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Assessing the Impact of Employment Regulation on the Low-Paid in Victoria

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Abstract

Since 1993 and the removal of the separate award system for the Australian State of Victoria, many Victorian workers have been on five minimum conditions and on pay levels well below that of employees in other States. Despite attempts to rectify the situation (with Victorian common rule awards), issues of coverage and employer compliance remained. The implementation of WorkChoices legislation in 2006 posed a further challenge to Victorian low-paid workers. Our research found that the impact of WorkChoices on the Victorian low-paid has been largely insidious, surfacing primarily as an increased wage-effort ratio, with people working more unpaid hours and at an increased pace. The implications of this are that these hidden effects are more likely to linger, even with the replacement of WorkChoices with the Fair Work Act, *2009. Furthermore, it appears that employer compliance with minimum conditions requires more adequate enforcement by the Federal Government.*[1]

JEL Codes: J81; J83; J88; K31

Keywords

*Labour market regulation***;** *low-paid workers; workers' rights; working conditions.*

Introduction

In March 2006, significant changes in Federal industrial law came into effect in Australia. These changes prompted the further decentralisation and fragmentation of bargaining. Under the title *WorkChoices*, the Howard Liberal-National Coalition Government claimed the changes gave greater freedom to individual employers and employees to determine the type of instrument to regulate em-

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ployment conditions. Debate continues as to whether increased 'choice' and 'flexibility' for employers and employees was a reality or whether the outcome was an overall deterioration in employment conditions (Saville, Hearn-McKinnon and Vieceli 2009). In particular, under the new legislative regime, individual employees, at their employer's behest, could opt out of collective agreements and awards and onto individual agreements with inferior conditions. Awards were effectively replaced by five minimum statutory entitlements, providing a much more restricted safety net for those Australians on minimum pay and conditions. Although *WorkChoices* has been replaced by the Labor Government's *Fair Work Act 2009*, some have argued that the effects of *WorkChoices* will linger, particularly for the low-paid (Pocock, Elton, Preston, Charlesworth, MacDonald, Baird, Cooper, and Ellem 2008).

The 2006 changes were introduced amidst much debate, mainly negative, in the media. While the then Liberal-National Coalition government argued that they '… would create a more flexible, simpler and fairer system of workplace relations for Australia' (Parliament of the Commonwealth of Australia 2004–05: Outline), various groups disputed this, among them industrial relations academics. The initial critique was based on an assessment of the legislation and its possible and likely implementation (Fenwick 2006; Fetter 2006; Forsyth and Sunderland 2006; Owens 2006). Over time, several studies appeared which have provided some empirical support for the initial criticisms. Peetz (2007) analysed the data on agreements and found early evidence of the loss of entitlements and lower pay for some. A national qualitative study of low-paid women across Australia also supported the earlier assessments of the legislation, although it revealed some variation in outcomes across states (Elton et al. 2007).

Building on this work, the current study examines the impact of *WorkChoices* on low-paid workers in the State of Victoria. Victoria is Australia's second most populous state and has a high level of regional settlement (ABS 2010). It also has a record of strong economic growth in recent years. In Victoria, neo-liberal restructuring began earlier and has reached further than in any other Australian state (Costar and Economou 1999). The election of the Kennett Liberal Government in 1992 led to extensive privatisation of public instrumentalities, severe cuts in government funding and an aggressive industrial relations policy that matched aspects of *WorkChoices* by abolishing the State Award system and ceding Victoria's industrial relations powers to the federal government.

This study employed a multi-method approach where data from a telephone survey with 250 low-paid persons was triangulated with a number of semi-structured interviews. The article proceeds by reviewing the literature on the relationship between low pay and institutional structures for regulating wages and working conditions. It provides an overview of the literature on low-paid work and employment regulation including the existing evidence on the impact of *WorkChoices*. This is followed by an explanation of the study's research design and methods before a presentation of findings. It is concluded that the effects of *WorkChoices* on Victoria's low-paid employees were somewhat masked by the fact that since late 1996, a large number of low-paid Victorian workers were

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protected only by minimum legislative standards under Schedule 1A and part XV of the *Workplace Relations Act 1996* (Cwlth). Nevertheless, the empirical results suggest the wage-effort ratio has shifted. While the *Fair Work Act* has extended the scope of minimum standards both legislatively and by retaining the award system, this is likely to have only limited benefit for low-paid workers, with employer compliance remaining a serious issue.

Low-Paid Workers and Employment Regulation

Numerous studies have demonstrated a link between the prevalence of low-paid workers and institutional structures for wage determination (Bazen et al. 1998; Robson et al. 1999; Wallerstein 1999; Rueda and Pontusson 2000; Lucifora 2005; Bosch et al. 2010). These studies have found the most important influence on differences in the rate (extent) of low-paid work to be the inclusiveness of a country's labour market institutions; that is, the extent to which the benefits gained by workers with bargaining power are extended to those without (Bosch et al. 2010: 91–92). A lower rate of low-paid work is associated with higher levels of collective bargaining coverage, stronger minimum regulations and higher levels of union involvement. However, even where national industrial relations systems are inclusive, there remain industries with weak union influence and poor enforcement of regulations. One study demonstrating this is that by Vanselow et al. (2010: 292–297) of hotel workers across several European countries. Similarly, Germany has had a strong collective bargaining system and the lowest percentage of low-paid workers but this varies across industries. Sectors dominated by women and with weak collective bargaining have higher percentages of low-paid workers (Robson et al. 1999). In short, inclusive regulatory systems at the national level do not necessarily translate into effective regulation across all industry sectors.

This explains why, in Victoria, a higher proportion of women, young people, older workers, non-unionised, lower skilled and non-English speaking workers are low-paid (State of Working Victoria 2003: 13–14). The low-paid are located predominately in the following industries: retail; personal services; accommodation and hospitality. They are also more prevalent in small firms and occupations such as labourers, clerical, sales and service staff and are more likely to work in contingent or part-time employment (State of Working Victoria 2003: 14–15). This accords with international findings on the low-paid, though there are variations in the importance of these factors in different institutional settings (Robson et al. 1999; Mason et al. 2010).

Not surprisingly, Australia, with its long history of centralised wage setting and extensive award coverage, has a moderate proportion of low-paid workers by international standards (Masterman-Smith and Pocock 2008: 28; LaRochelle-Cote and Dionne 2009). Various definitions have been used to identify the low-paid, though increasingly studies are adopting the OECD definition which distinguishes a low-paid worker as somebody earning two-thirds the median wage (OECD 1998; Bazen et al. 1998; Robson 1999; Lucifora 2005; Gautie and Schmitt 2010). OECD estimates indicate the percentage of low-paid workers

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in Australia remained constant at 13 per cent during the 1990s and early 2000s (Masterman-Smith and Pocock 2008: 28). However, this data is based on full-time employees only and, as such, the figures are deceptive and are clearly underestimates because many low-paid workers are not in full-time employment. Using the Households, Income and Labour Dynamics in Australia (HILDA) annual survey data for 2001 to 2004, and applying the OECD measure of low pay to all employees, Masterman-Smith and Pocock (2008: 32) calculate approximately 25 per cent of employees are low-paid. How this compares internationally, and the extent to which it is has changed over time, is more difficult to ascertain.

There are concerns that the proportion of low-paid employees within the workforce is increasing and that this is a product of decentralised bargaining that began in the 1990s. Alongside this is evidence of an increasing polarisation of wages between the highest and lowest income earners, with higher incomes growing while those at the bottom stagnate (Watts and Burgess 2000; Masterman-Smith and Pocock 2008: 14–15). Masterman-Smith and Pocock (2008: 29–33) examine a number of non-comparative estimates over a number of years and conclude that the proportion of low-paid has increased. While differences among the sampling frames of the various data sets call this conclusion into question, it is supported by data from the Luxembourg Income Study, which provides a singular source of comparable data for a number of OECD countries (LaRochelle-Cote and Dionne 2009).

In this context, the further erosion of a broad-based system of minimum standards under *WorkChoices* has been seen to present further problems for low-paid workers. Bray and Waring (2006) argued that the introduction of the *Workplace Relations Act* in 1996 weakened the protections for workers by promoting statutory individual agreements, restricting the scope of awards and placing constraints on union activity. *WorkChoices* raised further concerns. For low-paid workers, the changes of most concern related to choice in agreement making, unfair dismissal and the determination of minimum conditions and entitlements.

WorkChoices represented a move to the provision of statutory minimum standards and the new Australian Fair Pay and Conditions Standard (AFPCS) provided five minimum entitlements that an agreement could not undercut: four weeks annual leave (two weeks could be cashed out), 10 days sick or carer's leave, a maximum of 38 ordinary hours of work per week which could be averaged over 12 months, 52 weeks unpaid parental leave, and the minimum award classification rate of pay or the Federal minimum wage as set by the Australian Fair Pay Commission (AFPC). (The AFPC replaced the Australian Industrial Relations Commission (AIRC) in setting adjusting minimum wages.) While the broader application of the AFPCS provided minimum protections for some groups of workers for the first time, changes to awards and their role in the system put many workers' employment entitlements at risk. *WorkChoices* effectively froze awards, preventing the making of new awards or altering the existing awards (Hall 2006), and therefore froze the employment entitlements of award-only workers.

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The legislation promoted the use of Australian Workplace Agreements (AWAs) which overrode collective agreements and awards. This and the removal of the 'no disadvantage test' increased the risk that any new AWAs could result in a reduction in conditions without adequate compensation. *WorkChoice*s also made it easier for employers to dismiss workers by exempting businesses employing 100 people or less from the unfair dismissal laws (Stewart 2006; Riley and Sarina 2006).

Aside from altering the processes for determining entitlements, *WorkChoices* also created the office of the Workplace Ombudsman which received increased resources for enforcement. This built on an earlier trend which shifted enforcement to state-based agencies and restricted the role of unions. Regulatory studies distinguish between the 'command and control' approach to regulation based on state actors setting and enforcing rules and 'responsive' regulation which acknowledges the role of non-state actors in making and enforcing rules (Howe 2006: 149–150). Under the command and control approach, enforcement relies on a complaints-based process which leads to the individualisation of the enforcement of rights and entitlements (Goodwin and Maconachie 2006; Lee 2006; Hardy and Howe 2009: 314–316, 324).

At the time of the introduction of *WorkChoices* many observers claimed the legislation would constrain collective regulation, enhance managerial control and reduce entitlements (Fenwick 2006; Owens 2006). However, as Sheldon and Junor (2006) noted, employers' strategic responses are influenced by product and labour market conditions, workforce size, employer culture and the presence of unions. They predicted employers would be most likely to take advantage of their expanded powers where they operated in highly competitive product markets and unskilled labour markets. These are precisely the areas where low-paid workers are likely to be found.

While there is a considerably body of literature analysing *WorkChoices* and predicting its potential impact on workers, there are few studies of its actual impact. A national survey of human resource managers by Saville et al. (2009) failed to find any significant change during the *WorkChoices* era with respect to productivity, job creation and work-life balance. They concluded that from the perspective of human resource professionals, employers and employees were neither better nor worse off under *WorkChoices*.

In a comprehensive review of studies post-1996, Mitchell, Taft et al. (2010) conclude that the evidence supports a decline in labour protection, though they acknowledge the extent of decline and the degree of uniformity across the workforce is difficult to gauge. An attempt to measure changes in the protective strength of Australian labour law over the last 40 years using a quantitative, leximetric study found a high level of stability at an aggregate level, though the various dimensions forming the scale reveal more variation, in particular, the impact of changes to the unfair dismissal laws (Mitchell et al. 2010). The authors note that their measure 'cannot readily accommodate the differential impact that certain laws may have on particular sectors of the labour market' and they highlight the removal of unfair dismissal protection and weakening of the award system as more likely to impact on the low-paid (Mitchell et al. 2010: 81).

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There is also limited evidence on the impact of *WorkChoices* on the low-paid. A review by Peetz (2007: 23–27) found that, in less skilled occupations, those on AWAs earned less than those on collective agreements. He concluded that in relation to lower skilled workers, AWAs were frequently used as a cost-cutting tool. Peetz' analysis of agreement outcomes also provided evidence that the removal of the no-disadvantage test had resulted in lost entitlements for some workers. However, his study relied on secondary data and hence did not take into account the implementation and enforcement issues that are important aspects of effective regulation.

A national, qualitative study of low-paid women also found evidence that *WorkChoices* was having a negative impact (Elton et al. 2007; Pocock et al. 2008). That study consisted of 121 interviews with low-paid women who self-selected for the study. While overall there was evidence of a negative impact on the job security, income, voice, working time, and redundancy pay of the low-paid, and a perceived strengthening of managerial prerogative leading to work intensification, the findings did vary from state to state. In Western Australia, participants reported stories of uneven bargaining relationships, increased managerial prerogative and workplace cultures which normalised poor employment practice. As individual contracts had had a longer history there due to State legislation, few participants regarded these phenomena as recent (Jefferson et al. 2007; Jefferson and Preston 2010). The researchers concluded that 'in such a context there is little left to lose by the introduction of WorkChoices, hence the limited impact' (Jefferson et al. 2007: vii). In contrast, in New South Wales, there was more evidence of participants experiencing a loss of entitlements and, in a number of cases, their jobs (Elton et al. 2007; Baird et al. 2009). That study provides valuable insights into the conditions of low-paid women, but it is based on a non-representative sample and this limits the generality of the conclusions.

In Victoria, the position of minimum entitlement workers is complicated by the abolition of the State award system in 1992 and its replacement with a schedule of minimum terms and conditions specified in the *Employee Relations Act 1992* (Vic). The transfer of powers to the Federal arena in 1996 saw the provisions incorporated in the *Workplace Relations Act 1996* (Cwlth) as Schedule 1A. Workers under these provisions had minimal regulatory protection, with just five protected conditions: a minimum hourly rate of pay for the first 38 hours worked per week; provisions for four weeks of annual leave; one week of sick leave; 12 months unpaid parental leave; and notice upon termination of employment (Victorian Industrial Relations Taskforce 2000; Watson 2001). In 2000, the Victorian Industrial Relations Taskforce estimated that approximately 235,000 Victorian employees were employed under Schedule 1A minimum entitlements only, in conjunction with minimum wage orders. AIRC Vice President Ross (AIRC 2001) noted that 15 per cent of Victorian wage earners were earning less than $10.50 an hour compared with 11 per cent of Federal award employees. As well, the 2000 ACIRRT Victorian Employers' Survey found that nearly 54 per cent of Victorian workplaces had Schedule 1A employees (Watson 2001: 299).

Victoria's Labor Government sought to improve the conditions of Schedule 1A workers through the *Workplace Relations Amendment (Improved Protection*

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for Victorian Workers) Act 2003 (Cwlth). This legislation strengthened enforcement provisions, clarified some matters associated with annual leave and provided two days' bereavement leave, eight days' personal leave with up to five of these days available as carer's leave, and payment for work performed in excess of 38 hours. The Act also gave the AIRC the power to declare Federal awards to be common rule and binding on employers in Victoria from 1 January 2005 (WageNet 2004). It was estimated that approximately 95 per cent of Victoria's Schedule 1A employees in 2005 would benefit from the common rule awards; however, only if they had not signed an AWA because such an agreement would most likely contain provisions overriding the award (AWU 2004). The extent to which this occurred in practice is unknown and anecdotal evidence suggests that many workers probably did not benefit from the changes. Unions were important in monitoring the move to common rule awards and, in their absence, in many workplaces it is likely the shift from Schedule 1A to award coverage did not occur (AWU 2004). The fact that Victoria already had more low-paid employees than other States (AIRC 2001) may be an important consideration in the current research. The next section explains the research design and methods employed in this study. We then discuss the results from the qualitative and quantitative components of the study.

Research Design and Methods

This study involved a two-stage, multi-method process with data collection occurring from March to July 2007. The first stage was the collection and analysis of quantitative data derived from a questionnaire. The second used qualitative data obtained from semi structured interviews of low-paid workers identified through the initial survey.

The quantitative aspect of the study involved the development of a questionnaire by the researchers at Monash University in collaboration with Gippsland Research and Information Service (GRIS). The questionnaire included questions relating to wages, working conditions and the impact of the Australian Fair Pay Commission. GRIS collected data via a telephone survey of 19,327 households in five localities within the South-Eastern corridor of Victoria: Melbourne; Casey; East Gippsland; South Coast and LaTrobe City. We chose these diverse localities with differing socio-economic profiles to test for any regional impact *WorkChoices* might have. In this, we were sensitive to McGrath-Champ's (2005) findings of growing wage disparity between metropolitan and non-metropolitan regions between 1991 and 2002. Economic geographers also remind us that there are winners and losers across regional areas (Baum 2006; Beer et al. 2003). Stratified sampling was employed in order to obtain a final sample of 250 cases. Of the 19,327 calls made, 16,925 calls were either out of scope or were calls made where there was a problem with connection. Individuals were within scope if they were employed — but not self-employed — were no longer at secondary school and earned $15.82 per hour or less for their main job. The cut off rate for the low-paid was based on a standard definition of the low-paid, which was two thirds of the adult median wage (Robson et al. 1999). The final response rate was 10.5 per cent.

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Analysis of quantitative data involved the use of descriptive statistics such as frequency distributions, and the subsequent use of chi-square tests on cross-tabulations to determine if there were significant differences between groups based on region and sex. Regional differences did not emerge on key variables such as age, working hours, wages and status. Therefore, the data was aggregated to include all cases within the Eastern corridor of Victoria and the Melbourne Central Business District.

The second stage of the study involved content analysis of semi-structured interviews with individuals who were low-paid. Fifteen interviews were undertaken with people who indicated that they were prepared to be interviewed. Two thirds of the participants were female. The jobs varied but included personal and disability care, preschool assistants, food preparation, retail, and process work.

Both methods — telephone surveys and semi- structured interviews — have strengths and weaknesses. Telephone surveys have the advantage that most people can be reached at home and can be recorded; they are able to reach a geographically dispersed sample and have good response rates. The advantage of surveys more generally is that they tend to be more representative and data can be aggregated easily. Disadvantages include the need for brevity because of the difficulty of retaining the respondent's attention. Further, there is potential for non-anonymous responses and interviewer bias (Neuman 1994). Semi-structured interviews were also undertaken by phone from individuals who indicated that they were prepared to speak with the researchers. The advantage of interviews is that they provide feedback for the respondent, and allow for clarification and the opportunity to probe (Zikmund 1994). Disadvantages include problems of generalisation from smaller samples. Denzin (1970, cited in Fielding and Fielding 1986: 9–10) notes that 'by combining multiple observers, theories, methods and data sources, sociologists can hope to overcome the intrinsic bias that comes from single-method, single observer, single-theory studies'. Validity and reliability are enhanced through triangulation based on the use of qualitative and quantitative tools to explore similar questions (Fielding and Fielding 1986).

Results

The personal characteristics of low-paid workers participating in the study reflected those found in other studies, in particular, those found in the State of Working Victoria Project (2003). Table 1 sets out the demographic characteristics of survey respondents. As expected, women and young workers were over-represented, and very few respondents were union members. The type of jobs performed by respondents also conformed to earlier studies, with the retail industry employing the largest concentration of respondents. The dominant occupations of respondents were sales workers and labourers and these occupational groups were more likely than average to be employed in businesses with fewer than 100 employees.

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Table 1: Profile of survey respondents

Gender	%
Males	38
Females	62
(n=250)	

Age	%
16 to 20	26
21 to 36	25
37 to 50	31
51 to 75	18
(n=250)	

Employment Status	%
Full-time	41
Part-time	28
Casual	21
(n=250)	

Employer Size	%
Less than 20	38
20 to 49	14
50 to 99	5
100 to 499	12
500 or more	31
(n=236)	

Union Membership	%
Member	13
Non member	87
(n=243)	

Industry	%
Retail Trade	30
Accommodation, Cafes and Restaurants	12
Manufacturing	10
Education	9
Health and Community Services	8
Other	8
Agricultural, Forestry and Fishing	7
Construction	5
Personal and Other Services	5
Property and Business Services	4
Cultural and Recreational Services	2
(n=249)	

Occupation[a]	%
Sales Workers	31
Labourers	26
Community and Personal Service Workers	15
Technicians and Trades Workers	15
Clerical and Administrative Workers	5
Machinery Operators and Drivers	5
Managers/Professionals	4
(n=249)	

[a] *Due to rounding, does not total to 100%*

Wages

Within the low-paid group — and excluding those on a trainee wage and those under 21 likely to be paid junior rates — the average hourly rate of pay was $14.31, with no significant differences in rates between men and women. Although this average was above the adult minimum wage of $13.47, nevertheless, 18 per cent earned less than this minimum. The average hourly rate of pay for full-time workers was $14.21 per hour compared to $14.56 for part-time workers. However, the average hourly rate of casual workers was only $13.92, despite an expectation that the official 20 per cent pay loading that casual workers receive should be reflected in higher earnings.

Five per cent indicated that their wages had decreased over the first year of *WorkChoices*, half (51 per cent) indicated no change and 45 per cent indicated that wages had increased. Of the respondents who reported a positive change in their wages over the previous 12 months, only 29 per cent reported that it was due to the decision of the AFPC. However, an equal percentage of respondents were unsure whether the increase was due to the AFPC. Significantly, 42 per cent indicated the increase was not due to the AFPC. The results suggest that a significant proportion of low-paid workers did not benefit from the decisions of the AFPC, despite the low rate of pay these workers received.

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Working Hours

Table 2 shows the average hours worked by full timers (mean=39.05 hours), part timers (mean=21.70 hours) and casuals (mean=16.01 hours). Most workers (74 per cent) indicated that their hours had not changed, although almost a fifth (18 per cent) indicated that their working hours had increased and nine per cent indicated that their hours had decreased. Of note is that the average hours of full-time employees were beyond the 38 hour standard set by the AFPCS.

Table 2: Average hours worked per week by employment status — survey respondents

	Mean	Standard dev.
Full time (n=102)	39.05 hours	5.96
Part time (n=96)	21.70 hours	9.64
Casual (n=52)	16.01 hours	8.81

Of those reporting an increase in working hours, 79 per cent were paid for these extra hours. There was a significant difference between males and females, with 30 per cent of males not paid for the extra hours worked, compared with only 18 per cent of females.

While working hours did not change for a large majority of respondents, interview data suggested that many employees worked unpaid hours. All interviewees employed in community and personal services jobs reported working unpaid hours. One woman estimated she put in an extra seven hours a fortnight. Another estimated she worked at least an hour for free every day:

> I always end up doing a lot more hours than I get paid for. I only get paid for the session time so I don't get paid for any time that I turn up a bit early if there's a staff meeting or if I stay late for a staff meeting, or if I stay late to discuss things with the teachers that need to be planned. So I don't get any planning time; I'm only there for the session time. So that's really unrealistic, I have to be there for planning time. (Interviewee from education sector 2007)

Unpaid work was not confined to human and community services work. For a man whose job involved travelling to customers to repair and service office equipment, claiming overtime was problematic:

> We don't get paid overtime. That has got to be pre-arranged. So if you are an hour away from home and you have still got a job to do, they expect you to do it. Whether it is four o'clock or five o'clock, it doesn't matter. (Interviewee from retail sector 2007)

Entitlements

The survey measured respondents' access to annual leave and sick leave. Seven per cent of all full-time respondents reported an entitlement less than the statutory minimum of four weeks while 38 per cent were entitled to less than 10 days' sick

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leave per year. Of the part-time respondents, 16 per cent and 19 per cent respectively, reported no access to annual leave and sick leave. Of concern is the large number who could not specify their entitlement. Significantly a higher proportion of part-time workers were unable to specify their leave entitlements, compared with full-time workers. Of the part-time respondents, 32 per cent did not know their annual leave entitlement and 48 per cent could not report their sick leave. In contrast, of full-time respondents only 11 per cent did not know their annual leave entitlement and 37 per cent could not report their sick leave entitlement.

Table 3: Entitlements — survey respondents employed for period of 12 months or more (per cent)

	Removed	Reduced	Stayed the same	Increased	Introduced	n/a	Don't Know
			Per cent				
Annual leave (n=168)	1	1	71	1	1	20	6
Sick leave (n=167)	1	1	64	4	1	20	11
Carer's leave (n=167)	1	1	32	2	1	28	37
Paid mat/pat leave (n=167)	1	0	20	1	0	38	41
Overtime rates (n=167)	1	2	42	5	1	46	4
Penalty rates (n=142)	1	2	32	4	1	54	6
Paid public holidays (n=140)	1	0	81	3	1	14	0
Rest breaks (n=143)	1	1	79	0	0	18	1
Meal breaks (n=143)	1	1	78	0	0	19	1

Table 3 contains information about the entitlements of those who had been in the same job for the previous 12 months and about whether these entitlements changed after the introduction of *WorkChoices*. Most individuals indicated no change in their entitlements over the previous 12 months. Of significance is the very high proportion of individuals who indicated that Victorian common rule award provisions were not applicable to them. For example, 54 per cent of these respondents indicated that penalty rates were not applicable. Given that penalty rates are an award entitlement for many, this figure suggests that there might have been a high level of non-compliance from employers, either deliberately or thorough ignorance. Similarly 18 per cent, 19 per cent and 14 per cent indicated 'not applicable' as their response, respectively, to rest breaks, meal breaks and paid public holidays.

Intrinsic Working Conditions

The survey sought to measure changes in the intensity of work experienced by respondents who had been employed in their current job for 12 months or more. It used as its model the three questions used in the Australian Workplace Industrial Relations Survey (Morehead et al. 1997), which measured work intensification on the basis of the amount of effort exerted at work, the level of stress experienced and the pace of work. Our survey used these measures — effort, stress and pace of work — to gauge whether work intensity had increased, decreased or remained the same over the previous 12 months.

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Table 4: Survey respondents — percentage reporting changes in intrinsic working conditions

	Increased	Decreased	No Change
		Per cent	
Effort (n=170)	42	5	54
Stress (n=170)	42	4	55
Pace (n=165)	39	2	58

Table 4 shows that 42 per cent of respondents employed for 12 months or more in the same job reported increases in the level of effort required at work and the stress within their jobs, while 39 per cent reported an increase in the pace of work. In contrast, a decrease in effort, stress and pace of work was reported by five per cent, four per cent and two per cent respectively. There were significant differences between males and females on all measures of work intensity, with more males reporting increased stress and pace of work but a higher proportion of females reporting increased effort (see Table 4). There were no significant differences in effort, stress and pace of work among full-time, part-time and casual employees.

Table 5: Survey respondents reporting changes in intrinsic working conditions by sex

	Males (n=59)			Females (n=111)		
	Increased	Decreased/ No Change	Total	Increased	Decreased/ No Change	Total
		Per cent			*Per cent*	
Effort	39*	61	100	43	57	100
Stress	46*	54	100	40	60	100
Pace	46*	54	100	36	64	100

*$p < .05$

The interviews revealed that employees were often under pressure at work. As one woman explained:

> It is just full on, it really is. By Friday I am absolutely knackered …
>
> It is pressure to move faster, to do things faster. When you are asked to do things, you actually run. I do, literally. The primary is apart from the main school building, so you are out in the weather. And you are running back and forth photocopying, doing all sorts of stuff. (Interviewee from education sector 2007)

Some interviewees felt the introduction of *WorkChoices* had increased the pressure they experienced at work. As one man said:

> I would have thought if I was working for an employer for 15 years he would look after someone a bit better than what he does us. And I guess they have put pressure on us because of these IR laws, just in what they expect us to do at times. (Interviewee from retail sector 2007)

While they had not been threatened by their management, they perceived management to be more powerful and dominant.

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The stressful nature of many of the low-paid jobs was also raised in the interviews, particularly by those employed in community and personal services work. The level of responsibility, pressure from parents, discipline problems in schools and changing industry standards were among the factors cited as contributing to stress. For example, one woman commented:

> There's been a big change with our legislation and Human Services that govern us, they've had a bit of a change in regards to supervising and if anything goes wrong, hey, you can be fined and it can be you yourself that's fined, not just the unit. And there are big pushes to make sure that you do the right thing with Occupational Health and Safety. … which again means that we have to attend extra meetings, we've been doing online surveys and questionnaires and stuff and we have to attend certain meetings at night and things like that. So yes, those type of things ….
>
> You're more aware of being watched and you're more aware of not putting a foot out of place. Not that you do anyway but sometimes you're just a little bit more hesitant than what you would normally be ….
>
> Sometimes it is stressful I have to admit, and a mechanism that we often use is, 'Could you just deal with this for a moment. I need a few seconds. I'll just go to the store room'. (Interviewee from Government sector 2007)

For some interviewees, the increased work pressure and stress had a negative impact on their family and social life, with one woman stating that during a particularly stressful period, she 'used to come home and cry a lot'. For one man, the monotony and lack of control he experienced at work affected his life outside work:

> Well, outside of work I pretty much try and forget about it but it does make me upset outside of work because I seem to come home feeling helpless and useless but it's probably a factor to my drinking habits. I have been a big drinker pretty much for all my adult life but I do think it's a contributing factor to my drinking. (Interviewee from manufacturing sector 2007)

This evidence runs counter to that offered by 2,500 human resource professionals to Saville et al. (2009), who found that *WorkChoices* had not significantly changed work-family balance. These differences reflect the difference in the reality experienced by employees facing longer hours and increased stress compared to the perceptions of managers on employees' normal working hours.

The intrinsic satisfaction received from their jobs compensated other interviewees for the work intensity and stress associated with the work. One woman commented, 'I feel by doing what I'm doing I'm worth something', while another woman said 'I like being helpful and helping people who are less fortunate than myself'. Interviewees who had influence over their immediate work and how it was performed also expressed a higher level of satisfaction and commitment. Those working in schools or kindergartens often worked closely with teaching

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staff to plan and deliver programs for children which made them feel valued and respected.

In contrast, where the relationship between management and employees was poor, there was a lower level of job satisfaction and commitment. Male interviewees were more likely to complain of unresponsive management than females. As one interviewee explained:

> They will say, 'Well, this is the way we are going to do it'. And we will say, 'Well, what about this or that?' and they say, 'No, that's it'. So anything we do suggest or anything is looked upon as negative. (Interviewee from retail sector 2007)

The evidence from this survey showing increased job intensification from the employees' perspective was again not reflected in the findings of Saville et al. (2009), suggesting differing realities of employees and managers under these regulatory systems.

Job Security

The majority of respondents who remained in the same job over the previous 12 months reported their job security had not changed over the period. This finding is quite dissimilar from that of Pocock et al. (2008) and may be explained by the dominance of Schedule 1A regulation in Victoria since 1993. Table 6 shows that 71 per cent considered there had been no change in the level of job security over the last 12 months. Similar proportions reported their job security had increased (14 per cent) and decreased (15 per cent). There was no statistical difference in changes in job security reported by those employed in businesses employing less than 100 employees and those with 100 or more employees. These data are consistent with the qualitative findings but those reporting a reduction in job security were predominately people located in industries in decline such as manufacturing.

Table 6: Survey respondents reporting change in job security over last 12 months

	Working in organisations with <100 employees (n=84)	Working in organisations with 100 + employees (n=74)	All respondents (n=170)
	Per cent		
Job Security Increased	13	15	14
Job Security Decreased	13	20	15
No change in Job Security	74	65	71
Total	**100**	**100**	**100**

A small number attributed a decline in job security to *WorkChoices*. These employees were in micro businesses. One man, in food manufacturing, stated:

> Well I think these IR laws have played a big part. A lot of workers there have this attitude, 'Oh, I've got to work hard, I've got to work hard, I've got to work harder because if I make a mistake (that) might give them more chance to sack me at some point'. It's that whole mentality. (Interviewee from manufacturing sector 2007)

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Another woman had concerns that the workers would be forced onto individual contracts, which reinforced her perceptions of job insecurity:

> I think everybody is wondering whether they are going to be able to knock it on the head and put us all on contracts. Very few people are made permanent now … they mainly bring in casuals now through agencies if we have an overload of work. (Interviewee from manufacturing sector 2007)

The interview data suggested job security was more complicated for those on a fixed-term contract. One woman reported putting up with bullying behaviour by her manager because she feared her contract would not be renewed if she complained. While most of the interviewees employed on contract felt confident the contract would be renewed, they had no control over the hours they would work under a new contract. Rather, this was determined by the funding arrangements and matters outside of their control. Thus while they felt secure that their job would continue, their income security (Standing 1999) was compromised.

Instruments

Table 7 shows that the most common type of employment contract was an award (28 per cent), followed by a verbal contract (19 per cent) and an AWA (14 per cent). Only 11 per cent were covered by a collective agreement. In comparison, ABS data for May 2006 indicated only 19 per cent of the Australian workforce was covered by an award and only three per cent had a registered individual agreement, though 32 per cent had an unregistered individual arrangement. These results suggest that the low-paid sector was characterised by a higher rate of award-dependency, and a lower access to collective bargaining for above-award conditions. A substantial proportion of respondents (19 per cent) did not know what type of employment contract regulated their employment conditions and entitlements.

Table 7: Survey respondents — type of employment contract (n=248)

	%
AWA	14
Union Enterprise Agreement	8
Non Union Enterprise Agreement	3
Award	28
Unregistered Written Contract	9
Verbal Contract	19
Don't Know	19
Total	**100**

The qualitative data confirmed the lack of knowledge of respondents about their employment entitlements and how they were regulated. Interviewees were more likely to be aware of their entitlements and how these were determined if there was a union presence in their workplace, even if the interviewee was not a member. It is highly likely that the respondents' employers were also not aware of entitlements, particularly under the more complex Victorian common rule entitlements.

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Discussion and Conclusions

This study found that low-paid workers in Victoria have characteristics consistent with the literature from other countries. That is, the low-paid tend to be female, young, located in the service sector, and in blue collar occupations. The low-paid also tend to be located in small to medium enterprises, where there are fewer protections in place, less access to human resources professionals and lower union density.

The quantitative data revealed little change in the wages, paid working hours and employment entitlements of the Victorian low-paid workers during the first year of operation of *WorkChoices*. This could be because of the similarity of the five minimum conditions under *WorkChoices* and under Schedule 1A, and because employers had not moved their employees from the latter to common rule awards since 2005. The survey results certainly paint a depressing picture of low-paid employment in Victoria. Many low-paid workers are not receiving their statutory entitlements. Less than 50 per cent of workers indicated they had received a pay increase during the period, despite an increase in the minimum wage during this time. A significant proportion of full-time workers also continued to work long hours despite the new 38 working week standard. In the short-term, it is clear that the shift to minimum statutory conditions did not create an impenetrable safety net.

While employment entitlements did not change significantly, a substantial percentage of workers indicated a change in the pace of work, the amount of effort they exerted and the stress they felt. This differs from the findings of Saville et al. (2009) findings regarding perceptions held by human resource management professionals across Australia of work intensification and employee productivity under *WorkChoices*. Our interview data suggested many low-paid workers work more hours than for what they are paid. Furthermore, interviews with a number of survey participants provided evidence of the increased intensity of work in low-paid jobs. There were two contributors to this: the pressure placed on employees to increase work effort and the pressure to work beyond the normal working hours. Most interviewees employed in the services sector reported working beyond their normal working hours without extra remuneration. A number of interviewees also reported feeling stressed because of their work. For women, the increasing responsibility of their work contributed to stress. In contrast, male interviewees reported monotony of the work and increasing pressure to perform as the key factors. This parallels the findings of Pocock et al. (2008) on the perception by low-paid workers that *WorkChoices* strengthened managerial prerogative and that this then led to work intensification. Once again, it is contrary to the findings of Saville et al. (2009) based on perceptions of human resource managers.

Two key features of low-paid employment stand out: a lack of knowledge of entitlements and poor compliance by employers. A large number of survey respondents were unaware of at least some aspects of their entitlements and confused about how their entitlements were regulated. This reinforces the findings of Elton et al.'s (2007) study on low-paid women and *WorkChoices*. The interviews revealed that some employers were also confused about their obligations and the

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regulatory instruments which applied to their organisation. As a consequence of this lack of knowledge among employees and employers, employees can be reluctant to raise concerns and problems and, if they do, they may receive inadequate feedback. This parallels the findings of the British study by Pollert and Charlwood (2009) of vulnerable workers. They found that over half experienced a problem or concern in the workplace, that only a little over one half of these had taken any action to resolve the issue, and that a majority of those who did raise their concern received no outcome. The end result is poor compliance and increased vulnerability of low-paid workers.

As discussed earlier, resources devoted to enforcement increased under *WorkChoices* but this was tied to an individual complaints-based process. The legislation also restricted the ability of unions to raise complaints. While this 'command and control' approach may seem helpful for low-paid workers who commonly lack union representation, it is unlikely to be helpful where they lack knowledge of their entitlements or feel too vulnerable to pursue them. A number of interviewees expressed feelings of hopelessness and felt that lodging a complaint would be futile at best and potentially damaging to their ongoing employment. This bears out the concern of Hardy and Howe (2009: 310) that individual complaints-based enforcement is insufficient and of Pollert and Charlwood (2009) that if concerns are raised, nothing is likely to be done about them.

While the *Fair Work Act 2009* (Cwlth) retains a decentralised workplace focus, there are several promising aspects for the low-paid. First, the Act introduces a low-paid bargaining stream which allows for multi-employer bargaining. Potentially, this replicates a more inclusive system that will draw more low-paid workers into collective bargaining. The impact of the low-paid stream is still to be determined, yet even if it does improve the entitlements of low-paid workers, enforcement issues are likely to remain. Second, the Act provides an extended range of entitlements through an expanded set of statutory minimum standards (the National Employment Standards) and the re-introduction of awards, though these more limited in scope than previously. Further, the Act contains provisions which should help make the identification of entitlements more transparent. The Fair Work Ombudsman is required to publish a Fair Work Information Statement which provides information about statutory New Employment Standards, modern awards and agreement making. Of most significance is the rationalisation of awards. While this process has the potential to reduce entitlements available to some workers, it also should reduce the confusion workers and employers currently face in identifying the correct regulatory instrument.

Nevertheless, the *Act* retains a focus on a command and control, complaints-based enforcement process. The limitations of this approach have been discussed here and elsewhere. Howe (2006) argues for a more responsive approach to regulation involving non-state actors in both making and enforcing rules. With respect to employment regulation, unions are an obvious non-state actor and they have traditionally occupied an important role in Australian industrial relations. In recent times, this role has decreased owing to declining union membership and legislative restrictions on union workplace activity. The *Fair Work Act* lifts some previous restrictions on activities of unions within workplaces and, as Hardy and

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Howe (2009: 326–336) note, the role of unions within the enforcement process is enhanced. However, while these authors identify scope for unions to work with the Fair Work Ombudsman on enforcement, they note that the extent to which the legislation supports a collaborative approach to enforcement is uncertain.

This study indicates that the impact of changes in employment regulation is largely hidden for Victoria's low-paid employees. On the face of it, there have been very few substantive changes for the low-paid. This may be attributable, in part, to the large number of Victorian workers who were on Schedule 1A and part XV of the *Workplace Relations Act 1996* (Cwlth). However, the wage-effort ratio has changed. People are working more unpaid hours and at an increased pace. With the majority of workers on awards, verbal agreements and remaining AWAs, they have little industrial power and continue to face a very vulnerable position. While the *Fair Work Act* has extended the scope of minimum standards and maintains the award system, albeit in a much more limited form, our research suggests that this will not be enough to protect low-paid workers. An issue the current Federal Labor Government must address is improving employer compliance with the new labour standards because, according to our data, compliance was a serious issue not adequately addressed and remains so, particularly where employers face strong competitive pressures and operate in weak labour markets which characterise much low-paid work.

Notes

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