

Assessing the economic impact of Fair Work Australia



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Why is labour market regulation important?



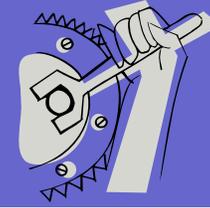
- Labour is a key input to economic activity
- Availability, quality and flexibility of labour inputs are important influences on decision making by investors
- Comparisons will be drawn between countries in terms of labour market regulation

An efficient labour market



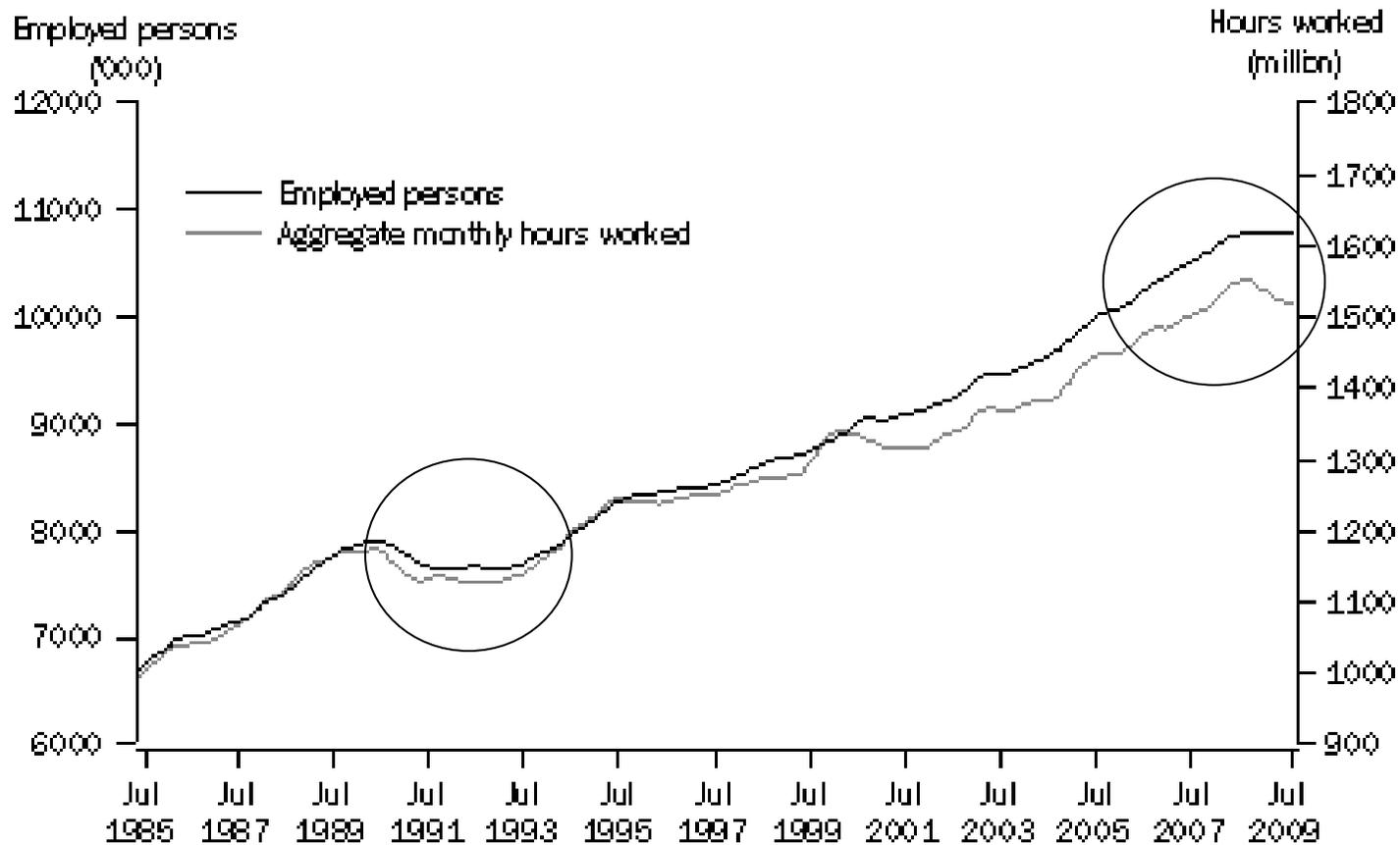
- Technical efficiency
 - Achieving labour input at least cost
- Allocative efficiency
 - Ensuring labour is allocated to its best use
- Dynamic efficiency
 - Providing incentives for innovation and training; and resilience to shocks

The related concept of labour market flexibility

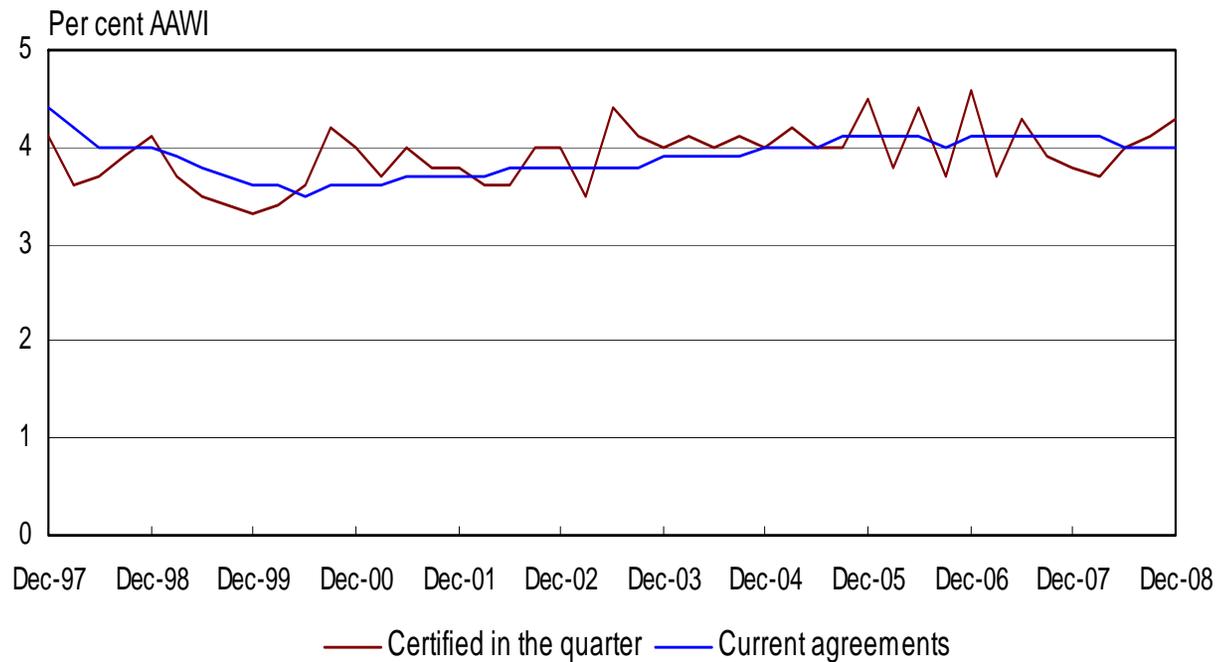


- Path-breaking OECD report
- Four main types:
 - Aggregate real labour costs
 - Relative labour costs across occupations and enterprises
 - Labour mobility
 - Flexibility of working time

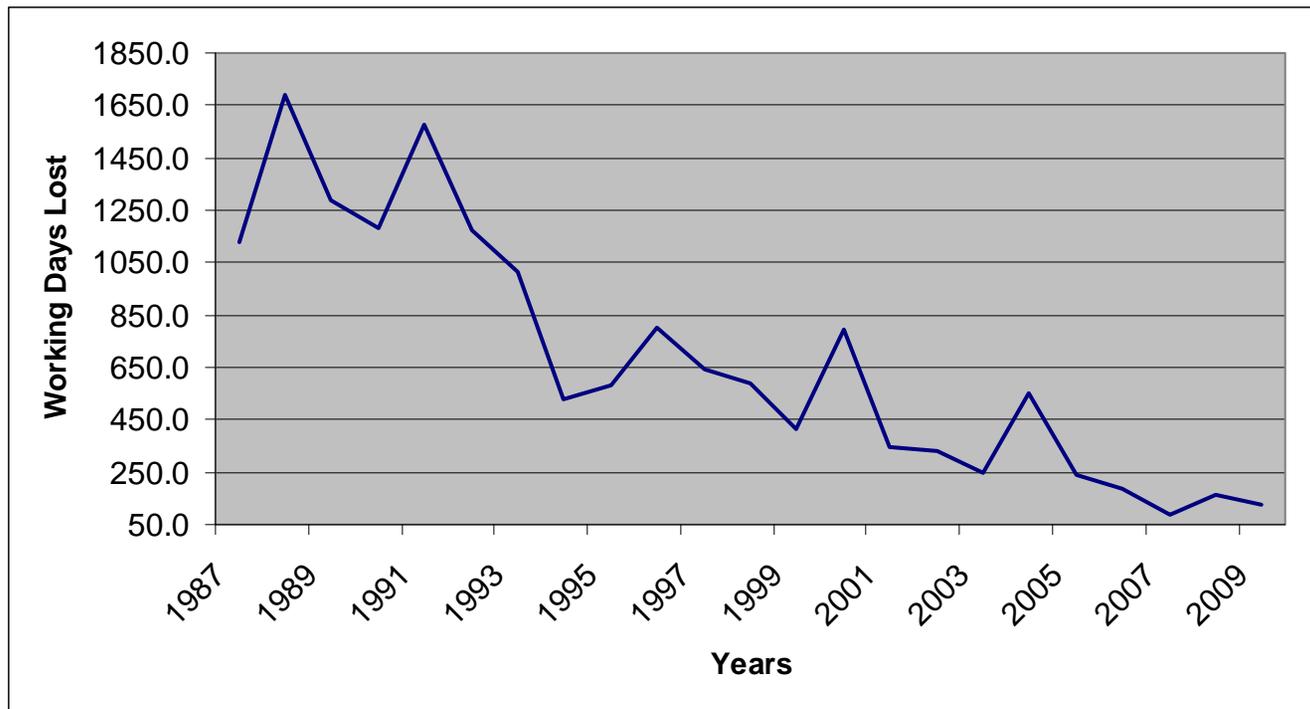
The benefits of labour market flexibility in Australia



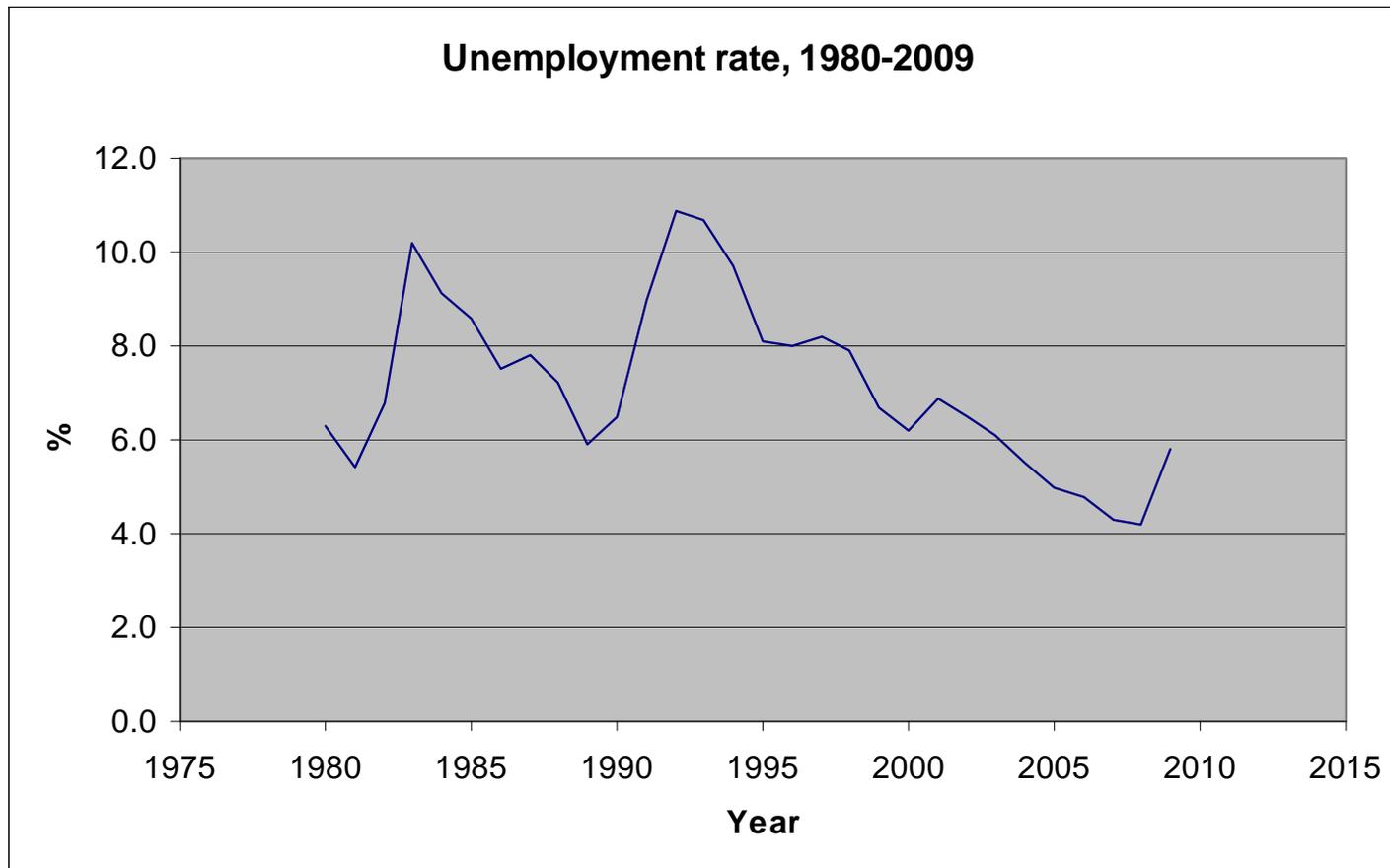
Wage outcomes from collective agreements



Working days lost through industrial disputes, year ending June quarter



Much lower unemployment



Labour market regulation



- Most countries intervene, to varying degrees, in the functioning of labour markets
- The reasons are both:
 - To offset perceived market failures
 - To achieve social policy objectives eg. in the area of minimum wages

Key forms of labour market regulation

- Wage bargaining
- Right to strike/dispute settlement
- Employment protection
- Minimum wages (and conditions)
- Compliance

A framework for assessing Fair Work Australia



- Focus on features that are likely to have key economic impacts:
 - Unfair dismissal provisions
 - “Good faith” collective bargaining
 - Minimum wages
 - Modern awards
 - Compliance

Unfair dismissal provisions

- Removes the very substantial exemption of small and medium sized enterprises
- A distinction is made between small employers (with fewer than 15 FTEs) and others
- A twelve month probation applies to the former and six month to the others
- Compliance with the “Small Business Fair Dismissal Code” is a defence
- Reinstatement is favoured over compensation

Claims for unfair dismissals

- Between July 1 and September 19 2009, 2339 claims lodged
- The same period in 2008, 1268 claims lodged
- An increase of 85% over the period
- A substantial increase was anticipated, given the much greater scope of the new provisions
- There had been an increase in claims under the old provisions, with nearly 8000 claims lodged in 2008-2009, the highest since 2000-2001

The economics of unfair dismissal laws



- By raising the cost of firing, they affect the incentives to hire
- There are various estimates of the impact of employment protection laws
- Most recent studies point to: negative productivity impacts on industries where laws bind (difference-in-differences); on long-term unemployment; and workers essentially prepaying the severance costs, especially in terms of return to tenure

Bargaining rules



- Presumption of collective bargaining (individual statutory agreement stream abolished)
- Employees have right to a bargaining representative, with the union as “default bargaining representative”
- Agreement must meet the BOOT: better off over all test, compared with modern award.
- Agreements must have individual flexibility and consultation terms
- Bargaining must be conducted in “good faith”

“Good faith” bargaining



- Attending and participating in meetings at reasonable times
- Disclosing relevant information
- Responding and giving general consideration to proposals made by bargaining representatives
- Refraining from conduct that undermines freedom of association or collective bargaining
- Making concessions is not necessary
- Reaching agreements on the terms also not necessary
- Applications can be made to FWA for breach and orders made

A very detailed and interventionist approach

- Likely to follow overseas case-law eg. *Truitts, Insurance Agents*
- Will involve third party intervention
- Moves away from the presumption that the parties to the bargain are the best judges of their interests
- Will add to costs

Minimum wage criteria

- The performance and competitiveness of the national economy, including productivity, business competitiveness and viability, inflation and employment growth
- Promoting social inclusion through workforce participation
- Relative living standards and the needs of the low paid
- Principle of equal remuneration for work of equal or comparable value
- Juniors, trainees, employees with a disability

The likely path of minimum wages

- Criteria similar to those applying under WorkChoices, although explicit reference to a safety net of *fair* minimum wages
- More explicit recognition of supply side and concept of “relative living standards”
- With out-of-work benefits rising with CPI, adjustment below CPI in a tight labour market can be problematic
- But what justifies Australia having the highest minimum wage in the world?

International comparisons of minimum wages



Rank	Country	National currency	Hourly rate AUD (PPP)
1	Australia	AUD 14.31	14.31
2	Luxembourg	EUR 9.47	14.12
3	France	EUR 8.71	13.75
4	Netherlands	EUR 8.39	13.59
5	Belgium	EUR 8.00	12.53
6	UK	GBP 5.73	12.37
7	New Zealand	NZD 12.50	11.76
8	Ireland	EUR 8.65	11.53
9	Canada	CAD 8.80	9.99
10	US	USD 6.55	9.08
11	Spain	EUR 4.20	7.59
12	Greece	EUR 4.05	7.53
13	Portugal	EUR 2.60	5.13

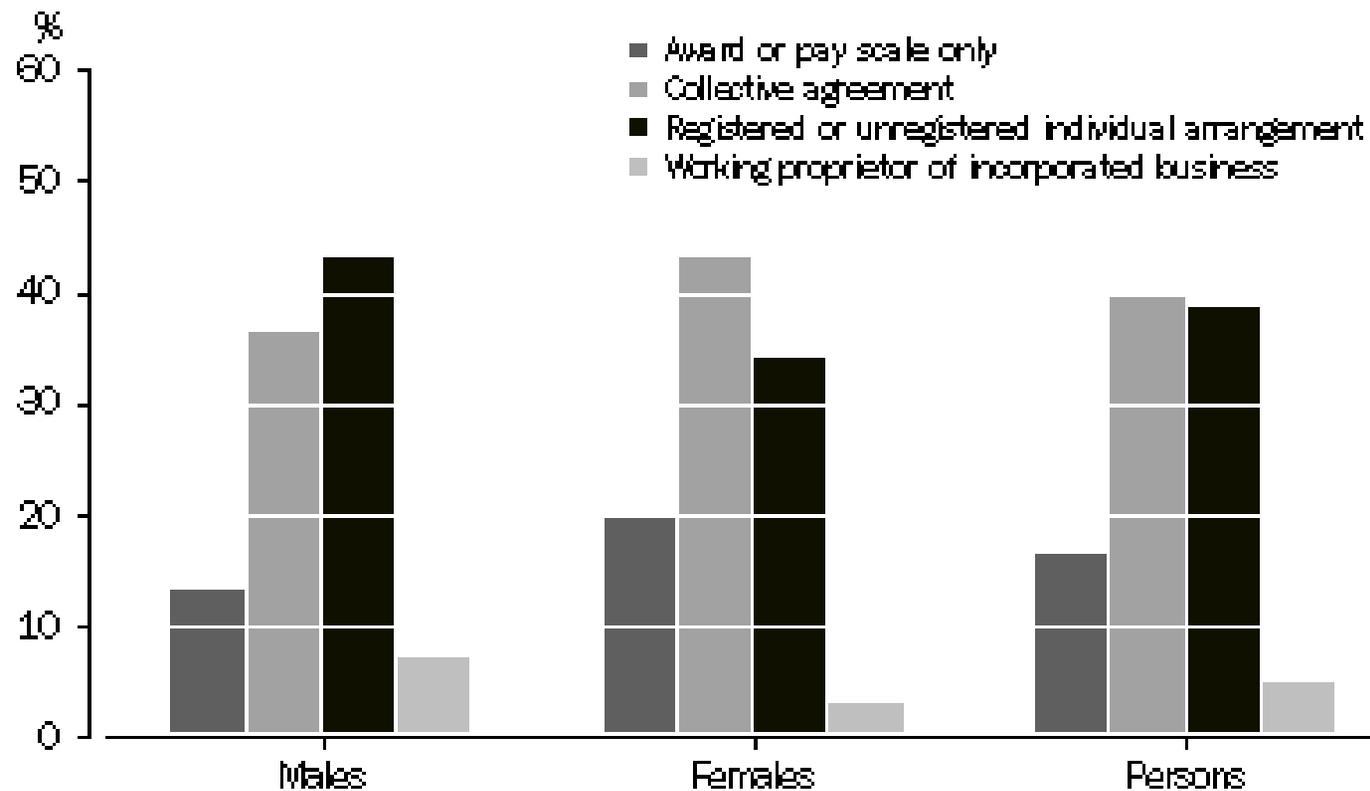
Modern awards

- Removes respondentcy, becoming in effect “common rule” awards
- Eliminate “award free” employees through the creation of a miscellaneous award
- 10 NES conditions, 10 industry-specific conditions
- Will not apply to high income earners (over \$100K)
- Mandatory “flexibility term”
- Delayed introduction, cannot be varied within four years save for minimum wage/pay scale adjustments

Methods of setting pay, 2004 and 2008 (% of employees)

Method of setting pay	2004	2008
Awards only	20.0	16.5
Registered collective agreements	38.3	39.2
Unregistered collective agreements	2.6	0.6
Registered individual agreements	2.4	2.2
Unregistered individual agreements	31.2	36.5

Method of setting pay, 2008



The impact of modern awards

- Loss of flexibility, especially through removal of interstate differences
- Aggregation of industry sectors into single awards leads to inappropriate outcomes (eg. hotels versus restaurants)
- Why are modern awards needed with 20 National Employment Standards?
- Slowing of process is admission of negative economic consequences

Compliance

- There can be a gap between legislative intent and outcomes depending on the extent of compliance
- Common in developing countries to have low compliance, with large informal sectors
- Pre-WorkChoices, compliance relied on trade union enforcement
- Small and medium sized enterprises only loosely followed award prescriptions
- Compliance has been dramatically ramped up with Fair Work Ombudsman

The process of compliance



- Budget of Workplace Ombudsman (now Fair Work Ombudsman) \$46 million in 2007, \$70 million in 2008
- Department appropriation for Fair Work Ombudsman \$134 million in 2009-2010
- Staff levels increased by 41% in 2008 over the previous year and have increased significantly again
- Recovery of under-payment of wages and allowances now associated with substantial, cumulative penalties

Short-term economic predictions



- Aggregate wage outcomes will continue to be relatively well-behaved, albeit trending upward
- The low level and prevalence of industrial disputes will continue
- Unemployment is close to its peak but underemployment will fall before unemployment

Preliminary assessment of FWA

- In many ways, FWA looks like a close cousin of WorkChoices, continuing the trend of top-down, prescriptive regulation of the employer-employee relationship, combined with well-funded compliance
- Too early to tell what will be the ultimate economic impact as players learn the features of the system and adapt
- The direction of the economic effect is clear; its size and timing are less clear