

# 20

## CONCLUSION: WAGES AND INCLUSIVE GROWTH

Andrew Stewart, Jim Stanford and Tess Hardy

### **Why does wage stagnation matter?**

When we set out to produce this book, we had four broad questions in mind. What is the wages crisis? Why is it happening? Why does it matter? And what should we do about it?

The first two questions were addressed by the various chapters of this book — although given the complexity and multidimensionality of the wages crisis, there is obviously room for further research and dialogue to refine those explanations. The last question — what to do about it — is one to which we return below. But before that, it may be helpful to revisit the third question, in light of the rich and varied contributions to this collection: why does it matter that we have a wages crisis in Australia, and why should it demand the attention of policy makers and the public at large?

Most obviously, wages matter because they are how the vast majority of Australians support themselves. Compensation of employees constitutes far and away the biggest single source of personal income for Australian households. It accounts for two-thirds of all primary household income, or around A\$875 billion

## THE WAGES CRISIS IN AUSTRALIA

in 2018.<sup>1</sup> That is five or more times larger than any other major source of personal income, including small business income, investments and business profits. Moreover, some other forms of income (such as superannuation) depend on wage levels, and this magnifies the ultimate impact of wages on lifetime household incomes. So there is no factor more important in determining the financial wellbeing of Australian households than how much workers are being paid.

In turn, the centrality of wages and salaries to household incomes ensures that many other macroeconomic and fiscal variables depend on wage trends, as well. Consumer spending, for example, is tightly correlated with wages and salaries, again for obvious reasons. The stagnation of wages has inevitably undermined the strength of consumer spending, which makes up around one-half of total GDP. For a while, households responded to the deceleration of wages by increasing personal borrowing, prolonging previous vibrant growth in consumption. But borrowing can only continue for so long — and now, after a decade of unprecedented growth in consumer credit, Australians are among the most indebted consumers in the world.<sup>2</sup> As Australian households now pare back their borrowing, the slowdown in credit growth will exacerbate the impact of continued wage stagnation on consumer spending. In the five years from 2012 through 2017, real per capita household consumption grew by under 1% per year — less than a third of the pace of the mid-2000s. Such sluggishness in the biggest component of aggregate demand has been a significant drag on overall GDP growth, and hence job creation.

The impact of stagnant wages on household financial stability goes further than just subdued consumer spending. The resulting precarity in household financial stability is another, potentially more dangerous consequence of flatlining wages. Household indebtedness is most commonly measured by the ratio of debt to household disposable income. According to the Reserve Bank of Australia (RBA), that ratio reached a record 190% by mid-2018.<sup>3</sup> The numerator of that ratio grows with new borrowing, which has accelerated in the wake of flat wages, easy credit and rising house prices. But many observers forget that the denominator of the ratio — the income of households, the crucial determinant of their capacity to carry debt — is just as important to the debt ratio as the numerator. The deceleration of wages, coincident with the acceleration of indebtedness, has thus contributed greatly to rising financial fragility. It both compels households to borrow, while simultaneously undermining their capacity to service their resulting debts.

Stagnant wages have contributed to the growth of public indebtedness, as well. Both personal income tax revenues and GST revenues (tied to consumer spending) have been held back by the slowdown in wages. And the serial failure of wages to live up to the optimistic forecasts built into government fiscal projections

## LABOUR REGULATION IN AUSTRALIA

has been a significant factor behind the failure of State and Commonwealth governments to meet their budget targets in recent years.<sup>4</sup>

Another important consequence of very weak wage growth for financial stability is its impact in suppressing overall inflation in the economy. In turn, this constrains the actions of monetary policy authorities. The Reserve Bank presently targets a rate of consumer price inflation of 2.5% per year. This is considered to be 'optimal' inflation, enough to lubricate necessary relative price adjustments while preserving long-run confidence in the value of money. In targeting that desired rate, the RBA establishes a 'range' of plus or minus one-half percentage point, so that its immediate interest rate decisions are not unduly influenced by short-term price movements. As discussed in Chapter 2, Australian wage growth first started decelerating dramatically in 2012. From the beginning of that year through September 2018 (a total of 27 quarterly observations), year-over-year national inflation fell below the RBA's target 23 times, while rising above it just three times. In 16 of the 27 quarters, inflation even fell right below the lower bound of the broader target range (below 2.0%); it never rose above the upper bound. Indeed, average inflation over this whole period was just 1.9% — also below the lower bound of the RBA range. RBA leaders have acknowledged that very weak wage growth is perhaps the major factor in the Bank's inability to meet its inflation target.<sup>5</sup> Low wages are thus forcing the RBA to keep interest rates lower than normal (with consequent implications, including for savings, superannuation and continued debt growth). It could even be argued that low wage growth is contributing to an erosion of public confidence in inflation targeting itself.

Another important consequence of stagnant wages is the growth of personal income inequality in Australia. Even if all workers experienced slower wage growth to the same degree, the fact that wages have consistently lagged behind productivity growth is itself leading to increased inequality. The resulting decline in the labour share of total national output means that a larger share of GDP is now paid out in investment income and business profits. Those forms of income are disproportionately concentrated among higher-income households — since, by definition, the returns to financial wealth are disproportionately received by the wealthy! Thus the shrinking share of national output paid out in wages (as documented in Chapters 2 and 3 of this book) itself translates into greater inequality.

But in practice, not all Australian workers have experienced the effects of wage stagnation evenly. There are still some workers (employed in particularly vibrant industries or occupational categories) whose wages have continued to grow at more typical rates. Other groups have experienced outcomes even worse than the average

## THE WAGES CRISIS IN AUSTRALIA

— and many have experienced outright declines in real earnings. The result has been an increase in income inequality, as measured by various indicators.<sup>6</sup>

Apart from the direct hardship experienced by Australian households whose labour income has stagnated and is lagging behind their costs of living, there is perhaps an even bigger consequence from the sustained deceleration of wages for the essential social compact that underpins our society. Australians have typically attached great importance to the principle of a ‘fair go’. And Australian economic and social policy traditionally focused on ensuring that the prosperity of rapid post-war growth was broadly shared through society. In recent years, however, that traditional Australian ideal has seemed further and further divorced from reality. Facing stagnant pay packets, rising prices for essentials and pervasive insecurity, many Australians are losing confidence that they will ever share fully in the fruits of economic progress. That pessimism affects their attitudes and behaviour across a whole host of economic variables and decisions, including decisions about education, home purchases and career choices. For example, if Australian workers have no realistic expectation that rising productivity will ultimately be reflected in their standard of living, why should they care about or support measures (like automation and innovation) that could boost productivity growth in the future?

More generally, the damage from a breakdown in the implicit expectation that economic prosperity will be broadly shared could extend well beyond the economy, and eventually jeopardise the stability of our social and political institutions. The rise of divisive and xenophobic ideas in many communities, and the fragmentation and extremism which now characterise much political discourse, can at least partly be understood as consequences of the loss of confidence among Australians that they have a realistic opportunity to share in future prosperity.

For all these reasons and more, we share the conviction of the contributors to this volume that the wages crisis is one of the most urgent and important items on Australia’s national policy agenda. Without proactive efforts to restore predictable wage growth, and to stabilise and rebuild workers’ collective share of the economic pie, we fear an intensification of these negative economic, social and political consequences. We do not expect that ‘market forces’ alone can overcome wage stagnation and restore normal distributional patterns. It will require corrective action to resolve the problem. And so it is to exploring the range of possible policy responses to the wages crisis that we now turn. We start by summarising and cataloguing the proposals advanced by our various contributors in their respective chapters. Then, seizing the editorial prerogative, we advance our own agenda for a policy response to the wages crisis that we believe would be both effective and feasible.

### Our contributors' solutions

One of the most consistent themes to emerge from the contributions in this book is the loss (or lack) of collective power available to Australian workers. In Chapter 7, David Peetz advocates changing the rules for bargaining and wage determination to enhance employee power. He suggests that this could be done by, among other things, simplifying bargaining procedures, removing limits on multi-employer bargaining, bringing the right to strike into line with international standards and ensuring that negotiated conditions remain in force after the expiry of enterprise agreements. But he also notes the need to go further in making changes to broader economic structures, including by reducing both the power of the financial sector and the incentives that drive antisocial behaviour by corporations.

For their part, Stephen Kinsella and John Howe agree in Chapter 3 that if the erosion in the bargaining rights of Australian workers can be reversed, the international evidence suggests that there could be a positive impact on both wage levels and economic growth. This is a theme picked up by Damian Kyloh in Chapter 16. He argues for the repeal of laws limiting the scope, content or level at which collective bargaining can take place, and in particular for the capacity to 'extend' collective agreements to cover an entire industry or sector. He also proposes making higher collective bargaining coverage an objective of the *Fair Work Act 2009* ('the Fair Work Act'), bringing Australia's laws concerning industrial action into line with international standards, and expanding the Fair Work Commission's power to conciliate and arbitrate disputes.

John Falzon, too, makes the point in Chapter 17 that new rules are needed to redress the power imbalance between workers and employers, including through the restoration of a right to strike. But he also highlights the need to challenge the underlying structure of the labour market by reconfiguring the social security system. It is only through organisation and solidarity, he suggests, that it is possible to repair the damage wrought by neoliberalism and to tackle inequality.

Collective bargaining is not the only method of setting wages. In Chapter 5, Tim Lyons advances various proposals for changing the way that minimum wages are fixed under the Fair Work Act. He suggests recasting award rates 'as a foundation, not a safety net', and changing the wage-setting criteria to put more emphasis on the needs of the low-paid and less on macroeconomic factors. A 'living wage' target of 60% of median wages should be adopted, with the Fair Work Commission given the power to make adjustments over a period of years to reach that figure — a proposal also supported by Damian Kyloh. Lyons also

## THE WAGES CRISIS IN AUSTRALIA

contemplates allowing States or even local councils, as in the US, to set higher minimum wages than those prescribed federally.

In their discussion of the gender pay gap in Chapter 6, Sara Charlesworth and Meg Smith call for reforms to the Fair Work Act's equal remuneration provisions, including by making gender pay equity an explicit object of the legislation and adopting an equal remuneration principle grounded in the concept of gender-based undervaluation. In addition, they propose broadening the protections offered by awards and the National Employment Standards, including for casual and part-time employees, providing fairer skill and classification structures, and improving the regulation of working time. (This broader emphasis on tackling insecure work is also supported by Damian Kyloh, who advocates higher penalty rates and casual loadings, as well as an expanded right for workers to transition to regular employment.) Charlesworth and Smith highlight the importance of collaborative action in both raising awareness of and addressing the gender pay gap, using recent developments in New Zealand as an illustration of what can be achieved.

In Chapter 10, Kym Sheehan disentangles the components of executive pay and uncovers some of the underlying drivers for corporate decision making in large, listed companies. The fact that the variable pay of senior executives often hinges on achieving cost savings to boost the bottom line means that the wages and conditions of non-executive employees are in the firing line. Whether it might be feasible or appropriate to change those incentives, by seeking to regulate the structure and vesting of executive bonuses and variable pay, is clearly something that warrants further consideration.

The critical role of government in controlling or influencing wages is the main theme in two particular chapters. In Chapter 8, Troy Henderson calls for an end not just to public sector austerity and what he calls 'surplus fetishism', but to privatisation and the outsourcing of government services, the imposition of arbitrary 'efficiency dividends' and the use of public sector wages caps. More positively, he notes the possibility for public sector employment and investment to be used 'as an essential counter-cyclical macroeconomic policy tool'. Fiona Macdonald and Michael Pegg's more specific concern in Chapter 9 is with 'marketised care economies' such as the NDIS, or other areas where services are funded by government. In such contexts, they highlight the importance of bringing government to the bargaining table, and also looking at the potential for sector-level bargaining. More generally, they suggest that it is time to question the neoliberal assumption that competitive tendering and the commercialisation of social services will produce the best outcomes for people needing public support.

## LABOUR REGULATION IN AUSTRALIA

A further theme to emerge in the book is the impact of particular business models on wages and employee bargaining power. In Chapter 11, Josh Bornstein explores the myriad ways in which the fracturing and reconfiguration of work have played out in the public and private sectors. He argues that while these business strategies can bolster profits and deliver consumer benefits in the form of cheaper goods and services, they also have the tendency to perpetuate wage cuts, wage suppression and ‘wage theft’. In particular, fissured work inhibits collective bargaining, by weakening workers’ bargaining power and placing a misplaced emphasis on the direct employer (as opposed to the lead business that is calling the shots). Further, by steering away from direct employment, lead companies may effectively shield themselves from the risks and responsibilities associated with workplace relations compliance. As he has previously argued, in order to achieve fair wage outcomes for these workers it is critical that sector-wide bargaining is allowed and encouraged.<sup>7</sup> David Peetz, too, emphasises in his chapter the importance of preventing employers from using new forms of organisation to evade their responsibilities.

In Chapter 12, Keelia Fitzpatrick takes up the particular issue of wage theft, which she describes as ‘intentional wrongdoing by the employer’. She believes that the extent of non-compliance permeating the labour market signals a profound problem with existing enforcement practices. She homes in on the civil penalty regime which applies under the Fair Work Act, arguing that it is not effective in driving compliance or deterring employers from engaging in deliberate contraventions. In her view, making wage theft a criminal offence — as the Victorian Labor Government is proposing to do if re-elected to office — is a step in the right direction.<sup>8</sup> Criminal sanctions would be available against employers and senior managers within a business, as well as third-party entities, such as franchisors. These criminal fines (and possible imprisonment) would be accompanied by an automatic five-year disqualification for any director convicted of a wage theft offence. In addition, Fitzpatrick applauds the way in which conventional and novel organising tactics, such as the use of snap protests, digital tools and social media, have been used to successfully build worker power. These same tools, she notes, have also been effective in amplifying pressure on non-compliant employers and prompting behaviour change.

In Chapter 19, Craig Shepherd and Penny Heard discuss the risks to investors posed by unsustainable business models and systemic non-compliance with wage laws. To enhance the regulatory role played by investors and markets, they argue that it is critical for academics, policy makers, communities and activists to sustain

## THE WAGES CRISIS IN AUSTRALIA

pressure on companies to commit and comply with Environmental, Social and Governance principles, increase transparency and enhance information flow.

Non-compliance is also a theme that marks Chapter 13. Iain Campbell explores the ways in which an expansion in the numbers of temporary migrant workers, combined with predatory business models and widespread underpayment, have not only tempered wage growth in Australia, but also potentially led to wage decline below the legal floor. Campbell suggests that to address slow wage growth, there should not necessarily be a clamp down on the numbers of migrant workers. Rather, it is essential to plug gaps in the regulatory system, and stem the tide of systemic non-compliance in low-wage industries.

Joanna Howe in Chapter 14 looks at a subset of migrant workers, namely those on a Temporary Skill Shortage visa. Howe explains how the government's decision to freeze the salary floor for these workers over a five-year period has put downward pressure on real wages for temporary skilled migrants. The challenges facing such workers have been further exacerbated by employer non-compliance in certain industries, such as hospitality. She argues for greater public and parliamentary scrutiny of the way in which the entry-level salary threshold affects the effective regulation of skilled migrant workers and the protection of lower-paid Australian jobs.

In Chapter 15, Saul Eslake argues that there is now economic evidence to support the view that globalisation and rapid technological change have contributed to a weakening of worker bargaining power. In turn, this has contributed to the problem of persistent slow wage growth. In light of this, there is a need to reconsider the legal, regulatory and institutional settings which apply to wage bargaining in this country. Further, to address the problem presented by productivity laggards, he believes that part of the solution may lie in enhancing education and training. (The importance to young Australians of a nation-building education and skills strategy is also emphasised in Chapter 18 by Annette Cairnduff, Kelly Fawcett and Nina Roxburgh.)

Eslake cautions, however, that increasing productivity may not necessarily lead to an automatic uplift in real wages. He also sheds doubt on the capacity for a universal company tax cut to facilitate faster wage growth. Instead, he contends that a preferential tax rate for new businesses, as opposed to small ones, may be more beneficial in stimulating increased innovation, investment, job creation and wages. According to Eslake, the advantage of this proposal is that it has a more limited impact on foregone government revenue and is unlikely to create perverse incentives (which tend to afflict policies targeting small businesses).

### **An agenda for reform**

Having summarised the proposals made by the other contributors to this book, it is now time as editors to nail our own colours to the mast and indicate how *we* believe the wages crisis should be addressed.

In thinking about this task, we have opted to focus on what might broadly be done within the existing social, economic and regulatory framework. This is essentially for reasons of pragmatism. As discussed above, the wages crisis must be tackled directly and urgently, to avoid the economic and social consequences of continued erosion in household living standards. Hence we propose below an agenda to boost wage growth that we think is immediately viable, even within current political constraints. Other, more far-reaching policy responses are also worthy of continuing research, consideration and public debate; but the proposals we advance below seem to us to be obvious, powerful and feasible. We stress, too, that our proposals are not necessarily supported by every contributor to this book, and nor is our agenda a comprehensive list of possible reforms. Nonetheless, we feel that important and sustainable improvements in wage growth could be achieved through focused, pragmatic action in some or all of the following five areas.

### **Ending wage suppression by government**

Governments are the largest individual employers in the whole economy. And along with jobs in government-funded programmes and agencies, the broader public sector accounts for 15% or more of total employment. So the direct importance of public sector wage trends to overall macroeconomic wage trends is undeniable. Moreover, government sends a crucial signal to other employers with its own wage policies, which are high-profile and influential. The contradiction between the hand-wringing of political leaders over the disappointing trajectory of wages, and their own conscious actions to directly suppress wage growth within such a large and important segment of the labour market, is both galling and counterproductive. How can workers and employers take seriously the urgings of leading figures like Prime Minister Morrison or RBA Governor Lowe that wages should grow faster, when the government itself remains determined to freeze the wages it pays to its own workforce?<sup>9</sup>

We are proposing an end to public sector wage suppression as our first category of proposed reforms because it is something that governments at every level can do immediately, without any need for bigger structural or legislative changes. Governments should indicate, through their actions as well as their rhetoric, that reigniting wage growth is considered a positive and central goal of economic and

## THE WAGES CRISIS IN AUSTRALIA

fiscal policy. Most directly, this requires governments taking their feet off the brake pedal of wage growth in their own employment practices. The restrictive caps on wage increases that have been implemented since the Global Financial Crisis (GFC) in several jurisdictions (including the Commonwealth government's Workplace Bargaining Policy) are undermining a return to more traditional wage growth, subverting principles of free collective bargaining and sending a powerful signal to the rest of the economy that the problem with wages is that they are still somehow 'too high'. Those wage caps were initially justified by governments as a response to purportedly urgent fiscal imbalances experienced in the wake of the GFC. That argument is clearly no longer valid (if it ever was) in light of improving budget balances in most States and the Commonwealth.

But the influence of government wages policies extends well beyond the realm of the public service. Compensation in large segments of broader public and non-government services also depend centrally on government funding and procurement rules, as discussed in Chapters 8 and 9. The fiscal structure established for broader public and community service provision (including in education, health care, disability services, long-term care, employment services and others) has powerful implications for wage determination in those sectors. The introduction and regulation of competitive service delivery models in many of these sectors (such as the new NDIS) must be cognisant of the need to support decent wage growth, rather than being unduly shaped by a presupposition that constraining labour costs is the priority.

Simplest of all, the federal government in particular could indicate in a myriad of other ways its overarching desire that wage growth must be rekindled. Whether it is promulgating a long-overdue increase in the Temporary Skilled Migration Income Threshold (TSMIT), or submitting arguments to the Fair Work Commission that it would welcome higher minimum wages, such action would help to establish a new common sense in Australian economic policy that lifting wages — as opposed to restraining them — is once again a central goal of policy.

### **Revitalising collective bargaining**

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

There are no doubt a great many factors at work here. They include the loss of jobs in traditionally unionised industries, changing public attitudes to collective

## LABOUR REGULATION IN AUSTRALIA

action and the difficulty in organising workers in jobs that are insecure or spread across different organisations in complex business networks. Indeed, it is hard to see any genuine or lasting resurgence in the union movement, unless it is able to develop strategies that can rise to these challenges and rebuild a sense of solidarity at work. The challenges created by financialisation and neoliberal policies, under both conservative *and* Labor governments, have also played their part.

Nevertheless, as many of our contributors have noted, at least part of the explanation for the current wages crisis lies in a statutory framework for bargaining and industrial action that has either been hostile, or at best unsupportive, towards the effective exercise of collective power.

Some of the particular problems noted in Chapters 4 and 7 could be quickly addressed, even without dramatically changing the framework established by the Fair Work Act. For example, it could be made harder for employers to block genuine collective bargaining by making agreements with small and unrepresentative groups of employees, or to use the threat of termination of existing agreements to secure concessions. Limits on the permissible content of agreements could be lifted. The procedures for taking protected industrial action could be simplified, and the capacity for damaging (or, in other words, effective) action to be halted by the Fair Work Commission could be reduced. Where protracted bargaining does not result in a concluded agreement, it should be possible for the Commission to step in and arbitrate, even if there is no threat of significant harm to public safety or the broader economy.

Those would all be worthwhile reforms, and we support them. However, those incremental measures would not address a more fundamental criticism of the current system's near-exclusive orientation around *enterprise* bargaining. In theory, it is legally possible for unions to seek to negotiate sectoral or even regional agreements, with multiple employers. But they cannot require such employers to bargain in good faith, nor place pressure on them by taking protected action. And not only must every employer involved in a multi-enterprise agreement be identified in advance, all the statutory procedures applicable to a single-enterprise deal must also be followed — including separate votes of employees at every organisation. There can be no formal negotiations with representative employer organisations or industry councils.

As Damian Kyloh notes in Chapter 16, there is growing international evidence that the availability of industry or sectoral bargaining is not incompatible with strong economic performance — and indeed may be associated with better labour market outcomes than fully decentralised bargaining. But for Australia to move in that direction, several important choices would have to be made.

## THE WAGES CRISIS IN AUSTRALIA

Simply giving workers the right to take industrial action in support of industry agreements would most immediately benefit stronger unions which have retained the capacity to exert economic pressure. But by and large, these unions are already engaged in enterprise-level bargaining. There might be some extension in bargaining coverage in their industries through a renewed system of industry bargaining, but many other sectors would be left untouched.

It is no doubt for this reason that the ACTU is also pushing to restore to the industrial umpire its former powers to conciliate and arbitrate disputes over the setting of wages and employment conditions, potentially even on an industry-wide basis. Unions without the industrial ‘muscle’ to secure industry-wide settlements could use the threat of compulsory arbitration in the Fair Work Commission to bring employer groups to the bargaining table — and rely on the tribunal to impose an outcome if agreement could not be reached.

It is worth remembering that under the old arbitration system, there was no legal right as such to strike, even if industrial action was in practice freely taken (at least for short periods) as a way of putting pressure on both employers and the tribunal. And while that system could in a sense be categorised as one involving industry-level bargaining, the formal outcomes generally took the form of awards, rather than agreements — and the tribunal retained an overarching discretion to reject any settlements it considered not to be in the public interest.

An important issue must therefore be confronted — how a new system of voluntary agreement making at the industry level would interact with a reinvigorated power of compulsory arbitration. Employer groups have argued, in response to the ACTU’s campaign, that there appears to be no country in the world that has both a system of industry bargaining *and* industry awards.<sup>10</sup>

The discussion over industry bargaining raises many important and complex issues, which can doubtless be worked through with continuing research and dialogue. In the short term, however, one obvious option is to complement the existing enterprise bargaining system with a new stream of industry-level bargaining, at least in sectors where the Fair Work Commission is satisfied that there are practical constraints on the ability of employees and their employers to bargain at the enterprise level. That might be because of a lack of skills, resources, bargaining strength or previous bargaining experience in the relevant sector. Or it might reflect the fact that wages and conditions for a significant number of employees in the sector are controlled, directed or influenced by someone other than their employers (such as a funding body, or the lead or host business in the case of fragmented organisational forms, such as supply chains, franchise networks or labour hire arrangements).

## LABOUR REGULATION IN AUSTRALIA

Under such a system, the Commission would have an active role in supervising bargaining, with the power to involve other interested parties in conciliation conferences. It would also have the power to arbitrate an outcome if, after a defined period, no agreement resulted. The tribunal could be directed to have regard to the terms of existing enterprise agreements in the relevant sector, but also to consider the importance of providing real wage increases. As with single-enterprise agreements, the employees covered by any industry agreement or determination would need to be better off overall than under the safety net awards applicable to their jobs. But the Commission would not otherwise be constrained by those awards in resolving disputes — it could choose, for instance, to lift wages above the legal minimum if the circumstances warranted that outcome.

As it happens, the Fair Work Act already provides for something like this system, in the form of the low-paid bargaining provisions in Division 9 of Part 2-4. Limitations in both the drafting and interpretation of these provisions have in practice precluded their use.<sup>11</sup> But that would not prevent some of the underlying concepts being strengthened and expanded as the basis for a new bargaining stream. That said, we see no reason why industry bargaining should be limited to those who are ‘low-paid’ (a term of uncertain meaning that is not defined in the current legislation). And, unlike the current provisions, we believe it would be appropriate for a right to take protected industrial action to be available.<sup>12</sup> We would also envisage individual employers covered by an industry agreement or determination having the right to negotiate enterprise agreements of their own, though any such agreements would need to leave their employees better off overall than under the industry-level instrument.

More generally, it is important that whatever measures are taken to extend or encourage collective bargaining, they should be complemented with the active promotion by governments, tribunals, unions and business groups of a more cooperative approach to workplace relations. There has always been a tendency in Australia to default to adversarialism. Yet there is clear evidence that cooperation can deliver both improved organisational performance and benefits to employees. Recent research has revealed startlingly positive impacts from initiatives such as the Fair Work Commission’s ‘New Approaches’ programme.<sup>13</sup> Even just having government and business leaders acknowledge that unions and collective bargaining are essential features of the labour market landscape, and that supporting a strong and efficient collective bargaining regime is crucial for ensuring that the gains of economic growth are broadly shared, would be a big step forward.

## THE WAGES CRISIS IN AUSTRALIA

### Strengthening minimum wage regulation

Australia is unusual amongst developed countries in having not just a single minimum wage, but a detailed floor of minimum wage entitlements set by modern awards for almost all forms of non-managerial or non-professional employment.<sup>14</sup> But aside from finding ways to tackle non-compliance with minimum wages (discussed in detail below), there are at least two ways in which the current system of wage regulation could be strengthened.

One is to give the Fair Work Commission the power it currently lacks to set medium-term targets that would increase the value of the lowest award wages over time. As pointed out in Chapters 4 and 5, the ‘bite’ of the lowest adult minimum wage has significantly declined over recent decades. There are sound arguments, in our view, for lifting it over time to a ‘living wage’ level at least 60% of median wages. But as the Fair Work Act stands, the Commission’s expert panel is not permitted to adopt targets that would bind a future panel when conducting annual wage reviews. The tribunal has also taken the view that the present statutory objectives for wage fixing preclude it from placing primary weight on the needs of the low-paid.<sup>15</sup> These are matters that can and should be addressed by legislative amendments.

The other proposal concerns the persistent gender pay gap discussed in Chapter 6. There is no single solution to this problem, which is deeply rooted in social and cultural assumptions concerning the role and abilities of women. But one obvious step is to amend the Fair Work Act’s ‘equal remuneration’ provisions to address the shortcomings exposed by attempts to use them to pursue pay equity for workers in feminised industries. We agree in particular that those provisions should specifically require the Fair Work Commission to look for and redress the undervaluation of work traditionally or predominantly performed by women, without needing to identify male benchmarks or comparators.<sup>16</sup>

### Responding to business models that avoid or outsource employment responsibilities

We have noted the contribution to wage suppression made by business models that seek either to disguise what in functional terms are employees as ‘independent contractors’ or ‘freelancers’, or to pass the responsibility for employing workers off to another person or organisation. There is nothing new in the idea of sham contracting, or using other firms to supply the labour that a firm needs for its business. But as a number of chapters make clear, the latter type of arrangement in particular seems to have grown in use over recent decades. Lead businesses appear to have become more aggressive in avoiding unions and cutting costs by obtaining

## LABOUR REGULATION IN AUSTRALIA

labour indirectly. Even where workers are employed, their wages may be driven down to or below the legal minimum, as their employers compete for contracts.

We are not suggesting that there is something inherently wrong with subcontracting, or labour hire, or franchising, or the facilitation of work through digital platforms. Nor do we believe that individuals should be denied the choice to establish genuine enterprises of their own. But if society is going to create minimum standards for employment, it is vital to ensure that those standards cannot be evaded by sham arrangements which disguise employment as something else. Lead businesses must also take appropriate responsibility for breaches of employment standards that they have helped to bring about.

To that end, we see two reforms as being essential. The first is to clarify and broaden the definition of ‘employee’ in statutes like the Fair Work Act. Anyone who agrees to supply their personal labour should be presumed to be an employee, unless there is clear evidence that they have a genuinely independent business of their own. While some courts are already taking this approach,<sup>17</sup> for the avoidance of doubt it should be enshrined in legislation.<sup>18</sup> Besides dealing more effectively than the current law with attempts to disguise employment,<sup>19</sup> such a statutory definition could also be used to crack down on the use of unpaid internships or ‘trial periods’ to obtain free labour, at least when not appropriately connected to formal education or training.<sup>20</sup>

A second reform would build on an important set of changes introduced in 2017 by what was then the Turnbull Government.<sup>21</sup> The Fair Work Act now provides that a holding company may be held responsible for breaches of certain employment standards by one of its subsidiaries. The same applies to a franchisor, in relation to a breach by one of its franchisees, provided the franchisor has significant influence or control over the franchisee’s affairs. In each case, the franchisor or holding company must have known about the contravention, or could reasonably be expected to have known that such a contravention would occur. The holding company or franchisor will not be liable if they can show they had taken reasonable steps to prevent contraventions.

In principle, we can see no reason why this should not apply to other kinds of business model as well.<sup>22</sup> If parent companies and franchisors can be held to account for breaches affecting workers who are not directly employed by them, then why not firms which obtain workers through labour hire agencies, or subcontractors, or affiliated companies that are not technically subsidiaries? Why not a lead business at the top of a supply chain? In each case, liability would only be imposed on hosts or lead businesses who had significant influence or control over the wages or working conditions of the relevant employees, and who knew or should have

## THE WAGES CRISIS IN AUSTRALIA

known about the likelihood of contraventions. It is especially important, we suggest, to hold such businesses to account where they contract to obtain services at a price that can only realistically be viable if employees engaged by a subordinate business are underpaid.

### Improving compliance

Effective enforcement is essential in ensuring that any gains made through reinvigorated wage-setting mechanisms are not whittled away through systemic non-compliance. Increased and sustained funding of federal regulators such as the Fair Work Ombudsman, or the Australian Taxation Office in relation to superannuation contributions, would go some way to improving enforcement efforts and enhancing compliance outcomes. But this is not enough to address the burgeoning enforcement gap. Rather, a multi-pronged strategy is required.

Making lead firms liable for contraventions in their business networks, as discussed above, is a critical first step. Another obvious method for boosting perceptions of deterrence — and perhaps the most politically expedient — is to strengthen the sanctions that are available. In particular, incapacitating those involved in the wrongdoing — via cancellation of an operating license or disqualification from holding directorships — provides an alternative method for reinforcing regulatory practice (and possibly preventing contraventions through the weeding out of shady operators). In our view, labour hire licensing regimes — which have already been rolled out in certain States — should be extended to the federal sphere, as a Senate Committee has recently recommended.<sup>23</sup> However, introducing such sanctions may do little to curb the problem of non-compliance if businesses continue to operate under the assumption that they are unlikely to get caught in the first place.

To shift the compliance calculus of this subset of firms, it is essential that emphasis is placed on, and resources are funnelled towards, improving detection mechanisms. In this respect, it is vital that the Fair Work Ombudsman continues to focus on proactive detection methods, such as targeted auditing and in-depth inquiries, which do not rely on workers raising complaints or acting as workplace protagonists, which tend to atomise claims and drain resources.

In terms of detection, trade unions are in a pivotal position given their ability to reduce information costs, their proximity to the workforce, their independence from employers and government, and their capacity to collectively agitate claims on behalf of a group of affected workers. Assuming that unions have the resources and inclination to perform this function, then it is critical that the legal framework facilitates performance of this role.

## LABOUR REGULATION IN AUSTRALIA

Another possible reform could involve allowing successful complainants to recover their legal costs in underpayment claims. That is presently prevented by the general bar on costs orders in proceedings relating to the Fair Work Act.<sup>24</sup> Awarding costs might encourage or enable more private legal practitioners to help workers pursue enforcement proceedings. It would also be desirable to provide a fast, informal and low-cost option for enforcement proceedings, especially those involving small sums of money. For constitutional reasons, the Fair Work Commission could not be asked to rule on breaches of employment standards, nor impose penalties. But there is no reason why it could not conciliate underpayment claims. And it should be possible to establish a Fair Work Court, or a similar body, staffed by magistrates or judges holding dual appointments in the Commission, to resolve any claims not quickly settled at conciliation.

### Summing up

What we hope we have demonstrated in this book is that

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

Not everyone will agree with the five-part agenda for dealing with the wages crisis that we have put forward in this final chapter. Some will feel that more far-reaching changes are necessary, others that action is needed on only some (if any) of the issues we have identified. But if the analysis and proposals we and our contributors have put forward do no more than spark further public debate on this vital issue, the book will have accomplished its main objective.

### Endnotes

1. Calculations from ABS 2018e.
2. According to Bank for International Settlements data, household debt in Australia exceeded 122% of national GDP by March 2018, the second highest of all industrial economies: Bank for International Settlements 2018: Table F3.1.

## THE WAGES CRISIS IN AUSTRALIA

3. RBA 2018b: Statistical Table E2.
4. Even the then Treasurer Scott Morrison acknowledged the damage being done to his budget forecasts by sluggish wage growth: see Heath 2017.
5. RBA Governor Dr Philip Lowe has repeatedly highlighted the impact of wages on the inflation targeting system: see Hutchens 2018a; Karp 2018.
6. Different ways of measuring inequality, and their link to wage stagnation, are discussed further in Stanford 2018c.
7. Bornstein 2018.
8. See Andrews 2018.
9. The 2% ceilings imposed by many governments, including the Commonwealth, imply a freeze or reduction in real wages, assuming that consumer price inflation falls within the RBA's target range.
10. See, e.g., Smith 2018.
11. See Macdonald, Charlesworth and Brigden 2018: 213-18.
12. This appears to be an option that the Labor Opposition is actively considering: see Hannan 2018.
13. See Bray, Macneil and Stewart 2017.
14. Some awards do, in fact, cover managerial and/or professional roles as well, although more typically they are excluded.
15. *Annual Wage Review 2016-17* [2017] FWCFB 3500 at [32]-[36].
16. See further Smith and Stewart 2017.
17. See, e.g., *Fair Work Ombudsman v Quest South Perth Holdings Pty Ltd* [2015] FCAFC 37 at [178]-[186].
18. For a detailed proposal to this effect, see Roles and Stewart 2012: 279-80. Another possible reference point is the 'ABC' test now used by some American courts: see, e.g., *Dynamex Operations West, Inc v Superior Court of Los Angeles County*, Supreme Court of California, Ct.App. 2/7 B249546, 30 April 2018.
19. Another useful reform in this area would be to tighten up certain provisions in the Fair Work Act that already purport to prohibit sham contracting: see Productivity Commission 2015: 813-15.
20. See Stewart and Owens 2013; Stewart et al 2018.
21. *Fair Work Amendment (Protecting Vulnerable Workers) Act 2017* (Cth) Sch 1 Pt 2.
22. See Hardy 2017; Stewart and Hardy 2018.
23. Senate Select Committee on the Future of Work and Workers 2018: 81-3, 90-2. This is not to say that any federal regime should necessarily be drafted in the same way as State measures such as the *Labour Hire Licensing Act 2017* (Qld), the scope and effect of which are far from clear.
24. Stewart et al 2016: 174-6.