

Chapter 1: Background - A new approach to setting minimum wages

Introduction

- 1.1 This chapter provides information on the recent changes to the mechanism for setting minimum wages in Australia. The changes were enacted through the WorkChoices amendments to the WR Act. The chapter outlines the policy objectives underlying the legislative changes and provides data relevant to the Commission's jurisdiction and functions.

Background

- 1.2 The recent changes to the WR Act continue the Australian Government's process of workplace relations reform. The aim of workplace relations reform is to reduce inflexibilities in the system and improve its capacity to deliver sustained improvements in prosperity.
- 1.3 Workplace relations reform has contributed to increased productivity and non-inflationary employment growth. As a consequence, the unemployment rate is at historically low levels without eliciting an outbreak of inflationary pressures.
- 1.4 The reforms reflect the importance of linking wage increases and improvements in conditions of employment to increased productivity and flexibility in the workplace.
- 1.5 Previous reforms began the process of enabling employers and employees to engage in mutually beneficial agreement making at the workplace level. Australia's strong economic performance over the last ten years benefited from these reforms.
- 1.6 Nevertheless, the system still retained rigidities associated with a centralised approach to settling industrial disputes. While the primary focus was on agreement making underpinned by a minimum safety net, it was not a genuine safety net.
- 1.7 Until the WorkChoices reforms, the process for reviewing the safety net rested on the arbitration of an industrial dispute between employers and unions by the

Australian Industrial Relations Commission (AIRC). The unemployed were not a party to this dispute. Their interests were not a prime consideration of the AIRC.

- 1.8 Major international economic institutions have recommended further reform of the safety net. The International Monetary Fund commented that there needs to be “a diminished role of the award system in setting the minimum wage, which has contributed to a relatively high unemployment rate for low-skilled workers”.¹
- 1.9 In its Economic Survey of Australia for 2004, the OECD encouraged further reform of the safety net so that it takes “into account the employability of low-skilled workers”.²
- 1.10 The WorkChoices amendments to the WR Act aim to improve the prosperity and welfare of Australians through a more flexible and productive labour market.
- 1.11 The Minister for Employment and Workplace Relations, in his Second Reading speech to the WorkChoices reforms of 2 November 2005, addressed the need for improved productivity and flexibility as follows:

A central objective of this bill is to encourage the further spread of workplace agreements in order to lift productivity and hence the living standards of working Australians. It is no coincidence that those industries that have the most workplace flexibility also enjoy the highest productivity growth and the highest wages.

We need more choice and flexibility for both employers and employees, so we can work smarter, reward effort and find the right balance between work and family life.

Establishment of the Australian Fair Pay Commission

- 1.12 The Australian Government established the Commission to overcome the deficiencies of an adversarial approach and bring a greater economic focus to minimum wage setting.

¹ International Monetary Fund, Australia, *Staff Report for the 2004 Article IV Consultation*, 30 August 2004, page 13.

² OECD *Economic Survey of Australia*, February 2005, page 160.

- 1.13 The Commission is established, and its functions set out, under the WR Act. The Commission's functions are:
- its wage setting function;
 - any other functions conferred on the Commission by the WR Act or regulations; and
 - to undertake activities to promote public understanding of matters relevant to its wage setting and other functions.
- 1.14 Under s.23 of the WR Act, in performing its wage setting function, the objective of the Commission is to promote the economic prosperity of the people of Australia having regard to:
- (a) the capacity for the unemployed and the low paid to obtain and remain in employment;
 - (b) employment and competitiveness across the economy;
 - (c) providing a safety net for the low paid;
 - (d) providing minimum wages for junior employees, employees to whom training arrangements apply and employees with a disability that ensure those employees are competitive in the labour market.
- 1.15 The Commission must exercise its wage setting powers in a way that is consistent with the WR Act as a whole. In this regard, it is desirable that the Commission's determinations are consistent with the principal object of the WR Act which is to provide a framework for cooperative workplace relations.
- 1.16 This is set out by s.3(c) and s.3(d) of the WR Act:
- Providing an economically sustainable safety net of minimum wages and conditions for those whose employment is regulated by this Act.*
- Ensuring that, as far as possible, the primary responsibility for determining matters affecting the employment relationship rests with the employer and employees at the workplace or enterprise level.*
- 1.17 The adjustment of minimum wages by the Commission will have important implications for encouraging agreement making.

A safety net

- 1.18 The safety net is a means for providing a foundation of minimum wages for those employees who require such protections. The legislation does not narrowly define the factors that are encompassed within the term of a safety net for the low paid. It is open to the Commission to take as broad an approach as it believes relevant in assessing what constitutes a safety net for the low paid.
- 1.19 It is the Australian Government's view that a safety net encompasses the full range of transfers and services available to low paid workers. This view recognises that many of the low paid receive not only wage income but also other sources of income through government transfers.
- 1.20 An "economically sustainable safety net of minimum wages" is one that does not endanger the employment of the low paid.

The unemployed

- 1.21 The WorkChoices legislative changes differ from past legislation through the explicit inclusion of the unemployed as a group which must be considered when making minimum wage determinations.
- 1.22 The Minister for Employment and Workplace Relations, in his Second Reading speech of 2 November 2005 to the recent reforms, emphasised the importance of reducing unemployment:

WorkChoices is not simply about raising the living standards of those Australians in jobs. It is also about getting more Australians in jobs.

A good society is one where those who have the capacity to work can work. With a job comes dignity, skills, a steady income and a chance at a better job.

In the end, this is not an economic argument. It is a moral argument. Australia can and should be a country where those who are able to work can find work.

- 1.23 The inclusion of the impact on the unemployed in the Commission's wage setting parameters represents an historic shift away from the legalistic and adversarial process for setting minimum wages in Australia. The Commission has the discretion to consider the impact of wage determinations on all

interested stakeholders. It is not simply arbitrating on competing positions between employers and unions.

Australian Pay and Classification Scales

- 1.24 The Australian Government recognises that some workers will remain outside the agreement making stream. These workers will be paid according to their relevant minimum wage which will be set and reviewed by the Commission.
- 1.25 Upon the commencement of Schedule 1 of the WR Act on 27 March 2006, preserved Australian Pay and Classification Scales (APCSs) were derived from pre-reform wage instruments such as federal and state awards.
- 1.26 The APCSs contain the basic classification rates of pay and any applicable casual loadings for employees. The basic rates of pay and casual loadings in APCSs form part of the Australian Fair Pay and Conditions Standard (the Standard). Under the Standard, the applicable APCS (or, where the employee is not covered by an APCS, the Federal Minimum Wage) represents an important guaranteed minimum wage below which an agreement wage may not fall.
- 1.27 Section 208 of the WR Act sets out what is contained in a preserved APCS. A preserved APCS will include the following provisions, to the extent that those provisions are contained in a pre-reform wage instrument:
- (a) Rate provisions that determine one or more basic rates of pay (including basic piece rates of pay, like commission-only arrangements);
 - (b) If the rate provisions determine different rates of pay for employees of different classifications – the provisions describing those classifications;
 - (c) Casual loading provisions and related casual classification provisions if the loadings are determined by classification;
 - (d) For trainees – provisions which determine whether the trainee must be paid a basic hourly rate for hours spent in off-the-job training;
 - (e) Any frequency of payment provisions; and

- (f) Coverage provisions (e.g. provisions concerning who was covered by the pre-reform award).

- 1.28 A preserved APCS must contain at least those rate provisions, provisions describing classifications (if those classifications determine different rates of pay) and coverage provisions. A new APCS must also include those provisions.
- 1.29 A preserved APCS may include the remaining provisions described above (i.e. other than rate, classification and coverage provisions), but is not required to include them. A new APCS may also include those other provisions, as well as other incidental provisions.

Reviewing and setting APCSs

- 1.30 Subject to the legislated requirements, the Commission can determine minimum wage adjustments in whatever form it considers appropriate, including flat rate increases and variable rate increases according to wage level.
- 1.31 The current workplace arrangements display great diversity. Workers are paid according to a range of instruments including workplace agreements, common law contracts and APCSs. It is those workers remaining on APCSs that directly fall within the Commission's responsibilities regarding wage setting.
- 1.32 However, as noted above, through the Standard, the APCSs provide a minimum wage for all employees. Workers who are not covered by an APCS must be paid at least the FMW. Consequently, the Commission's wage determinations will indirectly affect more workers than those remaining on APCSs.
- 1.33 As set out in s.22 (Division 2 of part 7) of the WR Act, the Commission's main wage setting powers cover the following matters:
- (a) adjusting APCSs, which include classification wages and casual loadings (s.216);
 - (b) adjusting the standard federal minimum wage (FMW), which is currently set at \$12.75 per hour (s.196);
 - (c) determining or adjusting the special FMWs for juniors, employees with a disability, trainees and apprentices (ss.197-200); and

(d) determining new APCSs (s.214).

- 1.34 When adjusting or determining APCSs, the Commission must exercise its power in accordance with Subdivision E of Division 2 of Part 7 of the WR Act. The Commission must ensure that wage rates within APCSs are not reduced below the rates contained in the APCS immediately after reform commencement on 27 March 2006.
- 1.35 Under s.221, the Commission is empowered, as part of its first exercise of powers under Division 2 of Part 7, to consider whether it should determine a special APCS for apprentices and trainees to ensure that appropriate minimum wages are universally available for these types of employees.
- 1.36 Similarly, the Commission is empowered under s.220 to make a special APCS for employees with a disability (as defined in s.178).
- 1.37 The employment of trainees, apprentices and employees with a disability is currently impeded where an applicable APCS does not contain appropriate minimum wages.

The minimum wages system

- 1.38 There are currently around 4,000 state and federal awards. Federal and state awards have been developed over time in settlement or part settlement of industrial disputes under various conciliation and arbitration systems. As a result, awards contain a wide range of terms that are not easily comparable across awards or industries.
- 1.39 There are over 100,000 wage classifications that are now embodied in preserved APCSs derived from these awards. These classifications specify the minimum rates of pay payable to a worker according to their job role. In a number of cases, classifications attempt to reflect the skill levels in operation in each industry or workplace.
- 1.40 In addition, some APCSs specify sub-minimum rates of pay. Sub-minimum rates apply to employees who are unable to earn the full minimum rate for a job, such as some juniors, apprentices, trainees and employees with a disability.
- 1.41 Most APCSs with provisions for casual employment specify a percentage casual loading on top of the hourly rate of pay. Casual loadings are typically

between 20 and 25 per cent, but some APCs (including those derived from state awards) include smaller and larger loadings.

- 1.42 In a number of industries, APCs have provisions for employees to be paid on a piece work or 'payment by results' system. Piece rates are generally calculated to ensure that an employee of average capacity working in ordinary conditions can earn at least the relevant classification wage.
- 1.43 The APCs inherited from awards do not provide a coherent set of wage rates. The logic and coherence of wage and classification structures in awards were of concern to the AIRC as far back as the late 1980s. Subsequently, the AIRC fundamentally reassessed the wages classification structure through the Minimum Rates Adjustment (MRA) process.³
- 1.44 The AIRC established the MRA process as a result of its February 1989 Review. The AIRC⁴ stated in its 1989 review decision that "there exist in federal awards widespread examples of different rates of pay performing the same work", and referred to "inequitable relationships among various classifications of employees".
- 1.45 The AIRC concluded that many award classification structures did not meet the needs of industry or employees. Moreover, the AIRC stated that the number of classifications in an award should be reduced to provide clearly defined skill levels, broadbanding of functions and multi-skilling.
- 1.46 The MRA process resulted in the restructuring of wage and classification structures in federal awards. However, the AIRC did not assess whether classification definitions remained current, nor did it ensure consistency between similarly defined job functions.
- 1.47 The MRA process retained pre-existing internal award relativities once consistency at the tradespersons level⁵ was established across awards.
- 1.48 However, since that time, maintaining internal award relativities has not been a priority for the AIRC or the parties to the Safety Net Review. Relativities are most easily maintained through percentage adjustments to all award wages.

³ See AIRC Decision Sydney 13 January 2005, Child Care Industry (ACT) Award 1998 and Children's Service (Victoria) Award 1998, PR954938 paragraph 32.

⁴ Ibid, paragraph 147.

⁵ The C10 level in the Metal Industries Award.

The last occasion on which the AIRC awarded a percentage adjustment to apply to all award rates was in the April 1991 National Wage Case decision.

- 1.49 Since that decision there have been eleven adjustments to award rates of pay generally which have been in flat dollar amounts. This has compressed relativities. Relativities have been compressed further by the tapering of the amount of the increase at the higher levels in the 1998, 1999 and 2003 Safety Net Reviews.
- 1.50 To exemplify the compression in relativities, following the adjustment of the Metal Industry Award for the 1991 National Wage Case, the highest classification in the award (C1[b]) stood at 233 per cent of the lowest adult rate (C14). Today, the highest classification in the award stands at 213 per cent of the C14 rate.
- 1.51 The full extent of wage differentials for like classifications across preserved APCs is unknown but there is significant inconsistency. This is illustrated by the preserved APCs derived from four federal and state awards for entry level baking/bread industry employees. Wage rates range from \$12.75 in Queensland and Victoria to \$14.66 in the Northern Territory.

Work value

- 1.52 The wage classifications within APCs are not a product of an over-arching, comprehensive or consistent process of determining wage rates which reflect notions of work value – even if the latter could be correctly assessed.
- 1.53 The lack of consistency across awards is understandable given the factors that were considered regarding the notion of work value. In 2005, the AIRC noted the usual factors that were generally accepted as relevant to the assessment of work value included⁶:
- Qualifications necessary for the job/training period required;
 - Responsibilities attached to the job regarding the plant and equipment, or other employees;
 - Working conditions – environmental conditions, noise, dirt;
 - Quality of the work required;
 - Skill exercised;

⁶ AIRC Decision Sydney 13 January 2005, Child Care Industry (ACT) Award 1998 and Children's Service (Victoria) Award 1998, Print PR954938, pages 42-43.

- Acquired knowledge of plant and processes;
- Supervisory responsibilities/necessity to work without supervision;
- Importance of work to the overall operations of the plant; and,
- Versatility and adaptability.

1.54 Moreover, the AIRC noted that changes in these job attributes did not necessarily lead to a wage increase based on work value. The changes had to represent a “significant net addition to work requirements”.

1.55 Importantly, the AIRC also stated at this time that while relativities have been compressed by flat dollar safety net adjustments, this alone is insufficient to justify a work value increase.⁷

Work value in a modern economy

1.56 What is important in the list of factors in paragraph 1.53 is what is missing – that is an assessment of the supply of and the demand for workers. Australia is alone among OECD countries in having a centralised wage fixing body that attempts to set a range of wage rates according to that body’s notion of relative value.

1.57 Other developed countries typically set a base minimum wage and allow the market to operate to set wages above this minimum. Other countries have had the opportunity to replicate Australia’s award system of minimum wages. None have chosen to do so.

1.58 An examination of the criteria in paragraph 1.53 reveals the difficulty of centrally determining wage minima that effectively take these competing factors into account. Clearly, such criteria are impossible for a central body to assess in a modern, globalised economy such as Australia.

1.59 Given the impossibility of centrally determining wages that reflect work value, it is not surprising that the AIRC chose to grant flat dollar wage adjustments that did not seek to maintain these relativities.

1.60 Clearly, the classification wages system inherited by the Commission lacks internal coherence and integrity. Under the WR Act the appropriate relativities between the wage rates for different classifications are a matter for resolution through agreement making.

⁷ Ibid, paragraph 160.

- 1.61 Any attempt to set them as part of the general wage increase or separately may act to stifle bargaining. Remuneration scales, incentives for up-skilling and rewards for promotion are best set at the enterprise or workplace level where they are most relevant.
- 1.62 Dealing with these matters through workplace agreements enables employers to quickly respond to changing skill needs and to provide incentives for skill formation that are appropriate to the requirements of the enterprise.

Timing and processes

- 1.63 The WR Act (s.24) leaves it to the Commission to determine independently the timing, scope and frequency of wage reviews and the material it considers when undertaking a wage review. It is up to the Commission to determine whether, when and in what manner it will respond to calls from stakeholders regarding the timing of wage reviews.
- 1.64 The Australian Government sees benefit in the Commission considering a longer term framework for minimum wage adjustments in the interests of providing certainty for employers and employees. Such a framework, however, would need to retain flexibility in order to deal with future uncertainties.

Jurisdiction and APCS reliance

- 1.65 The Commission's jurisdiction covers those employees employed by constitutional corporations, as well as all employees in the State of Victoria and the Territories and Australian Government employees.
- 1.66 It should be noted that there are likely to be some minor differences between the ABS's definition of incorporated enterprises, on which the data presented below are based, and the definition of a constitutional corporation. Any differences, however, are unlikely to have any major impact on the interpretation of the data.
- 1.67 Data from the ABS's *Employee Earnings and Hours* (EEH) survey show that of the 7,696,200 non-farm employees in Australia in May 2004, 68.4 per cent (5,263,200) would now be within the Commission's jurisdiction⁸ while the

⁸ The data in this section on the Commission's coverage do not include Australian Government employees. The EEH survey does not differentiate between the three tiers of Government employment.

remaining 31.6 per cent (2,433,100) were either employed by an unincorporated business⁹ or by government.

- 1.68 As noted above, the Commission is responsible for setting minimum wages for all employees in its jurisdiction through the Standard in the form of either APCSs or the FMW if employees are not covered by an APCS.
- 1.69 The main impact of the Commission's determinations will be upon APCS-paid workers in the Commission's jurisdiction and those workers on agreements who receive a flow-on from increases in minimum wages. Unfortunately, there are no recent, reliable data on the extent of 'overaward payments' that flow on from award (or APCS) adjustments to agreements.
- 1.70 To assist the Commission in determining which industries and occupations where APCS-reliant employees predominately lie, the Australian Government presents unpublished data from the EEH survey. The latest data available are for May 2004. Therefore, for the remainder of this section we present data only on employees who were award-reliant (now APCS-reliant) in May 2004. To avoid confusion, we will refer to these employees as 'award-reliant' employees.
- 1.71 These data display award-reliance by industry and occupation, as well as the jurisdiction that the award-reliant employees fall within.
- 1.72 Overall, only 20.0 per cent (1,539,800) of non-farm employees were paid the rate specified in an award in May 2004 of which just under two-thirds (1,010,900) would now be within the Commission's jurisdiction.
- 1.73 The three industries with the highest concentration of award-reliant employees were Accommodation, cafes and restaurants (60.1 per cent), Retail trade (31.3 per cent) and Health and community services (26.6 per cent). In the majority of industries (11 out of 16), a higher proportion of award-reliant employees are in the Commission's jurisdiction than other jurisdictions.

⁹ Those employees working for unincorporated businesses will lie either in the federal workplace relations system under the AIRC's jurisdiction, or in a state workplace relations system.

Table 1.1: Award-reliant employees by industry and jurisdiction, May 2004

Industry	Award-reliant Employees		Jurisdiction of Award-reliant Employees ^(b)			
	Poportion of Total Employees (%)	No. of Award-reliant Employees (000s)	Australian Fair Pay Commission ^(c)		Other Jurisdictions	
			(%)	(000s)	(%)	(000s)
Mining	1.9	1.4	59.0	0.8	41.0	0.6
Manufacturing	14.9	130.8	82.1	107.4	17.9	23.4
Electricity, gas and water supply	1.7	0.8	68.7	0.5	31.3	0.2
Construction	15.2	63.6	78.8	50.1	21.2	13.5
Wholesale trade	14.9	61.3	78.6	48.2	21.4	13.1
Retail trade	31.3	357.1	66.7	238.4	33.3	118.7
Accommodation, cafes and restaurants	60.1	258.4	71.8	185.5	28.2	72.9
Transport and storage	14.4	41.9	82.1	34.4	17.9	7.5
Communication services	2.1	2.3	17.0	0.4	83.0	1.9
Finance and insurance	4.5	15.3	54.8	8.4	45.2	6.9
Property and business services	19.7	199.1	73.8	146.9	26.2	52.2
Government administration and defence	0.8	3.7	0.0	0.0	100.0	3.7
Education	8.9	64.5	35.0	22.5	65.0	42.0
Health and community services	26.6	238.0	48.4	115.1	51.6	122.9
Cultural and recreational services	17.7	31.6	56.5	17.9	43.5	13.7
Personal and other services	23.5	69.9	43.9	30.7	56.1	39.2
All Industries ^(a)	20.0	1,539.8	65.7	1,010.9	34.3	528.9

Source: ABS Employee Earnings and Hours (EEH), May 2004, (Cat. No. 6306.0) unpublished data.

Note: (a) The sum of the industries may not equal the total due to rounding.

(b) Due to the methodology used to calculate these estimates, standard errors are not available. It should be noted, however, that high standard errors are likely to exist for the smaller estimates.

(c) Those employees estimated to be in the Fair Pay Commission's jurisdiction include employees of incorporated enterprises and other employees in Victoria, the NT and the ACT.

1.74 In absolute terms, Retail trade accounts for almost one-quarter (238,400 or 23.6 per cent) of award-reliant employees in the Commission's jurisdiction, followed by Accommodation, cafes and restaurants (185,500 or 18.3 per cent) and Property and business services (146,900 or 14.5 per cent). These three industries combined account for over half (56.4 per cent) of award-reliant employees in the Commission's jurisdiction.

Table 1.2: Award-reliant employees in the Fair Pay Commission's jurisdiction^(b) by industry, May 2004

Industry	Proportion of Award-reliant Employees in AFPC Jurisdiction (%)	No. of Award-reliant Employees in AFPC Jurisdiction (000s)
Mining	0.1	0.8
Manufacturing	10.6	107.4
Electricity, gas and water supply	0.1	0.5
Construction	5.0	50.1
Wholesale trade	4.8	48.2
Retail trade	23.6	238.4
Accommodation, cafes and restaurants	18.3	185.5
Transport and storage	3.4	34.4
Communication services	0.0	0.4
Finance and insurance	0.8	8.4
Property and business services	14.5	146.9
Government administration and defence	0.0	0.0
Education	2.2	22.5
Health and community services	11.4	115.1
Cultural and recreational services	1.8	17.9
Personal and other services	3.0	30.7
All industries^(a)	100.0	1,010.9

Source: ABS Employee Earnings and Hours (EEH), May 2004, (Cat. No. 6306.0) unpublished data.

Note: (a) The sum of the industries may not equal the total due to rounding.

(b) Those employees estimated to be in the Fair Pay Commission's jurisdiction include employees of incorporated enterprises and other employees in Victoria, the NT and the ACT.

1.75 As illustrated in Table 1.3 below, award-reliance is concentrated in the lower skilled occupations of Elementary clerical, sales and service workers (39.9 per cent), Labourers and related workers (37.9 per cent) and Intermediate clerical, sales and service workers (25.8 per cent).

1.76 In all occupations (apart from Managers and administrators) there is a greater proportion of employees in the Commission's jurisdiction than in other jurisdictions. Importantly, the three most award-reliant occupations account for a clear majority (70.5 per cent) of award-reliant employees in the Commission's jurisdiction.

Table 1.3: Award-reliant employees by occupation and jurisdiction, May 2004

Occupation	Award-Reliant Employees		Jurisdiction of Award-Reliant Employees ^(b)			
	Poportion of Total Employees (%)	No. of Award-reliant Employees (000s)	Australian Fair Pay Commission ^(c)		Other Jurisdictions	
			(%)	(000s)	(%)	(000s)
Managers and administrators	0.8	4.1	9.4	0.4	90.6	3.7
Professionals	6.7	94.7	53.0	50.3	47.0	44.5
Associate professionals	8.3	76.3	52.8	40.3	47.2	36.0
Tradespersons and related workers	22.5	169.9	68.5	116.3	31.5	53.6
Advanced clerical and service workers	8.2	19.0	60.7	11.5	39.3	7.5
Intermediate clerical, sales and service workers	25.8	410.3	61.5	252.3	38.5	158.0
Intermediate production and transport workers	17.3	104.6	75.1	78.5	24.9	26.1
Elementary clerical, sales and service workers	39.9	382.3	68.0	260.1	32.0	122.3
Labourers and related workers	37.9	278.5	71.8	199.9	28.2	78.7
All Occupations ^(a)	20.0	1,539.8	65.7	1,010.9	34.3	528.9

Source: ABS Employee Earnings and Hours (EEH), May 2004, (Cat. No. 6306.0) unpublished data.

Note: (a) The sum of the occupations may not equal the total due to rounding.

(b) Due to the methodology used to calculate these estimates, standard errors are not available. It should be noted, however, that high standard errors are likely to exist for the smaller estimates.

(c) Those employees estimated to be in the Fair Pay Commission's jurisdiction include employees of incorporated enterprises and other employees in Victoria, the NT and the ACT.

Juniors

1.77 As noted earlier in this chapter, an important consideration for the Commission is having regard to ensuring that junior employees are competitive in the labour market. Using the EEH survey, the Australian Government is able to provide data on junior employees within the Commission's jurisdiction.¹⁰ It should be noted that these data include both junior employees paid by junior rates and apprentices/trainees.

1.78 As illustrated in Table 1.4 below, junior employees are considerably more likely to be award-reliant, with almost half (49.6 per cent) paid by awards, compared with only 20.0 per cent for the population as a whole. Of these award-reliant junior employees, over two-thirds (167,000) are in the Commission's jurisdiction.

¹⁰ No EEH data are available on workers with a disability. The Australian Government does not have any figures on the workplace relations coverage of these employees.

Table 1.4: Junior award-reliant employees by industry and jurisdiction, May 2004

Industry	Award-reliant Junior Employees		Jurisdiction of Award-reliant Junior Employees ^(b)			
	Proportion of All Junior Employees (%)	No. of Award-reliant Junior Employees (000s)	Australian Fair Pay Commission ^(c)		Other Jurisdictions	
			(%)	(000s)	(%)	(000s)
Mining	np	np	np	np	np	np
Manufacturing	50.7	11.6	78.8	9.2	21.2	2.5
Electricity, gas and water supply	11.1	0.1	np	np	np	np
Construction	60.0	14.3	44.1	6.3	55.9	8.0
Wholesale trade	36.3	3.8	53.1	2.0	46.9	1.8
Retail trade	41.7	120.7	73.9	89.2	26.1	31.5
Accommodation, cafes and restaurants	66.1	25.1	87.4	21.9	12.6	3.2
Transport and storage	60.0	2.3	np	np	np	np
Communication services	0.0	0.0	0.0	0.0	0.0	0.0
Finance and insurance	59.7	3.1	67.5	2.1	32.5	1.0
Property and business services	63.3	28.8	29.1	8.4	70.9	20.4
Government administration and defence	np	np	np	np	np	np
Education	73.2	7.2	58.1	4.2	41.9	3.0
Health and community services	85.5	11.3	76.9	8.7	23.1	2.6
Cultural and recreational services	42.1	4.3	7.1	0.3	92.9	4.0
Personal and other services	68.3	13.9	70.7	9.9	29.3	4.1
All Industries^(a)	49.6	246.4	67.8	167.0	32.2	79.4

Source: ABS Employee Earnings and Hours (EEH), May 2004, (Cat. No. 6306.0) unpublished data.

np = not published

Note: (a) The sum of the industries may not equal the total due to rounding.

(b) Due to the methodology used to calculate these estimates, standard errors are not available.

It should be noted, however, that high standard errors are likely to exist for the majority of estimates due to their small size.

(c) Those employees estimated to be in the Fair Pay Commission's jurisdiction include employees of incorporated enterprises and other employees in Victoria, the NT and the ACT.

1.79 The award-reliance and jurisdiction of junior employees by industry is presented in Table 1.4 above. It should be noted, however, that due to the small number of award-reliant junior employees in many of the industries, high standard errors are present for the majority of estimates, and for some industries estimates are unavailable altogether. Accordingly, many of the estimates displayed above should be viewed with caution and only be used as a rough indicator of the industries and jurisdictions where award-reliant junior employees lie.

1.80 Bearing this in mind, it is important to note that of the 13 industries that employ award-reliant junior employees (and where estimates are available), nine can be considered as award-majority with over 50 per cent award-reliance.

- 1.81 The three industries with the highest number of award-reliant junior employees within the Commission's jurisdiction were Retail trade (89,200), Accommodation, cafes and restaurants (21,900) and Personal and other services (9,900). In these industries, the overwhelming majority of award-reliant junior employees are in the Commission's jurisdiction. Importantly, these industries account for just under three-quarters (72.4 per cent) of award-reliant junior employees in the Commission's jurisdiction.

Piece rates

- 1.82 Piece rates or payment by results systems were common in pre-reform awards in a number of industries, including agriculture and horticulture, textile and metals manufacturing, newspaper vending and dry cleaning.
- 1.83 Under s.208 of the WR Act, a pre-reform wage instrument that contained provisions determining basic piece rates of pay is taken to be derived from that instrument in a preserved APCS. The adjustment of such a preserved APCS is within the jurisdiction of the Commission.
- 1.84 There is considerable diversity between basic piece rate provisions in pre-reform awards. Some basic piece rates are given as dollar figures per unit of goods produced. Other piece rate provisions provide a means of determining an appropriate piece rate, with the rate itself determined at the workplace level.
- 1.85 The award piece rate system has served the flexibility of certain industries and workplaces well. The Australian Government's strong view is that the Commission should adjust piece rate provisions in APCSs in accordance with past practice that was taken in relation to awards.

Casual loadings

- 1.86 The Commission has responsibility for setting and/or adjusting casual loadings. These loadings may be contained within APCSs. The Standard also provides for a 'default' casual loading of 20 per cent which applies to employees covered by the FMW, a special FMW, or a workplace agreement. Employees covered by an APCS are guaranteed any applicable casual loading provision in that APCS.
- 1.87 Casual employees receive a casual loading expressed as a percentage on top of their hourly rate of pay to compensate for foregoing paid leave entitlements

and insecurity of tenure. Casual loadings in preserved APCs are typically between 20 and 25 per cent. However a number of preserved APCs contain either smaller or larger than average loadings. Some preserved APCs have loadings of up to 50 per cent.

- 1.88 The diversity in casual loadings in preserved APCs can represent the different access to entitlements that casuals had under a pre-reform award. In this sense, the interaction between the casual loadings in APCs and award entitlements is important. For example, some preserved APCs may provide a lower casual loading, where the relevant award provides access to a greater number of leave provisions (such as carer's leave) than other casuals might typically receive.
- 1.89 When adjusting casual loadings, the Commission must exercise its power in accordance with Subdivision E of Division 2 of Part 7 of the WR Act, which directs the Commission to ensure that casual loadings within APCs are not reduced below that which would have existed for the employee in his or her current circumstances of employment immediately after reform commencement (27 March 2006).
- 1.90 The Australian Government has asked the ART to examine the rationalisation of casual loadings. With this in mind, the Commission should await the results of ART's research before making any adjustments to casual loadings in APCs. Further, given the diversity in casual loadings in APCs and award entitlements, the Commission may wish to undertake its own research into casual loadings to inform its decisions in this regard.