A Modest Intervention:

The Implications and Context of the *Industrial Law Reform (Fair Work) Bill 2004*

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Introduction

This paper considers recent changes in the South Australian labour market and the challenges they create for the regulation of work in the state. It makes a general assessment of the direction of the proposed changes, and weighs up some arguments that have been made about the reform of the state's industrial framework. The paper does not attempt a detailed legal assessment of the changes, but considers the overall direction of change and the arguments around them.

The direction of change in South Australian arrangements must meet the challenges created by a changing South Australian labour market and its workplaces, as well as changes in the community in which these market and workplaces are located. There are good arguments for regulatory changes that meet these new challenges and foster an efficient, equitable and growing economy. Resistance to change in labour regulation fails to recognise significant issues that affect South Australia, and the need to provide a strengthened, relevant employment safety net and employment security in the interests of a more equitable labour market and more productive state.

A Long History of Gradual Amendment

South Australia has seen the regular updating of its industrial relations regulation for over 150 years, reflecting changes in elected governments and change in work and its organisation. South Australia was a national and international site of industrial relations innovation in 1890 when Charles Cameron Kingston introduced a Bill into the South Australian Parliament with provisions later enacted in New Zealand's and Australia's conciliation and arbitration systems. Many features of Kingston's original, comprehensive Bill were eventually made into South Australian law, some years after the birth of a system of conciliation and arbitration nationally and in several states.

South Australia's system of industrial regulation evolved from the 1912 Act to give rise to a system of conciliation and arbitration, with the result that industrial disputes are generally less frequent or severe than in other states. Both employers and unions have been generally supportive of its shape and existence.

In recent decades South Australian legislators have adopted innovative approaches to questions like unfair dismissal and the role of an industrial court and in the early nineteen-nineties, the system retained some distinguishing features: it was alone at the time in Australia in offering some legal protection to employees and unions who took strike action (now reflected in the *Workplace Relations Act 1996*); it allowed employers to make agreements outside the award system with registered or unregistered associations; and it permitted individual employees to find redress against unfair dismissal and seek reinstatement or compensation (Stewart 1998:135).

South Australian governments have followed the footsteps of their federal (and some state) peers along the path of reform, so that a specifically South Australian approach is now less clearly distinguishable. Two waves of legislative reform have

reshaped the South Australian system in the 1990s. Firstly, Labor introduced two amendment bills: the *Industrial Conciliation and Arbitration (Commonwealth Provisions) Amendment Act* 1991 and the *Industrial Relations (Miscellaneous Provisions) Amendment Act* 1992 that effectively responded to federal Labor reforms. These amendments allowed dual appointments to the federal and state tribunals, and permitted certified industrial agreements (mirroring the federal provisions) alongside the existing state provisions for industrial agreements. Stewart concludes of these changes that 'in two short years the two systems had been brought much closer together', mostly in the image of the federal system (1998:138).

The election of a Liberal government in December 1993 gave rise to a new pace and direction of reform, though it remained some distance from the radical changes in Victoria and federally from 1996. While South Australian Liberals took steps to privilege the goals of productivity and efficiency, to encourage workplace bargaining and constrain unions, they stopped short of allowing individual contracts: collective bargaining remained a cornerstone of the South Australian system.

The 1994 Act introduced several important changes. It encouraged a shift to enterprise bargaining through the negotiation of Enterprise Agreements, underpinned by an award system that - while left intact and not subject to a clipping back to 'allowable matters' – acted as a safety net beneath the processes of enterprise negotiation. Enterprise Agreements provide wages and conditions that, when considered as a whole, are at least as good as the relevant state award, and include existing legislated standards with respect to annual, sick and parental leave and some other conditions.

During 1997 the state Liberal government attempted two further amendment Bills but was unable to win support for them in the Legislative Council. Instead it secured changes to unfair dismissal systems and freedom of association laws (Department of Industrial Affairs 1997).

This history points to a tradition of incremental change in the state with considerable support for a consensual system that worked reasonably well, and had at its centre an effective industrial tribunal, and an important role for unions and employer associations. Consistently low levels of industrial disputation attest to a relatively smooth history.

Against this background the latest set of amendments, through the *Industrial Law Reform (Fair Work) Bill 2004*, are a modest set of changes made in recognition of a changing employment and workplace environment in the state. In some cases, they move in the direction of arrangements adopted in other states.

In recent decades the South Australian workplace and labour force has changed significantly. In the past two decades, the participation of women has risen by over 9 percentage points to reach 54 per cent, while men's has declined by 6 points. A growing proportion of South Australian workers have significant responsibility for dependents while undertaking paid work. The industry and occupational composition of the workforce has also changed significantly. The proportion of workers who conform to a standard employment relationship of wage earning in exchange for ongoing, secure, full-time work has shrunk. More and more workers in South Australia face regular, significant

changes in their place of employment, its form, conditions and hours. Union membership has fallen dramatically with rapid growth in poorly unionised jobs and significant job losses in areas where union density traditionally has been high. This means that a growing proportion of South Australians have no access to union representation, including most women, young people and many low paid. They are reliant upon community-wide labour standards, where they exist. Where they do not exist, many South Australians work in diverse arrangements where even basic rights are absent. This means that keeping community standards up to date and relevant to a greater diversity of employment forms is of increasing importance.

A large proportion of South Australians – significantly higher than the national level – now work without paid sick leave or paid holidays: their casual employment status has important consequences for them as workers and individuals and these extend into their homes and the South Australian community. It also has a significant impact upon skill development and the development of human capital in the state. The population decline in the state has been identified as creating significant labour force and economic development challenges. Part of the solution lies in an effective, fair platform of labour regulation that underpins new forms of employment and fosters employment growth at attractive rates of pay. A fair and effective system will foster participation in paid work by a growing proportion of South Australians, especially women; it will also underpin family formation and reproduction, and the development of skills. Effective labour law is relevant to the pressing question of a declining population and an economy where growth has lagged.

In this light, a good case can be made for more far reaching reforms than those proposed in the current Bill. Essentially, the proposed Bill makes marginal changes to existing law, many of which are already in place in other states or federally. The Bill does not give casual workers specific new rights; it will not significantly improve work family balance; it will not directly improve the employment security of South Australia's growing part-time workforce; it has nothing to say about the significant growth in paid and unpaid working hours in our community (which occur alongside persistent unemployment); it will have a limited impact upon the growing proportion of South Australians who work on limited term contracts; it will not directly shift the persistent inequity that sees South Australian women paid less, on average, than their male colleagues.

The Bill does not deal with growth in long and unsafe working hours. This contrasts with developments in some other states. For example, the Western Australian government has recently recognised that excessive working hours, successive long shifts and inadequate rest breaks are a serious industrial problem. Following a state review of excessive working hours, it has committed to the adoption of a Code of Practice to cap average working hours and limit successive long shifts ('WA to Cap Working Hours', *Workplace Express*, 4 May 2004).

With respect to unions the Bill does not propose any further change to the Freedom of Association amendments made in 1994 that outlaw union 'closed shops' or change 'preference to unionists' arrangements; these features are now essentially accepted

as a basic framework for the industrial relations system in the state. However, in this environment it is important that unions have access to employees to given them the opportunity to join unions.

While the Bill's objects intend greater 'equity and fairness', and to promote 'secure employment' they do not, by and large, directly ensure this by specific means.

The Bill does, however, make some significant amendments that will mean greater protection for growing forms of non-standard employment where the system of industrial regulation has not kept pace with the nature of employment. The Bill, if adopted, will work to protect child workers, trainees, outworkers, and those subject to very unfair contracts which are beneath established community standards. It will introduce some protections for the growing class of labour hire and contract employees.

The Bill has been described by the federal Workplace Relations Minister as a return to 'the industrial dark ages' (Andrews, Media Release, 2/3/04). Polemics aside, the Bill responds to some aspects – far from all and not always adequately – of changing employment and industrial life in the state. The Bill attempts to meet a range of new challenges which affect employers, employees and South Australian workplaces: it proposes a set of modest steps to ensure efficient, effective industrial arrangements to underpin a strong, productive society, and a fair system that assists employees in their increasingly diverse situations.

Some other state governments have in place more far-reaching reforms of their state systems. For example, on gender pay inequity the Queensland Government has initiated a pay equity inquiry resulting in adoption of a comprehensive pay equity principle (that builds upon recent NSW developments) and allows for pay equity applications to be made to industrial relations tribunals to examine the work, skills and responsibilities of female-dominated occupations to determine the true value of the work in a gender neutral and non-discriminatory way. This Queensland Principle does not allow employers to argue about the economic impact of a decision or their capacity to pay: if undervaluation is found, it must be rectified. The South Australian Principle is some distance behind the inquiries and responses now underway in Victoria and Western Australia, and recently completed in Queensland, NSW and Tasmania.

Despite industrial provisions that more assertively meet the changing nature of employment in other states, employment is growing much faster in NSW and Queensland than in South Australia. There is no evidence from these states that reforms like new objects in the Act for security, more practical means of entry for unionists to workplaces and a role for state Industrial Relations Commissions in ensuring fair employment contracts, reduces employment. Indeed, these states provide some evidence of the reverse. However, industrial regulation regimes which vary in relatively minor ways, do not explain significantly different rates of employment growth. These are largely explained by a range if non-industrial factors including costs, population, market growth, investment, locational advantage and demand patterns. To explain varying employment patterns by means of industrial law refinement is to mistake their true source.

To suggest a large negative employment effect arising from the proposed Bill is misleading. However, the modest scope of the proposals under discussion in South

Australia has not stopped some parties from over-reacting. This alarm is over-stated and unhelpful to informed public debate. Far from a radical backward step, the Bill is a modest response to significant labour market change. It falls short of reforms that operate - accompanied by vigorous employment rates and without industrial disorder – in several Australian states.

I now turn to the labour market context for this debate.

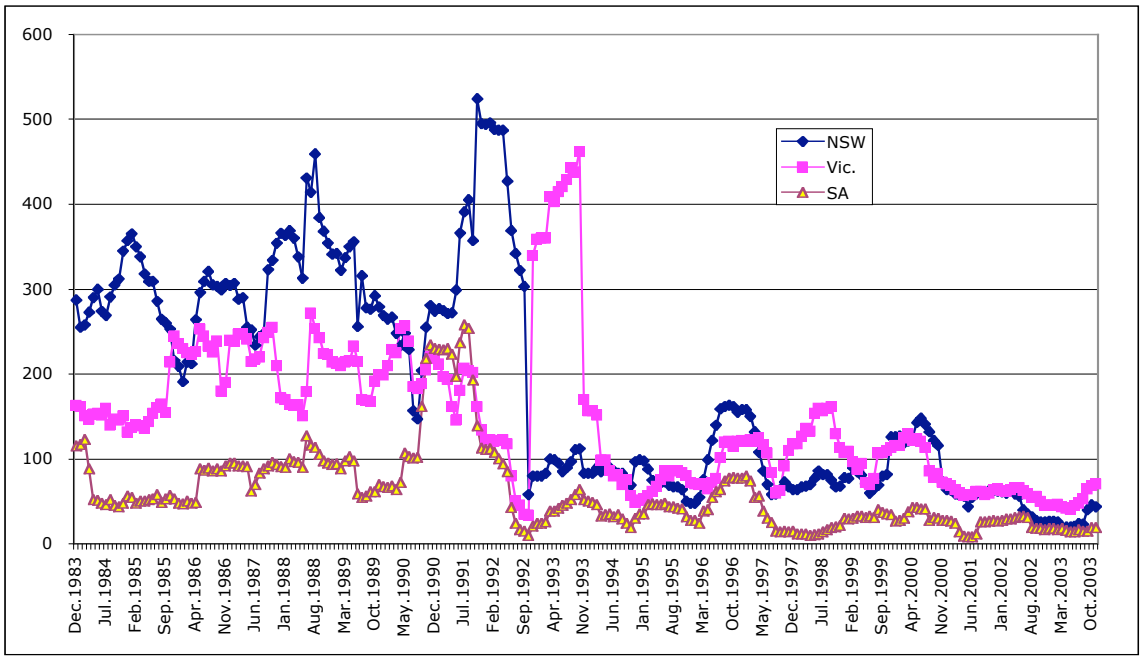
Working life for South Australians: the Current Context

This section considers several key indicators of the state of South Australian workplaces and industrial life. It is worth reviewing a range of industrial and employment indicators that are the context of the next set of industrial changes, and in some cases provide their rationale.

Industrial Disputes

In recent decades South Australia has not been a site of significant public industrial confrontation. Figure 1 shows that working days lost per thousand employees remains much lower than in New South Wales or Victoria.

Figure 1: Working Days Lost per Thousand Employees, South Australia, NSW, Victoria, 1983-2003

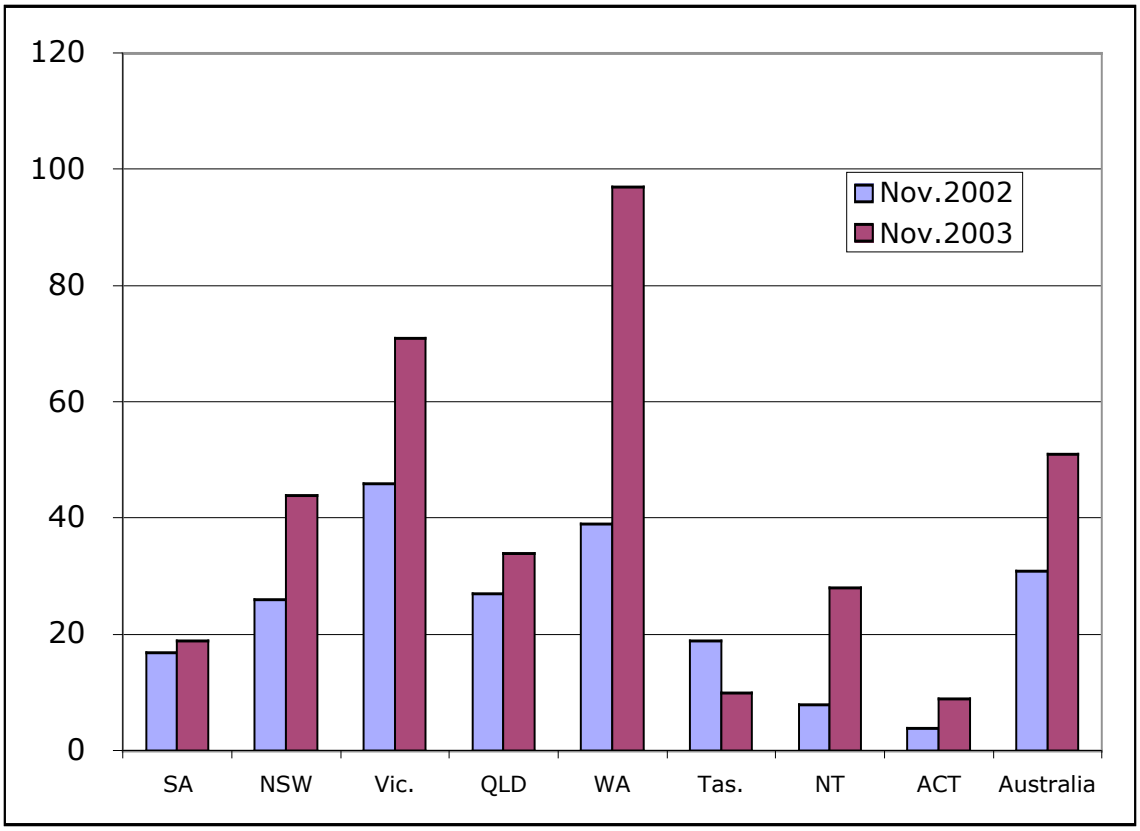


Source: ABS Cat. No. 6321.0

Figure 2 shows that the number of days lost per thousand workers in the year to November 2003 was 19, well below half the Australian average of 51. The gap was similar

in the previous twelve months and in both 2002 and 2003 South Australia had the third lowest rate of disputation amongst Australian states. Clearly, the South Australian industrial system continues its long history of relatively low levels of industrial disputation.

Figure 2: Working Days Lost per Thousand Employees, Year to November 2002 and 2003, by State.



Source: ABS Cat. No. 6321.0

How Pay is Set

While pay and conditions are set by awards for about a fifth of Australians, the share in South Australia is somewhat higher, at 25.1 per cent – the highest in Australia (ABS, Cat. No. 6306.0 May 2002: 7). The proportion of Australian employees whose pay is set by awards has been falling in recent years, although awards remain significant, particularly for part-timers in industry sectors like accommodation, cafes and restaurants (where 61 percent have their pay set by awards) and for many women (26 per cent were covered by awards in 2002 compared to only 15 per cent of men) (ABS Cat. No. 6306.0, May 2002).

In May 2002, 22.1 per cent of South Australians had their pay set by collective federal agreements registered by the AIRC or OEA (23.0 per cent nationally), only 1 per cent by individual federal registered agreements, with 16.2 per cent covered by collective

agreements registered at state level. 60.7 per cent of South Australians have their pay set at award rates or by unregistered agreements (ABS Cat. No. 6306.0, May 2002: 49).

This picture suggests that state-wide minima are of growing significance to our most disadvantaged and powerless workers, compared to other states.

Employment

Table 1 shows that employment growth has been much slower in South Australia than nationally. Over the twenty years from 1984 to 2004, employment in the state rose by 27 per cent, half the national rate of growth. Official unemployment has remained around a percentage point higher in the state than nationally, while participation rates have lagged a couple of percentage points behind the national average for both sexes.

Within total employment, the pattern has also shifted from full-time to part-time work, with the strongest jobs growth amongst part-time males (albeit from a low starting base), and the weakest growth amongst full-time males. Part-time employment also has been strong amongst women. These are consistent with national trends.

Part-time jobs now account for a third of jobs in South Australia, compared to 28 per cent nationally (Table 2). The rate is higher for both sexes in South Australia.

The high proportion of part-time work in South Australia means that its effective regulation, and pro-rata access to all employment entitlements for those who do it, is important. This is especially the case in relation to training and development, and of particular significance to a large proportion of the state's working women.

Table 1: Employment changes, Australia and South Australia, 1984-2004

	Australia	Australia	Australia	South Australia	South Australia	South Australia
	Change 1984-1994	Change 1994-2004	Change 1984-2004	Change 1984-1994	Change 1994-2004	Change 1984-2004
Fulltime males	7%	13%	**21%**	-1%	3%	**2%**
Fulltime females	26%	20%	**51%**	19%	4%	**24%**
Fulltime persons	12%	15%	**29%**	4%	3%	**8%**
Parttime males	92%	69%	**224%**	89%	59%	**201%**
Parttime females	62%	37%	**121%**	44%	29%	**85%**
Parttime persons	68%	45%	**144%**	52%	36%	**107%**
Employed males	12%	19%	**33%**	4%	9%	**14%**
Employed females	39%	27%	**76%**	30%	16%	**50%**
Employed persons	22%	22%	**49%**	14%	12%	**27%**

Source: ABS Labour Force, Cat. No. 6202.0.55.001

Table 2: Part-time jobs as a percentage of all jobs, Australia, South Australia, February 2004

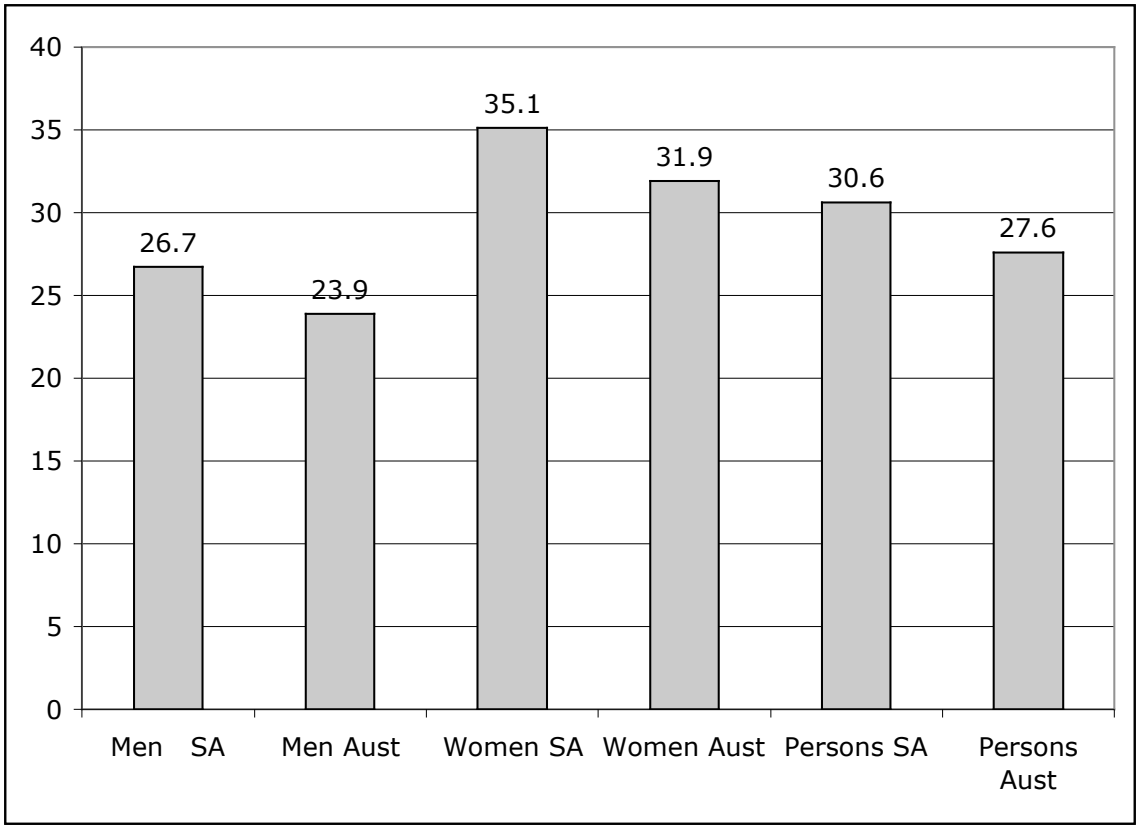
Part-time jobs as percent of all jobs		
	Australia	**South Australia**
Women	45%	52%
Men	16%	16%
Persons	28%	32%

Source: ABS Labour Force, Cat. No. 6202.0.55.001

Job Security

Casualisation of the South Australian workforce has increased significantly in recent decades. Access to paid sick and holiday leave is a useful labour market indicator of casual employment. In August 2003, 27.6 per cent of Australia's 8.1 million employees lacked holiday or sick leave or both in their main jobs (31.6 per cent of women and 23.9 per cent of men) (Unpublished ABS data, August 2003). In South Australia the proportion is higher: in 2003 26.7 per cent of men, 35.1 per cent of women and 30.6 per cent of all persons lack access to sick and holiday leave (figure 3).

Figure 3: The Proportion of All Employees Without Sick or Annual Leave, 2003, South Australia and Australia



Source: Unpublished ABS Data

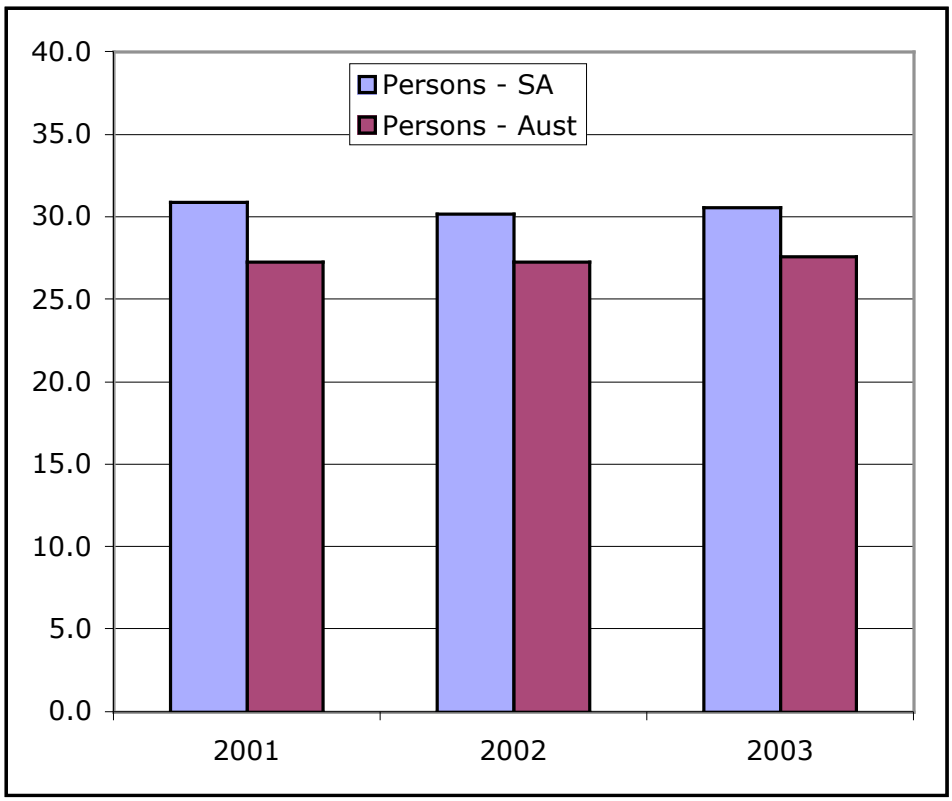
The higher level of insecurity in South Australia persists over recent years as Table 3 and Figure 4 below show.

Casual employment is associated with a number of problems in the labour market. Firstly, casual workers' earnings are often unpredictable. Many work for less hours than they would prefer, and large numbers would prefer more predictable earnings and hours: 68 per cent of casual in Australia in 2000 preferred predictable patterns of work over casual or relief work (Watson *et al.,* 2003: 67). The insecurity of casual employment means that many casual workers have difficulty in family formation, buying a house or establishing other loans (Pocock, Buchanan and Campbell, 2004). While many casuals are eligible for a loading to compensate for some lost conditions (mainly paid sick and annual leave), the loading is inadequate compensation for all lose benefits, and it is unclear how many casuals actually receive such a loading. Many casuals are low paid, and it is clear that the 'casual loading' does not fully compensate for a range of employment conditions available to ongoing employees. Analysis of HILDA data reveals that:

> [Casual] employees tend to have relatively low earnings. Even if we adjust for hours worked, the hourly earnings of casual employees is still only around 83 per cent that of permanent employees, despite the fact that many casual employees receive a pay loading in lieu of leave entitlements. (Wooden and Warren, 2003: 12).

This low pay and insecurity and loss of conditions is not a short term experience for many casuals: it continues for many years for a large proportion. The average tenure of casuals in 2001 was 2.6 years (based on HILDA survey data), with 57 per cent of casuals having more than one year's tenure in their current jobs (Wooden and Warren, 2003). Casual employees experience low levels of skill development: in 2000, half of casual employees did not undertake any form of training, compared to thirty per cent of permanent employees (Watson *et al*., 2003: 78).

Figure 4: The Proportion All Employees who Lack Annual Leave or Sick leave or Both, Australia and South Australia, 2001-2003.



Source: Unpublished ABS data.

Casual employment affects the security and well being of many employees; these effects are likely to reach beyond individuals into households, affecting the timing of partnering and reproduction especially amongst lower paid, blue collar men (Birrell *et al*, 2004). Recent research amongst young Australians (including many South Australians) shows that children and adolescents are negatively affected by parental insecurity at work and by low earnings (Pocock and Clarke, 2004).

Casual work is not the passing experience of a strata of young students supplementing earnings while they study. Much of the current growth in casual employment is amongst prime age men and women, and amongst young people who are not students (Campbell, 2000). While casualisation is especially associated with the retail, accommodation cafes and restaurants industries, it increasingly characterises employment in other industries. Australia-wide, casual employment in manufacturing grew from 8 to 16 per cent between 1985 and 2002 and grew from 18 to 32 per cent in the construction industry in this period (Watson *et al*, 2003: 69).

The growth in casual employment and its relatively higher share of employment in the state make it an important policy question that labour regulation should address. The state's industrial legislation has not kept pace with this change. The issue especially

affects a disproportionately large number of South Australian women. Unfortunately the proposed Bill does not directly deal with this important issue in its current formulation.

Table 3: Proportion of Employees Without Leave Entitlements, Australia and South Australia, 2001-2003

		2001	2002	2003
South Australia	Men	24.8	24.1	26.7
	Women	37.9	37.2	35.1
	Persons	30.9	30.2	30.6
Australia	Men	23.6	23.5	23.9
	Women	31.5	31.6	31.9
	Persons	27.2	27.3	27.6

Source: Unpublished ABS data.

Growth in Labour Hire and Non-Standard Contracts

Historically, most Australians covered by the industrial system and its regulations have had the standing of 'employees'. Over recent decades, ambiguity about contracts for service and the status of 'employee' has increased. The growth in 'dependent' contracts has been especially strong in construction, property and business services, and in transport and storage (Watson *et al*, 2003: 71). Such dependent contracting has important implications for the tax system, and for employment rates, health and safety and workers' compensation systems.

Alongside 'dependent' contractors, the growth in use of labour hire employees has also been strong in recent years across Australia including South Australia. While both of these forms of employment remain small in numerical terms, their effects are widening. For example, between 1990 and 1995, use of labour hire in larger Australian workplaces (200 to 499 employees) grew from 14 to 42 per cent of such workplaces and to over 55 per cent in workplaces with more than 500 employees. The impact of labour hire on Australian workplaces and workers was recently summarised by ACIRRT who suggest that differences in conditions between labour hire and 'core' ongoing employees causes strain between employees, and their use can undermine wages and conditions of employees who are – by reasonable tests of employment status – 'true' employees. They argue it may also undermine skill development and health and safety controls.

Union density

As in other Australian states, union density in South Australian workplaces has been falling steeply since the 1970s. In August 2003, 24.6 percent of South Australian employees were union members in their main jobs (compared to 23.0 per cent Australia wide). This was down from 25.9 per cent in August 2000. Essentially, union density in the state has been flat for several years, following steep falls in the 1980s and 1990s. This follows the national pattern.

Fewer South Australians can now rely upon a union if they have industrial problems, or can negotiate collectively, especially if they are young or female. Much of the decline in union density is explained not by changes in attitudes to unions but by changes in the composition of employment on an industry and occupational basis, and by difficulties that unions have in reaching workers and vice versa (Peetz, 1999).

The fall in union density leaves growing proportions of South Australian workers without traditional forms of collective support, requiring more reliance upon an effective industrial system and safety net with effective reach and reasonable standards.

Worker Stress

Based on data from workplaces with twenty or more employees[1], the Australian Workplace Relations Survey shows that, after the Northern Territory, South Australian workers reported higher levels of increased stress over the 12 months to late 1995 compared to other Australian workers. Over half of South Australian employees (53 per cent) in these larger workplaces said that the stress in their jobs had increased; this is slightly above the Australian average of 50 per cent. Sixty per cent of South Australian workers said that the effort they had to put into their jobs had increased (compared to 58 per cent nationally), and 48 per cent said the pace of their work was increasing (46 nationally) (Pocock and Psarros, 1998).

Unfortunately we do not have more recent data on the question of stress (and many other workplace variables) because the federal Government has not extended the AWIRS Survey beyond its 1990 and 1995 collections.

Wages and Bargaining

In recent years there has been a widening dispersion in earnings between South Australian and Australian workers, between women and men, between those in the state and federal systems, those in differing industries and occupations, and those in actively bargaining, unionised workplaces and those that are not.

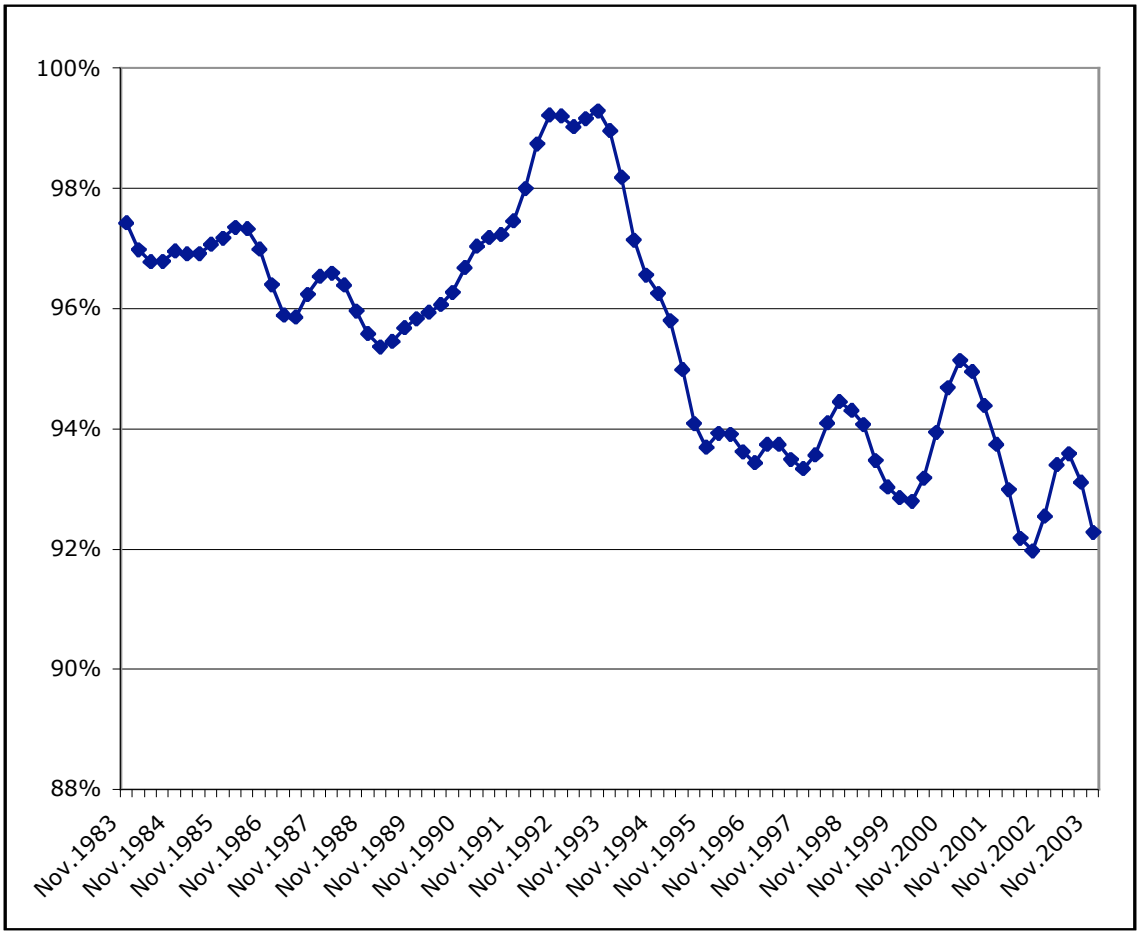
Average ordinary time adult earnings in the state have fallen behind those nationally. Of those within the actively bargaining sector, a growing proportion are engaged in some form of enterprise agreement making, increasingly within the federal system, and less in the state system.

Figure 5 shows the ratio of South Australian to Australian average weekly ordinary time earnings of full-time adults. While the ratio tended to rise in the late eighties, and peaked at 98 per cent for all of 1993, since that time it has headed downwards, reaching a low of 92 per cent in late 2002. In November 2003 full-time, adult

[1] AWIRS 1995 was the second large survey conducted by the federal government to inform analysis of workplace relations. AWIRS consists of several structured questionnaires administered by a range of methods to union delegates, managers and employees (in 1995) at a representative range of Australian workplaces, stratified by location, size and industry. All industries were included with the exceptions of agriculture, forestry, fishing and defence. While some aspects of the study extend to workplaces with 5-19 employees, the survey of individual employees did not, and so individual wages data, for example, is available only for employees in workplaces with more than 20 employees. Discussion of AWIRS data throughout this chapter is based on workplaces with at least 20 employees. For details of how the survey was conducted see Morehead et al. 1997.

South Australians were earning $867.10 a week compared to the national average of $939.60, a gap of $72.50. In nominal terms, this gap has increased more than seven fold in ten years. The gap is wider still in relation to all earnings including overtime, and wider again for all earnings of all employees, including juniors ($107.70).

Figure 5: Ratio of Average Weekly Ordinary Time Earnings of Adults, South Australia/Australia, 1983-2003



Source: ABS Cat. No. 6302.0

Data available from AWIRS 1995 showed that South Australian workers lagged behind Australia as a whole in terms of the extent of workplace bargaining in the state, and the size of pay rises won through such bargaining. In 1995 just over half of South Australian workers in workplaces with more than 20 employees (or 55 per cent) said that their average weekly pay had gone up in the 12 months to late 1995, compared to 59 per cent nationally. South Australia had the highest proportion of workers who said that they had not received any pay rise in the period (36 per cent).

AWIRS 1995 results suggest that agreement making - with concomitant pay rises - was less widespread in South Australia than in most of the rest of Australia. Where an agreement had been made, AWIRS survey results show that South Australian employers

were more likely to give cost cutting as a motivation for negotiation: 23 per cent of South Australian managers indicated this as a motivation compared to 18 per cent nationally, perhaps explaining something of the higher sense of rising stress amongst workers in the state described above. South Australian employees were also the least likely out of all states to have been consulted by managers in the process of agreement making.

Turning to the issue of the size of pay increases, many more South Australian workers in 1995 were found in workplaces where the size of the increase available to them in the 12 months to late 1995 through an enterprise agreement was small: 17 per cent received less than 2 per cent rise (9 per cent nationally), while 47 per cent were in workplaces with agreements giving over 5.1 per cent increases, compared to a much higher 67 per cent nationally.

Wage increases through enterprise agreements in the South Australian jurisdiction continue to lag behind those in other states and the national average (Table 5). Based on the 488 agreements lodged in the year to May 2004, the average increase was 3.9 per cent in the South Australian jurisdiction, the lowest in any jurisdiction and below the 4.4 per cent increase in the federal jurisdiction, 4.5 per cent nationally, and two percentage points behind NSW and WA.

Widening pay dispersion between the states has seen South Australia fall behind in relative earnings, making it more difficult to attract and retain workers. Future declines in population growth rates are likely to increase competitive pressures for skilled and experienced workers, which a low wage regime will not assist.

Table 5: Average Annual Wage Increase in Enterprise Agreements by Jurisdiction, May 2004

Jurisdiction	Mean Increase (per cent)	No.	Std. Deviation
Federal	4.3725	3962	2.27013
NSW	4.8165	1060	2.57103
QLD	4.6316	1550	2.54741
SA	**3.884**	**488**	**1.92822**
WA	4.8002	808	2.23168
Total	**4.497**	**7868**	**2.35823**

Source: ACIRRT (2004) ADAM Database, University of Sydney, May, Unpublished Data.

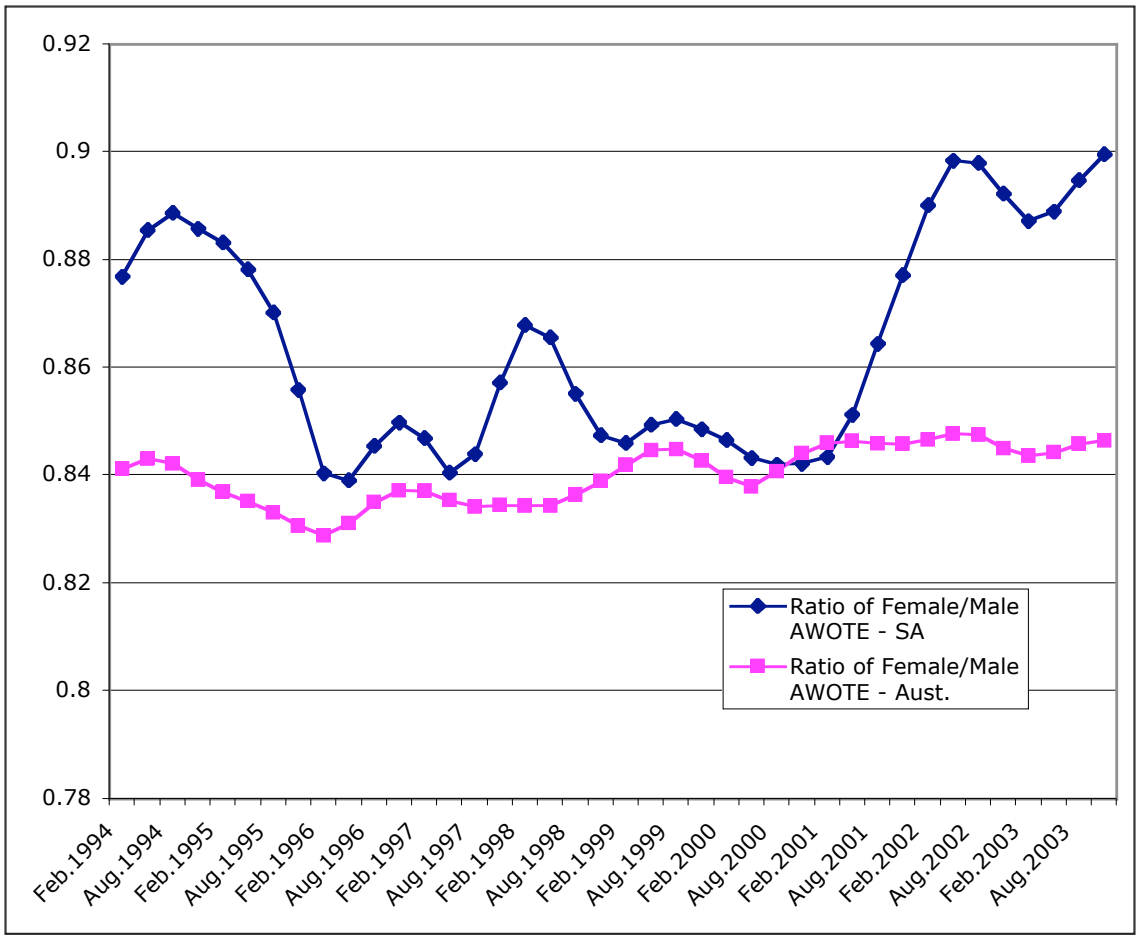
Gender Pay Equity

Figure 6 shows the ratio of female to male average weekly ordinary time earnings of adult full-time employees (excluding juniors and overtime). The figure shows that at the national level pay equity remains stalled, with Australian women earning around 85 per cent of men's earnings. This persistent inequity has led state governments in NSW, Tasmania, Queensland, Western Australia and, in late March 2004, Victoria, to establish

enquiries into gender pay in equity, and adopt legislative and other responses to narrow the gender pay gap.

In South Australia the ratio of female/male earnings was higher than the national average in early 1994. It then declined from 1996 and stayed close to the national average until early 2001. Since then it has moved ahead of the national ratio.

Figure 6: Ratio of Female to Male Average Weekly Ordinary Time Earnings of Full-time Workers, Australia and South Australia, Trend Estimate



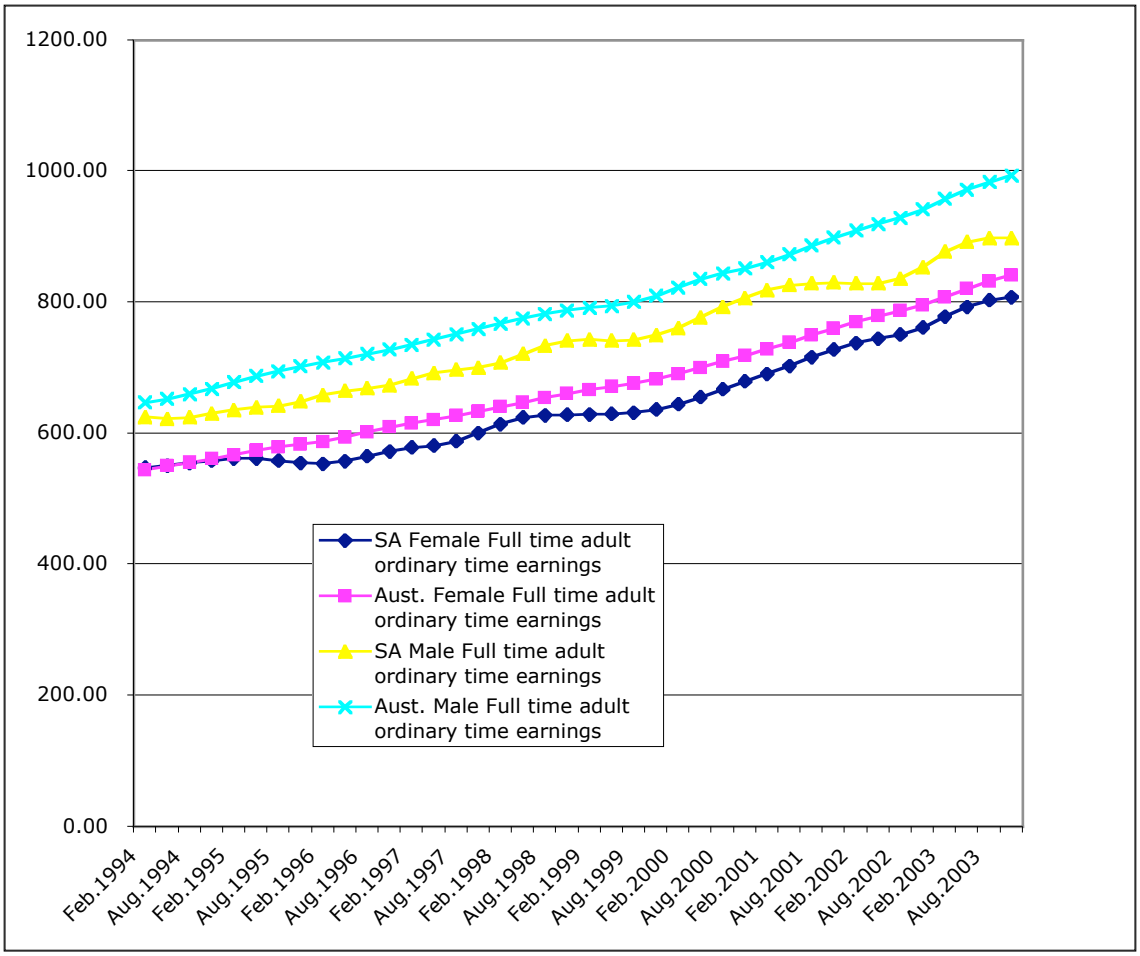
Source: ABS Cat. No. 6302.0

Unfortunately the improvement in the ratio since early 2001 reflects a deterioration in the relative pay of South Australian men, rather than a relative advance for South Australian women. This is illustrated in Figure 7 which shows that South Australian women's pay – while lower than the Australian average – has steadily kept pace with the rate of increase of Australian women, while South Australian men's rate of increase has fallen behind since early 2001.

In both the state and federal spheres, several industries in which women are concentrated have a low incidence of enterprise bargaining, notably retail trade, accommodation cafes and restaurants, and personal and other services. In both sectors, wage outcomes have tended to lag behind the more male-dominated pace setters. In the retail sector in South Australia, for example, employees in the large retailing firms are generally covered by federal enterprise agreements while many who work in smaller workplaces are left outside formal bargaining entirely.

Quesetions of gender pay inequity, an dlow pay in feminised occupations an dindsutries covered by common rule state awards are being assertively addressed in other states. Unfortunately, the Bill as currently drafted takes only limited steps in this direction.

Figure 7: Average Weekly Full-time Adult Earnings, Men, Women, Australia and South Australia, 1994-2003



Source: ABS Cat. No. 6302.0

The Case For Reform: Pay, Security, Skills, Population, Family Formation and Work/Life Balance

What of the future of the South Australian labour market and its skills and labour supply prospects? The state faces several key challenges which industrial regulation can affect for better or worse, with varying degrees of purchase. A good case for reform in South Australia exists.

Firstly, industrial regulation needs to ensure a timely, relevant set of industrial standards that fosters a growing labour market. The number of working age South Australians is projected to begin declining within the next ten years, well before it does so in other states or Australia as a whole. The state's population is relatively old. The total fertility rate in the state is 1.67, well below the national rate of 1.72. The crude birth rate in the state is the lowest in the country (ABS Cat. No. 3301.0, 2001). The state economy is likely to begin to face labour and skill shortages in the next few decades. South Australia will meet intense competition in attempting to attract new workers, at a time when skill and labour shortages are projected in many parts of the industrialised world and elsewhere in Australia. A labour market which offers attractive pay and conditions, and is underpinned by a comprehensive safety net with attractive rates of pay and conditions is important in this context.

Theses problem will not be assisted by the state's lower wage regime. What is more, they will be exacerbated by the state's poor regime of work/family arrangements. Many South Australian women attempt to balance their work and family commitments by working part-time, a great number on terms that are casual. Many women cannot easily find affordable, quality childcare (including in country areas).

Flexibility at work and access to maternity, parenting and family leave are very important to more and more working South Australians, but they are often inaccessible or below community standards (Pocock 2001). For example, women employed in the South Australian public sector have the smallest amount of paid maternity leave of any public sector workers in Australia: just four weeks.

In terms of balancing work and family, only a small proportion of South Australians felt that things were improving in 1995 based on AWIRS data: the balance had improved for only 12 per cent since 1990, while it deteriorated for 28 per cent (the national figures were 14 and 26 per cent respectively) (Table 4).

Table 4: Quality of Working Life, South Australia and Australia, 1995
Proportion indicating 'Gone up' over the past 12 months

	SA	Australia
	(per cent)	(per cent)
Satisfaction with work family balance	12	14
Stress in job	53	50
Effort into job	60	58
Pace at which you do your job	48	46
Your chance to get a more senior job	16	18
Satisfaction with job	27	30

Source: unpublished AWIRS data

A smaller proportion of South Australians felt that their job satisfaction had gone up (27 per cent compared to 30 per cent nationally).

While these differences are not large, the trend is persistently in the negative for the state. This occurs against an overall background of growing pressure in Australian workplaces where half of all workers report increases in stress. It seems that the quality of working life on a range of indicators is deteriorating for many South Australians, and appears to be doing so at a slightly faster rate than in other states. As we have discussed above, there are few signs of any compensating increases in earnings in the state to make up for the lack of skill development, career opportunities, family-friendly provisions or higher perceptions of stress.

These factors partly explain the lower rate of labour market participation amongst South Australian women, and they give a solid rationale for improvements in South Australian arrangements for working carers by means of industrial regulation and other measures.

The South Australian workforce is relatively under-qualified: in 2002 51 per cent of the South Australian labour force aged 25-64 years (including both employed and unemployed) had a post-school qualification, compared to 55 per cent nationally.

The problems of under-qualification, poor work/family provisions and a low skills base affect the state's productivity. A perception of limited career prospects also affects future migration and the capacity to retain existing residents. Based on 1995 AWIRS, South Australian workers had more negative assessments of their chances for promotion, on average, than in any other state: 19 per cent felt that their chances of a more senior job had gone down in the past year, compared to a national proportion of 15 per cent. And more felt insecure: a third of South Australian workers in the survey felt insecure in their workplaces compared to 29 per cent nationally (AWIRS95).

Clearly, the states industrial relation system faces challenges in meeting the changing structure of employment and the labour force in the state, especially in an international environment of competition for labour. Low pay, insecure employment, new

forms of employment, limited prospects for promotion, a low skills base, and a poor work/family regime, are issues that the industrial arrangements in the state partially shape, and must help reshape. The proposed Bill meets some of these challenges.

The Proposed Changes in Industrial Regulation

The main provisions of the Bill include or allow:

- New objects in favour of 'equity and fairness' and 'secure employment'. Such objects recognise the growing insecurity of employment in some labour market sectors and reinforce the importance of fairness in labour law;
- Awards of general application – which will provide a less porous safety net to capture those outside traditional employment arrangements or award or agreement coverage;
- More effective powers for the Industrial Relations Commission to meet some aspects of the changing employment situation of South Australians, while not changing the overall thrust of the system and its growing reliance upon enterprise agreements;
- Continuing emphasis upon practical legislation, avoiding over-regulation and prescription as characterises the *Workplace Relations Act 1996*;
- Deeming provisions that respond to the growth in classes of workers who are - in form and function – employees, but treated as self-employed contractors, in some cases as a means of evading recognition of their rights. Similar rights already exist in some states;
- Non-discriminatory treatment of labour hire employees: where they work alongside others, they should be paid similar rates. This meets a basic test of workplace fairness: a single rate for like work;
- Greater powers for inspectors: these will allow the more efficient pursuit of abuses of the system of regulation. They may see an improvement in enforcement that will ensure that award-abiding employers are not undercut by the illegal behaviour of unscrupulous competitors;
- The power to make multi-employer agreements: this will be of assistance to some small businesses who are looking for efficiencies in agreement making;
- 'Best endeavours' bargaining: giving some scope to the Commission to ensure efficient and timely agreement making, constraining both employers or employees from obstructive behaviour in bargaining;
- Some scope for the Commission to intervene in relation to enterprise agreements where there are significant disputes. These powers are quite limited;
- A limited principle in relation to equal remuneration in awards. Confined to awards it may not have much real effect upon longstanding gender inequities many of which are outside awards, as more expansive arrangements in other states recognise;
- Access to some carer's and bereavement leave for all employees;

- Access to some remedy in the case of a harsh, unjust of unfair contract. In an environment where employment contracts are more varied in form and content, it is appropriate to have a general remedy to protect against contracts that are significantly inferior to established standards, especially where they encourage or countenance unsafe working practices (like driving long hours or other implicit terms);
- A less constrained right of entry of union officials. Given the significant fall in union density in South Australia, it is appropriate to make union contact more practically feasible without disruption to workplaces.

These are not dramatic amendments to South Australia industrial law. They continue a well established tradition of gradual amendment. Many follow established interstate precedents. They are unlikely to change the main means of setting pay and conditions for South Australians, or result in marked changes in overall pay rates or significantly change employment rights. They will, however, strengthen the industrial safety net, improve compliance and permit the updating of awards and move towards more equitable provision of employment conditions.

Will the Bill Cost Jobs? The Access Economics' Argument

Business SA commissioned Access Economics to analyse the potential impact of the Bill on employment, investment and economic prospects in South Australia. The Executive Summary of the report states that they have undertaken analysis to 'identify areas of the Bill which may produce negative economic consequences' (Business SA, 2004: 8). They have not, it seems, given any consideration to the positive consequences that the Bill may bring about.

The Access Economics argument has two main elements:

- First, they see two potential negative consequences from the Bill: additional on-costs, and reduced flexibility. They describe these as arising from the 'broad intent' of the Bill. Importantly, however, they do not offer a detailed assessment of specific provisions of the Bill that might have such effects. Nor do they offer any quantification of these effects. They are, in short, *assumed*.
- Having been assumed, Access Economics then refer to a body of academic literature to argue that increased labour costs cause job losses.

In fact, neither of these two propositions is proven. The first step in the argument - that the Bill will drive up costs - is an assumption made in 'broad terms' without detailed consideration of the specific provisions of the Bill and their likely cost effects. No detailed analysis is offered in its support. Exactly how the Bill might affect labour costs is unclear from the analysis presented by Access Economics: indeed they say that

they find it difficult to assess 'the likelihood of the Bill raising unit labour costs' given limited information and time.

The second step in the argument is also flawed: the literature around linkages between marginal changes in labour costs and employment is far from settled on this issue. Relevant research was exhaustively examined at the 2003 and 2004 Safety Net hearings of the Australian Industrial Relations Commission, which heard evidence from employers and unions detailing recent research about the relationship between labour costs and employment.

Dowrick and Quiggan's 2003 evidence to the AIRC concluded that 'Econometric studies on the impact of changes in minimum wage have yielded ambiguous results. The work of Card and Krueger, and subsequent studies using similar methods suggests that, in some cases, increases to minimum wages may have no effect, or even a positive effect on unemployment' (AIRC, 6 May 2003, PR002003: para 152).

Experience in the UK where recent changes to the minimum wages have increased wages especially for the low paid, does not suggest that these increases have cost jobs: instead the sectors most affected by the minimum wage have 'generally been stronger than average' in their employment growth (AIRC, 6 May 2003, PR002003: para 154). The 'uprating' of the minimum wage in the UK in 2001 had no inverse employment impact according to the Low Pay Commission (Stewart M.B., 2003, cited in AIRC, 6 May 2003, PR002003: para 154). In 2003 the AIRC concluded that increases in labour costs for the low paid had not resulted in significantly slower employment growth:

> Having regard to the various studies and the research findings of the UK Low Pay Commission, it is evident that there is a continuing controversy amongst academics and researchers as to the employment effects of minimum wage improvements. As noted by the UK Low Pay Commission, the research results often conflict. That Commission concluded, from the research undertaken for it, that negative effects do occur but that those effects are modest and confined to specific groups. Taking all of the research into account, it has not been established that moderate increases in the wages of the low paid, of themselves, will diminish aggregate employment outcomes, although some studies suggest that some negative effects might occur for employees receiving the minimum wage (AIRC, 6 May 2003, PR002003: para 161).

In awarding the 2003 Safety Net Adjustment, having weighed recent international and Australian studies, literature and the materials tendered by employers and unions, they reached the following conclusions:

> • a general assessment of employment data, including a focus on more heavily award reliant sectors, does not disclose any basis to suggest that past safety net adjustments have had significant adverse employment effects;
> • there remains a continuing controversy amongst academics and researchers as to the employment effects of minimum wage improvements. As noted by

> the UK Low Pay Commission the research undertaken often produces conflicting results;
> • the various studies do not establish that moderate increases in the minimum wage, of themselves, will diminish aggregate employment effects;
> • whilst there is no automatic relationship between the two, real wage growth can adversely affect aggregate employment growth. The extent of such effect will depend upon the prevailing economic circumstances and the extent of the real wage movement. (AIRC, 6 May 2003, PR002003: para 175)

The AIRC revisited this issue in its recent April 2004 AIRC Safety Net Decision (PR002004), where it concluded that no new evidence had been brought forward to resolve the 'continuing controversy 'amongst academics and researchers about the employment effects of minimum wage improvements' (2004: 68). The conclusion of Access Economics in its report for Business SA that on balance 'an increase in wages (without offsetting productivity gains) will reduce employment' is contradicted by some significant international and Australian studies and is not supported by the comprehensive analysis of the AIRC.

However, Access Economics proceed in their analysis to assume a general 1 per cent increase in labour costs arising from the Bill, and consider how this projection might affect employment at a macro level. They conclude that '*if* labour costs in South Australia were to rise by 1% and be unsupported by productivity gains, the result *may* be a loss of 1,700 jobs within three years' (my emphasis). This statement is hedged with uncertainty. What is more, it takes no account of different sectoral effects that the Bill might be expected to have.

Against this, on the positive side, Access Economics point out that Adelaide at present ranks competitively in international business costs indexes.

Two things about this analysis are striking. Firstly, it is provisional in its own terms: it does not predict a fall in employment but sees this as a possibility that 'may' arise. Secondly, the analysis is tendentious. It rests on unsubstantiated assumptions and a literature that is, in fact – at best – inconclusive about employment effects, as the AIRC have consistently concluded in relation to links between wage costs and employment effects. The figure of 1700 possible job losses in South Australia as a result of the Bill cannot be regarded as a serious prediction, as it is underpinned by unsupported assumptions and hedged with equivocating language and uncertainty. The predicted loss 1700 jobs is unsubstantiated.

The absence of any attempt to weigh up, in detail, *how* and *whether* the Bill will affect labour costs, means the analysis lacks a serious basis. It assumes that the Bill will have an affect on labour costs across the South Australia, further assumes that this will be at the level of 1 per cent, and yet further assumes that this will impact negatively across the economy. This analysis is not convincing. The cost and employment effects of the Bill are unknown, and no case has been made that they will be negative.

Will the Bill Impose New Rigidities?

The Bill takes a number of steps to repair or make stronger the safety net underpinning employment in the state. Awards of general application have the potential to ensure fair protection for many South Australian employees whose employment conditions are outside the reach of awards and agreements. Steps to repair the award system, ensure its effective enforcement, and permit unions access to sites to pursue compliance, will not introduce new rigidities, but ensure that South Australia does not build economic growth upon a growing underclass of underpaid, poorly protected employees or pseudo-employees.

Will the Bill undermine Enterprise Bargaining?

The Bill seems likely to have little effect upon Enterprise Bargaining, which is likely to continue to grow as a main means of wage fixing in the state through both federal and state systems.

Should the Bill Support Collective Bargaining and Unionisation?

International evidence suggests, on balance, that collective bargaining has beneficial impacts upon many elements of macroeconomic performance. Similarly, unionisation is not associated with lower employment outcomes or poorer economic performance. Aidt and Tzannatos, writing for the World Bank, recently reviewed 1,000 primary and secondary studies of the relationship between unionisation, collective bargaining and economic performance. They find that:

> Countries with highly coordinated collective bargaining tend to be associated with lower and less persistent unemployment, less earnings inequality and wage dispersion, and fewer and shorter strikes compared to countries with semi-coordinated (for example, industry-level bargaining) or uncoordinated (for example firm-level bargaining or individual contracting) collective bargaining. In terms of productively growth and real wage flexibility, countries with highly coordinated collective bargaining tend to perform slightly better. (2002: 12)

This slightly better performance did not persist in the 1990s compared to the 1970s and 1980s. However, they conclude that:

> High union density and bargaining coverage do not contribute to poor unemployment performance so long as they are complemented by high bargaining coordination (particularly among employers). (2002: 13)

This analysis suggests that union organising or collective bargaining are not generally associated with negative economic performance. The study by Aidt and Tzannatos shows that the relationship between unionisation and collective bargaining on the one hand, and economic outcomes on the other, varies widely according to local circumstances. However, several studies they survey find a positive association between

unionism and economic growth, and the effect of unions on a reduction in the gender pay gap and overall pay equity is 'very robust' (Aidt and Tzannatos, 2002: 7). Voluntary job turnover tends to be lower and job tenure tends to be longer in unionised firms (Aidt and Tzannatos, 2002: 9).

In addition, there are strong arguments in favour of both unionisation and collective bargaining in terms of meeting the 'asymmetry in contracting between individual workers and employers and the concern for basic workers' rights' (Aidt and Tzannatos, 2002: 5). These concerns explain the inclusion of the right of freedom of association and the right to collectively bargain in the five core International Labour Organisation standards.

Will the Bill Create a More Sustainable Labour Market?

The Bill's object of creating a more secure and fair labour market through an effective safety net, with some priority attached to improved work and family conditions, and greater security at work, may have the effect of attracting more into paid work and redressing the lagging rate of participation in the state. It is unlikely that further progress down the path of a low wage, insecure and family unfriendly work regime in the state will have anything other than a negative effect upon labour supply, adding to labour shortages that already are predicted.

Unification of Industrial Relations Regulation

The argument for greater coordination between states and the federal system is not undermined by these reforms in South Australia. Given political realities, such unification is unlikely to be achieved by the imposition of a federal 'model' upon the states, but is more likely to be achieved by steady negotiation towards compromise, reflecting both state and federal standards. In this light, many of the proposed South Australian reforms take the state closer to established approaches in other states. Thus the reforms do not add to disunity. The challenge to move to a unified system is not made more difficult than it already appears.

International context

The South Australian economy is located within international labour and product markets that are increasingly competitive. There is downward pressure on labour standards in many industrialised economies. This has provoked considerable international interest in the need to increase economic output whilst also fairly sharing its outcomes, including through 'employment security and equal opportunity', as the ILO determined as a key objective of industrial regulation in its constitution many decades ago.

The ILO's most recent international review of globalisation specifically urges that global competition should not occur at the cost of fairness (ILO 24th February 2004). That report recognises the positive contribution of global competition, but cautions that 'Seen through the eyes of the vast majority of men and women, globalization has not met their simple and legitimate aspirations for decent jobs and a better future for their children'. The report recommends the achievement of core labour standards like job

security and equal opportunity as part of the process of ensuring 'decent work for all' (ILO, 2004).

OECD studies of the relationship between economic growth and other core labour standards suggests a positive link between the core labour standard of the right to organise in unions and to bargain collectively, and rates of GDP growth per capita, reinforcing the results of the World Bank studies discussed above (OECD 1996).

In Australia, Dowrick and Quiggan conclude from their analysis of wage regulation and employment outcomes, that 'countries with regulated labour markets have been able to resist the global trend towards rising inequality without suffering either higher unemployment or lower employment that countries with deregulated labour markets' (2003: 1).

In sum, the effects of labour regulation vary widely around the world. A regulated industrial system with effective safety nets is not generally associated with employment declines and many examples exist of regulated employment coexisting with healthy employment growth.

Conclusion: A Modest Step in the Right Direction

In their study for the World Bank, Aidt and Tzannatos state 'Of course, labor regulation introduced at a time when particular circumstances prevailed should be reconsidered when economic conditions change' (2002: 14). Changes in the South Australian labour market and concerns about the state's future labour supply make such reconsideration timely now.

The prospect of widening pay gaps between South Australian workers, between the top and the bottom of the labour market, and between the state and the nation as a whole, must be a source of concern in the current context. We are witnessing a widening disparity in earnings of South Australians relative to the national average, a growing gap between unionised and non-unionised workers, and between those working under informal, less regulated contracts and those in traditional regulated work. The growth and high level of casual work must be a particular cause for concern. Similarly the lack of work/family supports in many South Australian workplaces works against the labour market participation of women in the state.

South Australia must avoid becoming the industrial poor cousin of Australia: a state of low pay, widening inequities, deteriorating working conditions, with an increasingly insecure workforce and an inadequate safety net. This is a long way from what is possible, what has been achieved in the past, and what innovative South Australian policies and action could ensure for the future. Significant change in industrial law on other issues – like excessive working hours, employment security, pay equity and work and family – might well be justified. However, in its current form the Bill takes a modest step in the right direction.

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