

# Australia: Public policy

Authors: Erin Watson, Philip Taylor, Joanne Goodall, Tia Di Biase

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# AUSTRALIA

## *Public Policy*

Erin Watson, Philip Taylor, Joanne Goodall, and Tia Di Bias



### TABLE OF CONTENTS

In-Country Policy Context	2
Policy Overview— Dimensions of Quality Employment	3
Contextual Focus— Employer View on Work Choices	10
Implications for Quality of Employment	11

This policy brief discusses employment laws in Australia, with a particular focus on policies concerning the employment of older workers, as they relate to the dimensions of the Quality of Employment framework. Rather than discussing all employment policies, this brief will highlight the most significant legislation to provide a general introduction to current policies as they relate to quality of employment in Australia.

This brief includes four sections:

- An in-country policy context introducing the reader to the policy background of Australia.
- A discussion of the dimensions of quality employment, providing an overview of the major public policies affecting each dimension. The following matrix represents factors that impact the quality of employment. Seven of the eight dimensions are discussed in this brief. Indicators of Opportunities for Meaningful Work is omitted because it is not the focus of legislation in Australia.
- Contextual focus: Australian Work Choices discusses the implication of work-choice legislation for employers and employees.
- A brief conclusion on the implications of policy for quality of employment in Australia.



This brief uses the Quality of Employment framework to discuss the effect of public policies in Australia.

## IN-COUNTRY POLICY CONTEXT

The *Fair Work Act* 2009 was enacted in Australia on July 1, 2009 and established Fair Work Australia, which oversees the national workplace relations system. The Act superseded the *Workplace Relations Act* 1996 and *Workplace Relations Amendment (Work Choices) Act* 2005. The Fair Work Act affects workplaces in various ways, including setting the minimum wage and regulating enterprise bargaining. The Fair Work Act encompasses the Enterprise Agreement and Award systems in Australia that govern working conditions. Enterprise Agreements and Awards are forms of setting minimum conditions for employees that include minimum wage and leave entitlements, along with other employment conditions.

Enterprise Agreements are made at the employer level and therefore can be tailored to suit the needs of a particular business rather than a whole industry. In comparison, Awards are set for a particular industry. An Award is underpinned by the Australian Fair Pay and Conditions Standard (AFPCS) and is made up of five minimum-employment conditions:

1. Basic rates of pay and casual loading;
2. Maximum ordinary hours of work;
3. Annual leave;
4. Personal leave; and
5. Parental leave and related entitlements.<sup>1</sup>

In January 2010, the provisions of the AFPCS will be expanded to include matters concerning “minimum entitlements in relation to meal breaks, public holidays, extension of parental leave to non-national system employers, and notice of termination.” With these changes, the AFPCS will become known as the National Employment Standards (NES).<sup>2</sup>

## POLICY OVERVIEW

### DIMENSIONS OF QUALITY EMPLOYMENT



#### ➔ Indicators of Fair, Attractive, and Competitive Compensation & Benefits

*Employees' basic needs are secured, and fair and equitable distribution of compensation and benefits among employees is promoted.*

#### Overview

Two major forms of compensation in Australia are wages and the superannuation fund.

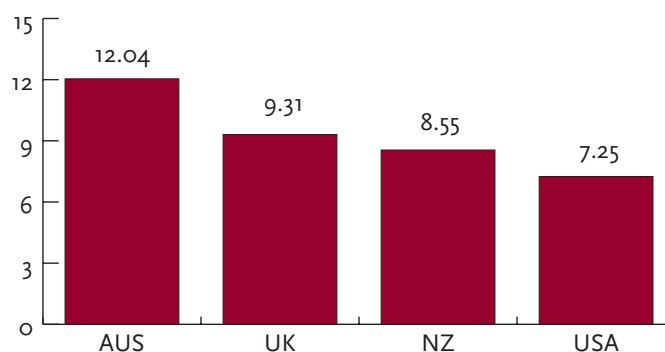
#### Minimum Wage

Fair Work Australia sets minimum wages via the Minimum Wage Panel. Minimum wage specifications are indicated within the appropriate award for an employee.<sup>3</sup> Currently, the minimum wage in Australia is \$14.31 (AUD) per hour (\$543.78 per week).<sup>4</sup>

Wages for employees with disabilities vary according to whether the disability affects their productivity, what their job is, and whether they are employed by an Australian Disability Enterprise. An Australian Disability Enterprise is a commercial business that provides employment for disabled workers. There are over 600 disability enterprises in Australia.<sup>5</sup> If an employee's disability limits productivity, then wages are reduced proportionately. Thus, someone who can work at 80% capacity is entitled to 80% of the standard wage.<sup>6</sup>

Figure 1 shows current minimum wages in Australia, the United Kingdom, New Zealand, and the United States of America. These rates apply to adult workers within their respective countries. In the United Kingdom, adult rates do not apply until the age of 22, whereas in New Zealand these rates apply from age 16.

Figure 1: Minimum Wage Comparison: Australia, New Zealand, United Kingdom and United States of America in USD (exchange rate as at August 31, 2009)



Sources: Department of Labour (NZ); United States Department of Labor (USA); HM Revenue & Customs (UK); Australian Fair Pay Commission (AUS)

#### Superannuation Fund

In addition to the federal minimum wage, employers in Australia also are required to provide access to superannuation. Superannuation is a retirement and pension scheme designed to provide benefits to individuals or their beneficiaries in the event of disability, death, or retirement. Employers must contribute the equivalent of 9% of an employee's base salary to that individual's superannuation fund.

The superannuation contribution requirement applies if employees are over 18 and under 70 years of age and earn more than \$450 per month before taxes. Those aged under 18 also are entitled to superannuation contributions if they work more than 30 hours per week.<sup>7</sup>

Those who are not eligible for superannuation contributions include:

- Employees who do the work of a private or domestic nature for 30 hours or fewer each week;
- Non-resident employees who are paid to do work outside Australia;
- Members of the Army, Navy or Air Force Reserve; and
- Foreign executives holding a specific class of visa or entry permit or temporarily working in Australia for an overseas employer and covered by a bilateral social security agreement.<sup>8</sup>



### ➤ Indicators of Opportunities for Development, Learning, & Advancement

*Job skill development and advancement are promoted for employees of as many industrial sectors, employment statuses and life/career stages as possible.*

#### Overview

Australia has many policy initiatives aimed at developing a skilled workforce, including social security for those in higher education and various initiatives within vocational training.<sup>9</sup> In addition, Australia has emphasized the importance of lifelong learning, which addresses four key elements:

1. Informal and formal learning;
2. Self-motivated learning;
3. Self-funded learning; and
4. Universal participation.

Informal and formal training may be subsidized by the government, if it relates to skills required by a job. Government policy emphasizes the need for people to self-fund and be self-motivated when undertaking lifelong learning.

A 2003 publication from the Department of Education Science and Training (DEST) reported a study that examined lifelong learning in Australia and trends associated with the

Lifelong Learning Policy. At that time, both informal and formal learning were found to be mostly self-funded and self-motivated, indicating that the policy was effective in achieving its goals.<sup>10</sup>

#### Training Younger Australians

The educational focus of Australia's 2009/2010 budget was for younger Australians to attend universities. This included a goal that, by 2025, 40% of Australians between the ages of 25 and 34 have a bachelor's degree or above. In order to do this, the government is changing the student income support system and funding students from lower socio-economic backgrounds so that they are able to attend universities.<sup>11</sup>

#### Trade Recognition & Vocational Education

In addition to education, Australia is also encouraging trades and vocational development. One government initiative to promote learning and development is Trades Recognition Australia, which encourages migrants to seek an Australian trade qualification in return for permanent residency or citizenship.

Similarly, the federal government is funding the Productivity Places Program to create more than 700,000 places in vocational and technical education programs and an additional 32,000 places for currently employed workers to upgrade their skills.<sup>9</sup> The Productivity Places Program recently has come under scrutiny by those within the education system. The Opposition government identified that just 6,000 out of 94,000 job seekers in the program actually gained employment. However, in September 2009, the chief executive of Technical and Further Education (TAFE) Directors Australia defended that, "[t]he problem has been that the program was rushed and was underfunded, in many cases by more than 50%."<sup>12</sup>



### ➤ Indicators of Wellness, Health, & Safety Protections

*Protection of employees' safety and health at their worksite is mandated, and their physical and mental well-being is promoted. In the case of job-related injury or illness, compensation or other forms of social protection are offered.*



### ➤ Indicators of Opportunities for Meaningful Work

*Opportunities for meaningful and fulfilling work are available.*

*This dimension is omitted because it is not the focus of legislation in Australia.*

Safe Work Australia is a new agency created to improve standards of occupational health and safety (OHS) across Australia.<sup>13</sup> Australian OHS laws are decentralized to individual states and territories to both develop and enforce.<sup>14</sup> Safe Work Australia is developing a new OHS Act, to be implemented by 2011, which will establish a national standard for OHS and workers' compensation.<sup>13</sup>

The current OHS standard, the National OHS Strategy 2002–2012, is an agreement among all Australian governments, the Australian Chamber of Commerce and Industry (ACCI), and the Australian Council of Trade Unions (ACTU) to reduce workplace incidents in Australia.<sup>15</sup>

Safe Work Australia Week is a governmental incentive to promote safe work practices. In 2009, the week was used to promote the switch to a national standard.<sup>16</sup> During the week, organizations were encouraged to hold events pertaining to workplace safety, such as seminars and competitions.<sup>17</sup> Additionally, Safe Work Australia offers employers and individuals the opportunity to receive recognition from the Australian government for their safe work practices. The annual awards are designed as an incentive to Australian workplaces to provide places of employment that minimize workplace accidents. Awards cover aspects of health and safety, such as “best solution to an identified workplace health and safety issue” and “best workplace health and safety management system.”<sup>18</sup>



## ➤ Indicators of Provisions for Employment Security & Predictability

*Stable provision of employment opportunities for job seekers is promoted, clear communication of terms of employment is facilitated, and protecting job security of the employed is a policy objective.*

### Overview

There are various circumstances where employees may be entitled to financial compensation when their employment is terminated. Upon termination, employees are entitled to the remainder of their wages, annual leave entitlements, long-service leave (if applicable), and redundancy payments (if applicable).<sup>19</sup>

If a company goes into liquidation, the government-funded General Employee Entitlements and Redundancy Scheme applies, which provides eligible employees with financial security upon the employer's bankruptcy.

### Unfair Dismissal Laws

Employees in Australia are protected by unfair-dismissal laws. These apply when an employee's job has been terminated as a non-genuine redundancy or the reasons for termination are unreasonable.<sup>20</sup> Small businesses with fewer than 15 employees are covered by a separate law, the Small Business Fair Dismissal Code. Small businesses receive additional assistance from the Fair Work Ombudsman, a code that ensures dismissals are not unfair and requires that worker be employed for at least 12 months prior to dismissal before being eligible to bring an unfair-dismissal claim.<sup>21</sup>

### Minimum Notice Periods

In addition to laws governing unfair dismissals, there are also minimum-notice periods for termination of employees, which depend on an employee's length of service and permanent employee status. For example, the notice period for an employee with no more than one year of service is one week, whereas an employee with five years' service is entitled to four weeks' notice.<sup>22</sup>



## ➤ Indicators of Workplace Flexibility

*Availability and utilization of flexible work options are promoted for employees of various life stages through increasing their control over work hours, locations, and other work conditions.*

### Overview

Flexible working in Australia is promoted at both the state and federal levels. For instance, the State of Victoria has taken many initiatives to encourage flexible work practices, with a focus on balancing work and family commitments. This includes the provision of the Equal Opportunity (Family Responsibilities) Act 2008. This legislation prevents employees from being treated unfairly due to communication or requests pertaining to family matters.<sup>23</sup> The act protects against unfair dismissal of those with parental or caring duties. In the event of an unfair dismissal, employees may lodge a complaint with the Victorian Equal Opportunity and Human Rights Commission.<sup>23</sup>

### National Work-Life Balance Awards

At the federal level, Deputy Prime Minister and Minister for Employment and Workplace Relations, Julia Gillard, recently launched an initiative to recognize businesses in Australia that promote family-friendly workplace practices. Recognition will come in the form of 13 awards and one overall national winner. Award winners will be entitled to use a winners' symbol in promotional materials for three

years.<sup>24</sup> In addition, an accreditation scheme will be implemented. The initiative, known as the National Work-Life Balance Awards, is part of the Australian Labour Party's efforts to help Australian families manage work and family commitments.<sup>25</sup>

### Small Business Funding

In addition to the Work-Life Balance Awards, the Australian Federal Government has provided funding to small businesses to help them implement more family-friendly practices. Businesses may receive grants between \$5,000 and \$15,000 and guidance from personnel at Fair Work Australia.<sup>26</sup>

### Paid Parental Leave

In 2011, Australia will begin its first Paid Parental Leave (PPL) for primary caregivers of biological or adopted children. To be eligible, the primary caregiver must meet certain requirements, including income tests and work history. Research has shown that providing PPL for the first six months of a child's life improves both the child's and parents' mental health and improves the child's development. In addition, PPL improves women's labor force participation and assists in the managing of work/life balance. The implementation of PPL is a progressive move for Australia. Previously, the United States and Australia were the only two OECD countries without a parental leave scheme. In addition, Australia showed a significant decrease in labor force participation during child rearing years in relation to comparable countries.<sup>27</sup>





### ➤ Indicators of Culture of Respect, Inclusion, & Equity

*Diversity in the workforce and inclusion of less advantageous populations are promoted, and equity in work conditions is pursued.*

#### Overview

Australia has various federal policies enforced by the Australian Human Rights Commission that are applicable to workplaces. Employers are responsible for enforcing them to create a safe and harassment-free environment. Additionally, equal opportunity commissions are present in each state and territory.

#### *Age Discrimination Act 2004*

This act protects younger and older workers. It covers areas including employment and education.

#### *Disability Discrimination Act 1992*

This act protects people with a disability. It does not discriminate based on the type of disability, so disabilities from physical disfigurement to sensory disabilities are included.

#### *Racial Discrimination Act 1975*

This act protects people from discrimination related to race, ethnicity, color, and descent.

#### *Sex Discrimination Act 1984*

This act protects people from discrimination based on sex, marital status, and pregnancy. It also protects people from discrimination based on family responsibilities, but only in situations of unfair dismissal.

### *Human Rights and Equal Opportunity Commission Act 1986*

This act prevents breaches of human rights by any Commonwealth body or agency based on any of the above mentioned acts. In addition, it protects people from being discriminated against based on political opinion, medical record, sexual preference, or trade union activity.<sup>28</sup>

In addition to these federal policies, each state and territory in Australia has its own anti-discrimination/equal opportunity act that is at least equal to federal provisions.

#### *Social Inclusion Agenda*

Australia's new Social Inclusion Agenda addresses key areas that will move Australia towards a more socially inclusive society. These include ensuring people are able to participate in education and training, employment (including voluntary work and family and caring duties), community involvement and the opportunity to "influence decisions that may affect them."<sup>29</sup> The Social Inclusion Agenda includes the Social Inclusion Unit and the Australian Social Inclusion Board. The initiative establishes an agenda for the entire Australian government.<sup>30</sup>

#### *State Equal Opportunity Commissions*

Every state and territory in Australia has its own equal opportunity act. They are the following:<sup>28</sup>

- Australian Capital Territory Discrimination Act 1991
- New South Wales Anti-Discrimination Act 1977
- Northern Territory Anti-Discrimination Act 1996
- Queensland Anti-Discrimination Act 1991
- South Australia Equal Opportunity Act 1984
- Tasmania Anti-Discrimination Act 1998
- Victoria Equal Opportunity Act 1995
- Western Australia Equal Opportunity Act 1984



## ➤ Indicators of Promotion of Constructive Relationships at Work

*Employer-employee frictions are mitigated, and constructive workplace relations are facilitated.*

### Overview

Australia has a process for industrial action known as protected industrial action. If an employee's industrial action meets the necessary criteria, it is protected. Fair Work Australia is responsible for ensuring that bargaining processes are lawful. It has the authority to end unprotected action or withdraw protection if action does not continue to match the protection criteria.<sup>31</sup>

In Australia, employees cannot be discriminated against based on their choice to either join or not join a trade union, and the right to industrial action is protected by law.<sup>32</sup>

If an employee feels the need to complain about an act of discrimination, pay, conditions, or workplace rights, Australians may petition to the Fair Work Ombudsman, who may investigate and mediate the employee's claim with the employer and take action.<sup>33</sup>

## CONTEXTUAL FOCUS:

### AUSTRALIAN WORK CHOICES

The Workplace Relations (Work Choices) Amendment Act 2005 was implemented in March 2006 by the former Liberal (conservative) Government. It was an attempt to amend the already existing Workplace Relations Act 2006. The purpose of the act was to establish greater flexibility and choice for both employers and employees, resulting in increased productivity, job creation and work-life balance.<sup>34</sup> The act allowed employers to negotiate individual employment contracts and to bargain away certain conditions that were protected under Awards, such as leave loading, overtime, and shift allowance.<sup>35</sup>

However, the introduction of this act was highly contentious and it was replaced by the new Labour Government in the form of the Fair Work Act 2009. The Fair Work Act 2009, launched on March 19, 2009, was designed to create “cooperative and productive workplace relations that promote national economic prosperity and social inclusion for all Australians.”<sup>36</sup> “Its primary objectives include improving workplace relations, enforceable minimum wages, enabling sufficient work-life balance, anti-discrimination, collective bargaining, aiding businesses, and more.”<sup>31</sup> The following section provides information on the impact of the Work Choices legislation on Australian employers.

## EMPLOYER VIEWS OF WORK CHOICES

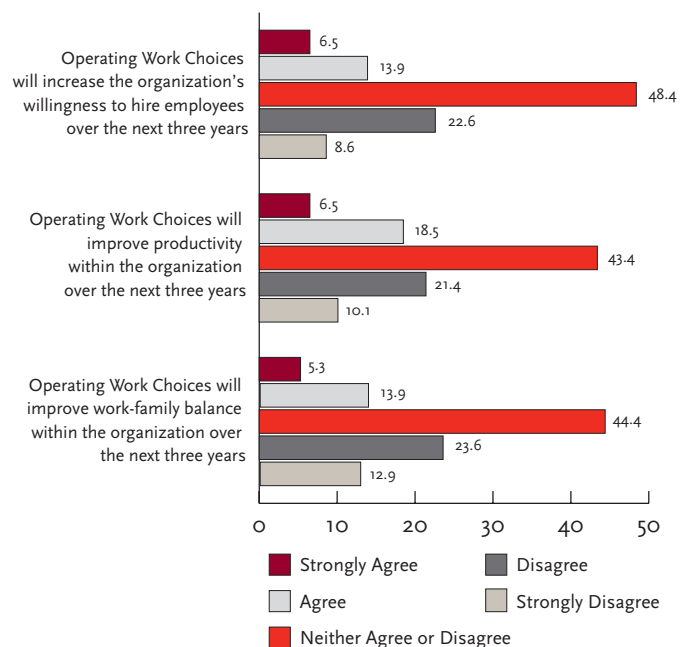
### *Changes observed as a result of Work Choices*

A 2007 survey explored the impact of Work Choices within Australian workplaces. The majority of employers reported that the legislation had not produced any significant changes. There was an increase in flexibility within employment-management practices, such as negotiations of terms and conditions of employment and termination practices.<sup>30</sup> Other changes included the ability to develop a more direct relationship with the employee without union involvement. However, employers also revealed that there was an increase in complexity, confusion, legal costs, and an administrative burden on human resources staff.<sup>30</sup> In addition, employers expressed the view that the act fostered an environment in which employees did not trust their employer’s motives and actions.<sup>30</sup>

### *Employer views on the influence of Work Choices on work life balance, productivity, and job creation*

When asked about effects on three particular dimensions—work life balance, productivity, and job creation—the majority of respondents indicated that they neither agreed nor disagreed that the legislation had resulted in improvements (see Figure 2).<sup>29</sup>

Figure 2: Responses to Questions About the Perceived Influence of Work Choices on Job Share, Productivity, and Work-Life Balance\*



Source: Wilson, McKenzie & Clarke, 2007

\*Note: A small percentage (3.4%) of respondents to the sourced survey were academics and students.

The equivocal nature of the employer responses may be a consequence of the relative newness of the legislation at the time of the survey or that many were waiting until after the forthcoming general election to see what the incoming government might do. In addition, some employers may have been waiting for current collective agreements to end before implementing changes.

## **IMPLICATIONS FOR QUALITY OF EMPLOYMENT**

Australia presents as a typical modern Western economy in terms of the range of employment regulations applying to employers and employment protection for workers. Notable, however, is the belated shift towards paid parental leave, when compared with other OECD countries. Australia has a long history of tackling issues of labor market disadvantage, with equalities legislation introduced over several decades. Industrial relations has been a particular area of contention between the main political parties, employer groups, and trade unions in recent years.

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Established in 2007 by the Center on Aging & Work, the Global Perspectives Institute is an international collaboration of scholars and employers committed to the expansion of the quality of employment available to the 21st century multi-generational workforce in countries around the world.

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## ABOUT THE AUTHORS:

### **Erin Watson**

*Position*

Company or University

Erin Watson is a social science student at Swinburne University of Technology in Melbourne, and is currently completing a 12 month industry placement with the Business Work and Ageing Centre for Research. Erin comes to BWA with a background in Human Resources and Recruitment and her research interests are employment policy; globalising labour markets; and the management of labour supply.

### **Philip Taylor**

*Position*

Company or University

bio info.

### **Joanne Goodall**

*Position*

Company or University

bio info.

### **Tia Di Biase**

*Position*

Company or University

Tia Di Biase is a psychology/politics student at Swinburne University of Technology, Melbourne, Australia. Her current research interests include public policy, ageing and mental health.