful complainants to recover their legal costs in underpayment claims. That is presently prevented by the general bar on costs orders in proceedings relating to the Fair Work Act (Stewart et al 2016, pp. 174–6). Awarding costs might encourage or enable more private legal practitioners, including those from community legal centres, to help workers pursue enforcement proceedings. Similarly, when an underpayment is remedied, interest should be properly applied to the backpay amount, and the tax treatment should be fair (Senate Economic References Committee 2022; Cavanough and Blain 2019). Without these protections, the wrongdoer may inadvertently benefit, and the worker may suffer undue disadvantage, by the employers' failure to pay wages on time and in full.

It is also imperative that there is a fast, informal and low-cost option for recovering backpay, especially in matters involving small sums of money. For constitutional reasons, the Fair Work Commission could not be asked to rule on breaches of employment standards, nor impose penalties. But there is no reason why it could not conciliate underpayment claims (or arbitrate with the parties' agreement). An overhaul of the small claims jurisdiction, and involvement of the Commission, was contemplated in the 2020 Omnibus Bill. Further consideration should be given not just to this idea, but possible alternatives, such as the establishment of a Fair Work Court, or a similar body, staffed by magistrates or judges holding dual appointments in the Commission.[96]

Ensuring that federal and State governments both promulgate and implement comprehensive procurement policies is another way in which to exclude firms with a history of non-compliance and gain valuable leverage over businesses which may be tempted to underpay workers in order to gain a competitive advantage or game the system.

7.6 A final word

What we hope we have demonstrated in this report is that:

- there remains a significant problem with wage stagnation in Australia;

[95] The Senate Economic References Committee (2022) did, however, make an express recommendation regarding trade union rights of entry.

[96] The Senate Economic References Committee (2022) recommended that the 'Australian Government establish a small claims tribunal, ideally co-located with the Fair Work Commission, to create a simple, affordable, accessible and efficient process for employees to pursue wage theft'.

- it has multiple causes and dimensions;
- it is not likely to fix itself through the 'magic' of market forces;
- the failure to tackle it is having, and will continue to have, serious economic, social and political consequences; and
- any policy response needs to be multi-faceted — there is no silver bullet that can restore 'normal' wages growth on its own.

Not everyone will agree with the five-part agenda for dealing with the wages crisis that we have put forward. Some will feel more far-reaching changes are necessary, others that action is needed on only some (if any) of the issues we have identified. But we hope nonetheless that the analysis and proposals put forward both in our 2018 book, and in this 2022 update, can focus attention on what we continue to believe should be a matter of urgent social, economic and political concern.

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