

**Australian Business Economists**



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*Productivity, prosperity and fair work*

Thursday 23 August 2012, Sydney

**The Fair Work Act and Australia's  
Economic Performance**

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August 23 2012

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## Terms of Reference and Procedure

- The ToR required the review panel to examine whether the operation of the Act met its objectives, and whether it could be improved consistent with its objectives. The review was to be “evidence based”.
- The objectives prominent include productivity and prosperity. The panel decided early that a consideration of economic impacts was essential.
- The Review was also “Post Implementation Review” as required by legislation. This obliged the panel to compare the FWA with the Work Choices framework, which the FWA replaced.
- The Review called for public submissions (over 250 received) and discussed their submissions with major stakeholders.

## Conduct of the Review

- The terms of reference were much broader than the requirements of the PIR. The panel decided early that it should satisfy both the ToR and the PIR requirement.
- The panel was disinclined to limit itself to a comparison of the FWA and Work Choices. Its perspective was the whole of the experience of bargaining since the turn away from arbitration in the early 1990s.
- The panel was reluctant to recommend changes where judicial interpretation was not yet clear.
- In considering proposals, the Review was disinclined to accept those that favoured one party or the other, but did not contribute significantly to either productivity or equity overall.
- With a three month deadline the Review was obliged to rely on submissions, available economic data, statistics collected by FWA and DEEWR, and the public record.

## Some pertinent facts

- The transition away from arbitration towards bargaining over a safety net of minimum wages and conditions began around 1993, and has been the theme of all four IR frameworks between then and now. (Work Choices emphasised individual over collective bargains.)
- Beginning with Work Choices and completed under the FWA the system has become national rather than federal, with over 90% of employees now covered by the FWA. It now relies on the corporations power of the constitution, rather than the conciliation and arbitration power.
  - As a result the number of awards and like instruments has been reduced from 3175 to 122
- In the private sector about 14% of employees are union members, and around 16% of private sector employees are covered by enterprise agreements.
- Most private sector employees are covered by individual over award agreements. About one employee in seven is paid at the award rate (and a very much smaller proportion paid at the lowest rate in the award system)
- Australian employees are overwhelmingly employed in the services sector (over 70%)
- Under all four frameworks casual and part time employment has continued to increase as a share of total employment, and female participation has increased.

## FWA role in bargaining

Table 6.5—FWA intervention in bargaining

Process	Number	Percentage of agreements affected
Agreements approved	18,315	-
Majority support determinations made	80	0.44%
Bargaining orders made	35	0.19%
Scope orders made	17	0.09%
Low-paid authorisations made	1	0.01%
Serious breach declarations made	0	0.00%
<b>TOTAL</b>	<b>133</b>	<b>0.73%</b>

Source: Agreements approved – DEEWR Workplace Agreements Database. No. Applications, Orders and Determinations - FWA annual and quarterly reports, and FWA advice, from 1 July 2009 to 31 March 2012.

Note: In addition to these instances of compulsory intervention by FWA, FWA also conducted dispute resolution in 371 matters between 1 July 2010

## Impact of permitted content rules

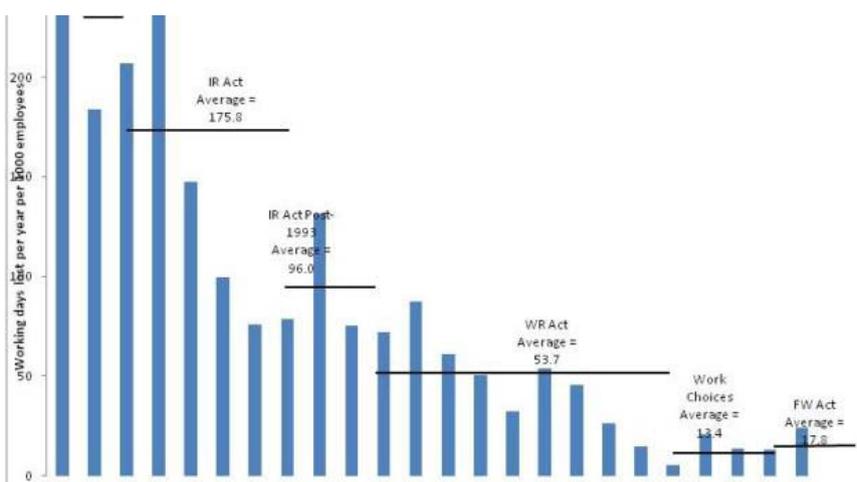
Table 6.6—Comparison of contractor and union clauses in agreements

Condition and years recorded	Pre-Work Choices		FW Act	
	Agts	Emps	Agts	Emps
Restriction on contractors (1997–2006, 2009–11)**	23.10%	11.50%	4.80%	8.60%
Union fees deducted (1997–2006, 2009–11)	15.40%	23.07%	10.85%	20.86%
Union right of entry (1997-2006, 2009–11)	46.03%	38.71%	9.99%	21.69%
Delegates—leave for union training (1997–99, 2010–11)	25.96%	33.17%	34.72%	46.26%

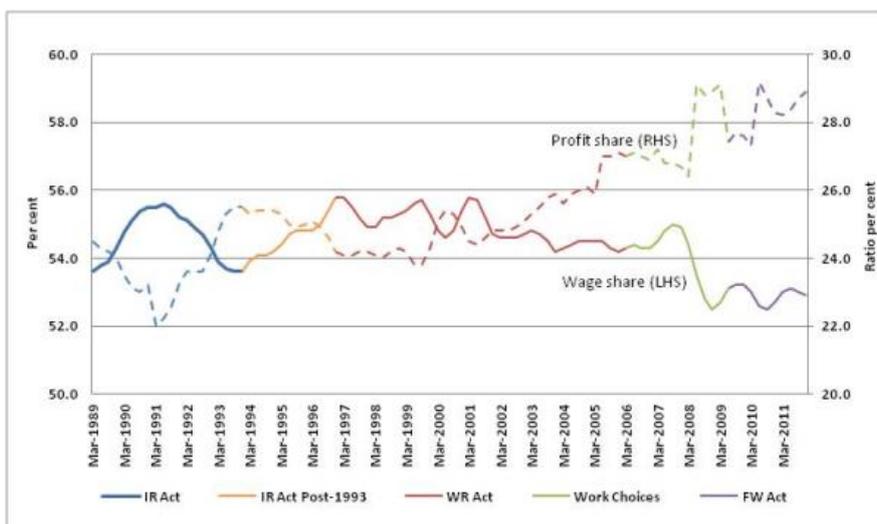
Notes: Percentages are calculated based on lodgments/approvals for only the years in which the condition was recorded.

\*\* Coding framework definitions have changed over time. The 2006 definition differs from the 2011 definition.

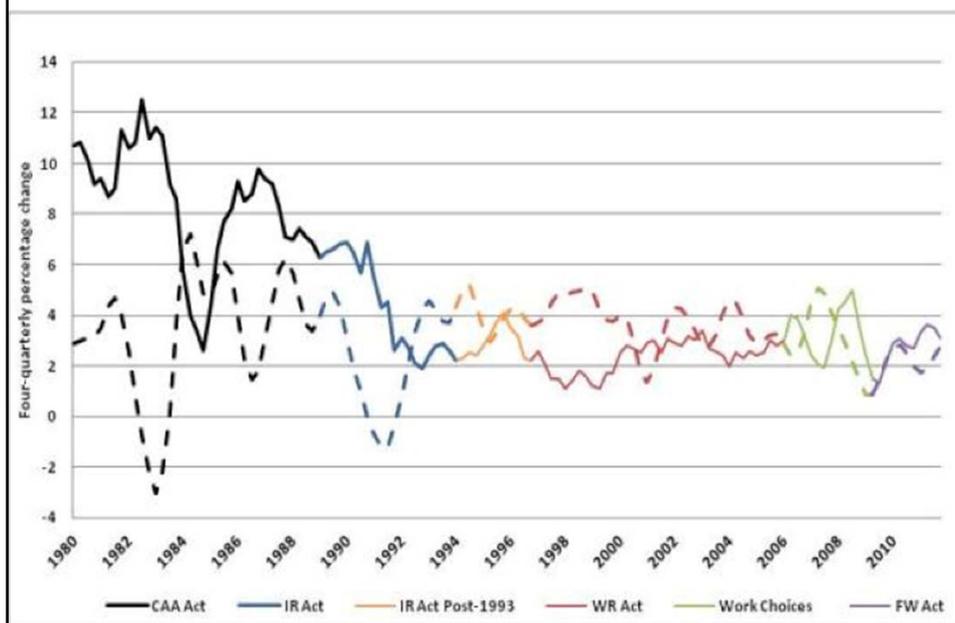
## Industrial disputes

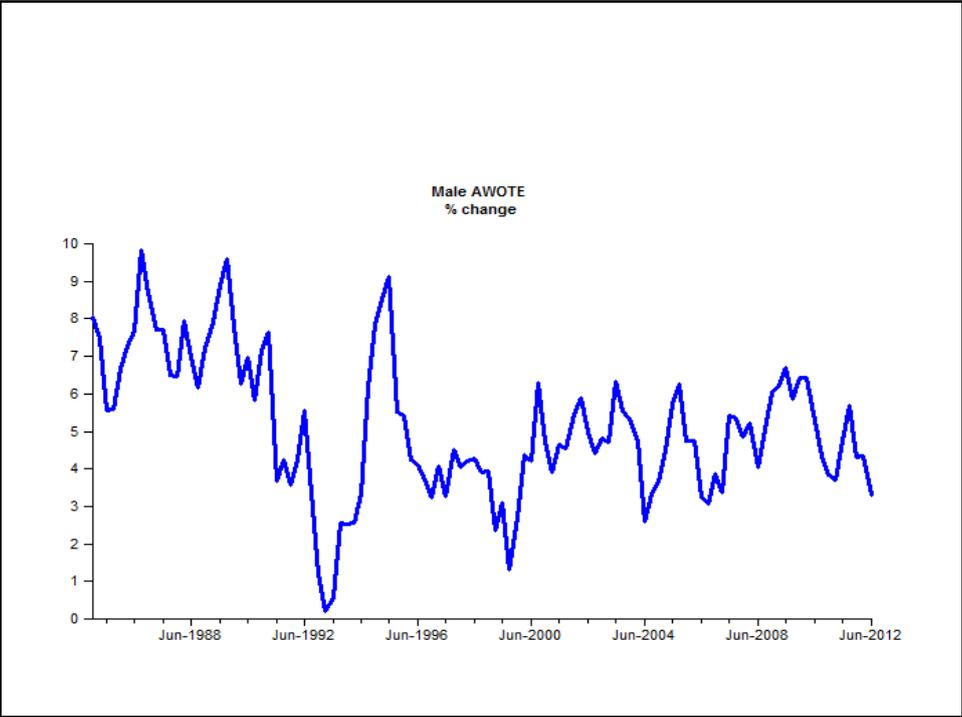


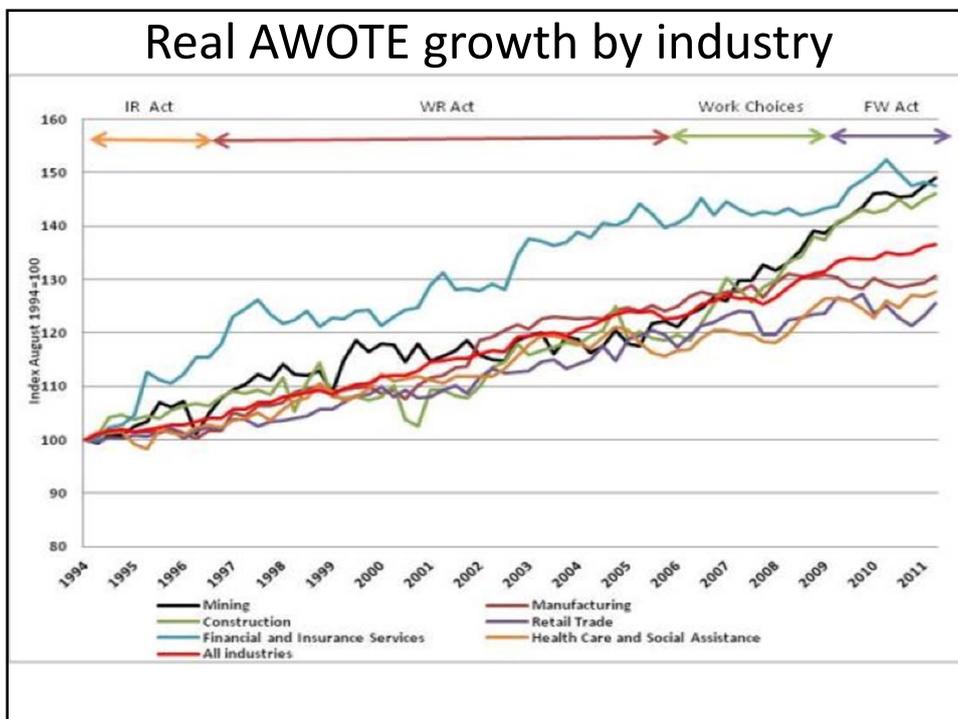
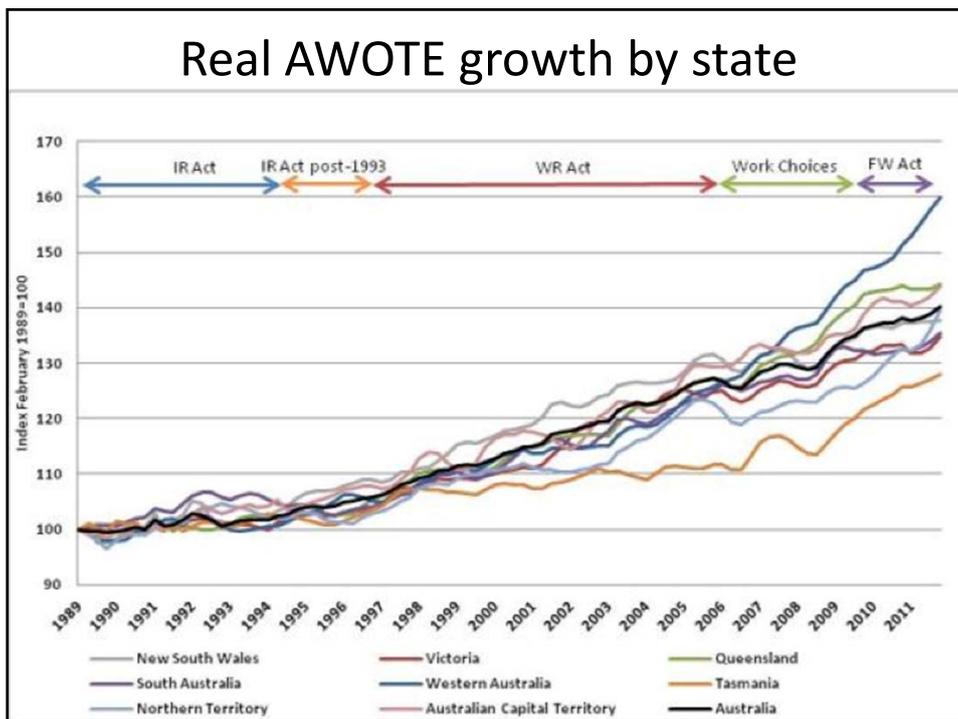
## Wage and profit shares

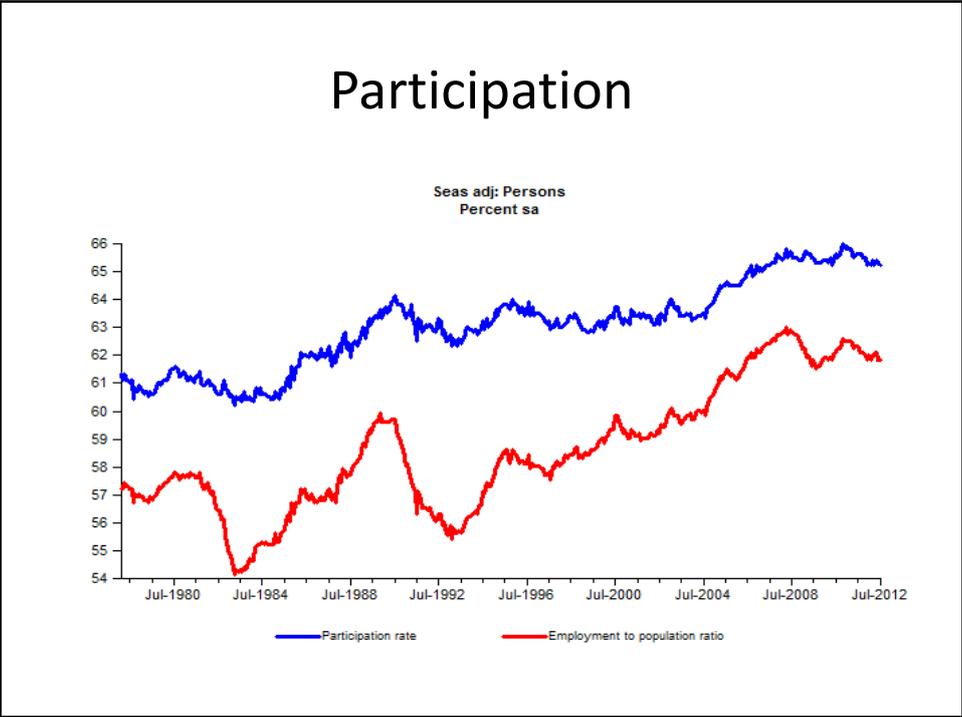
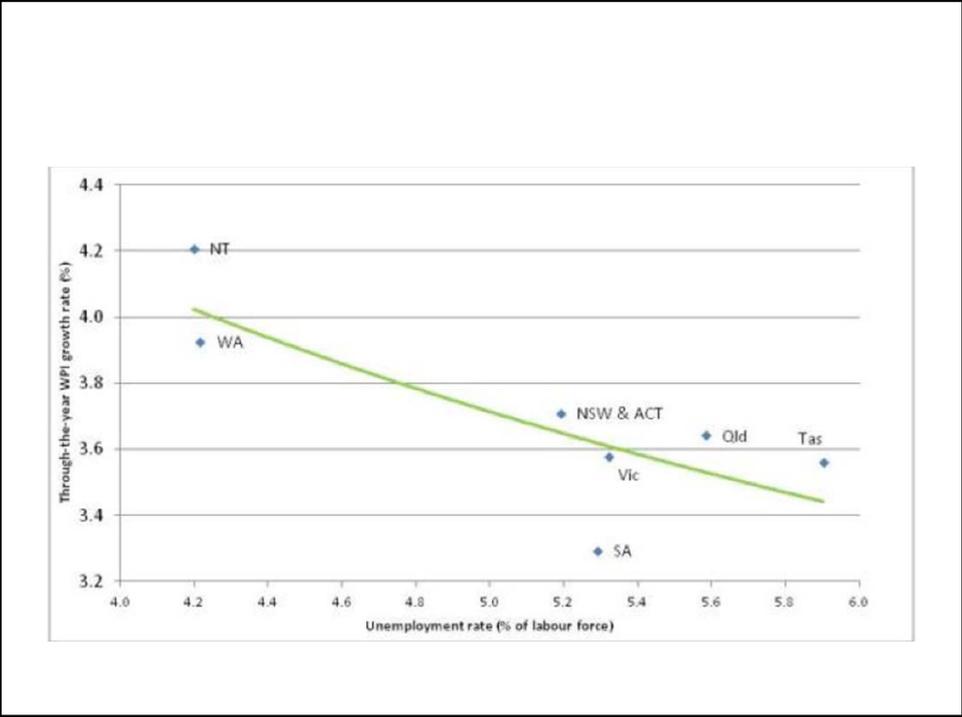


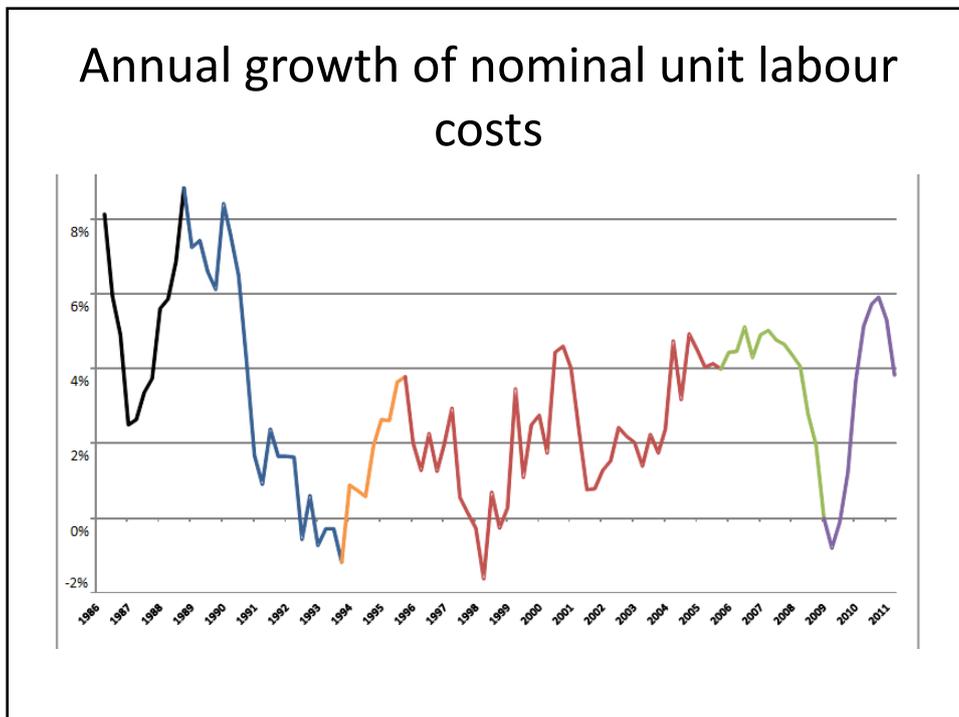
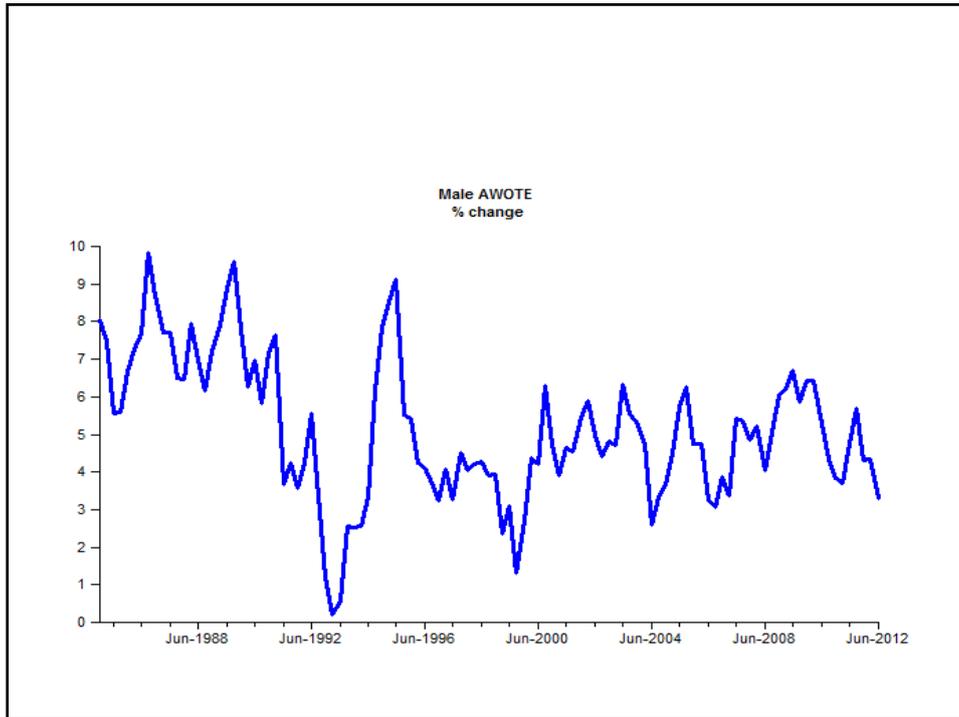
## Growth of real GDP (dashed line) and RBA-adjusted CPI (solid line)





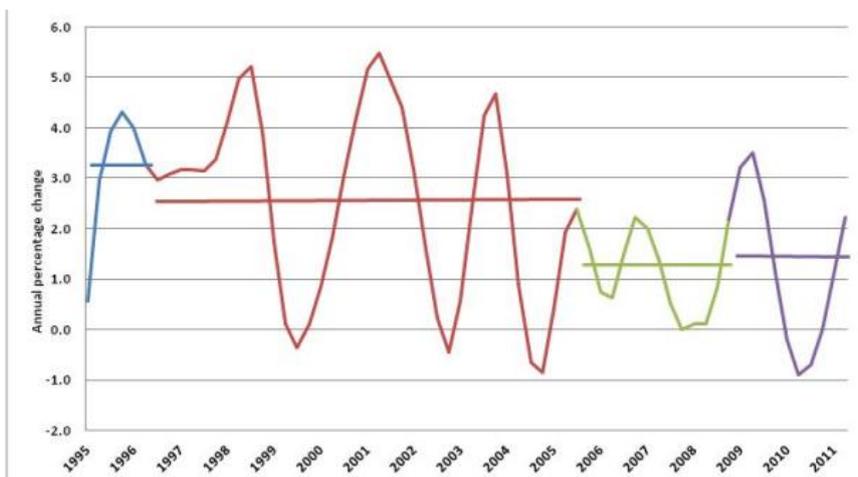




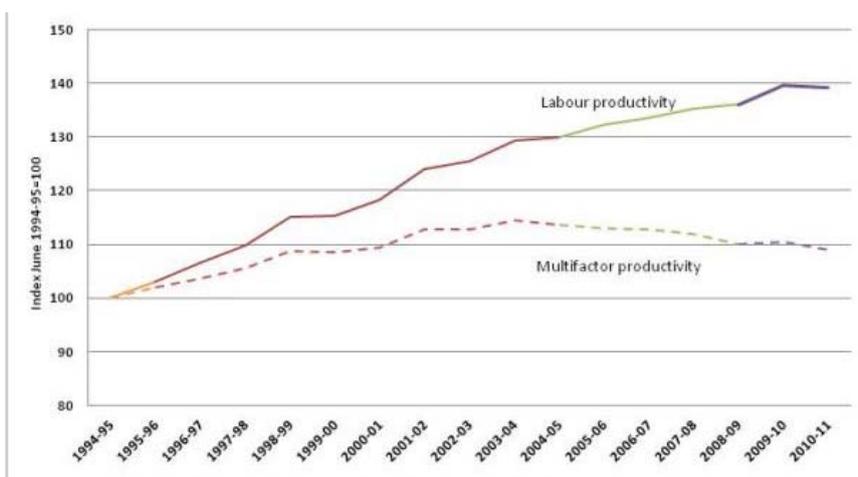


## Growth in real GVA per hour worked

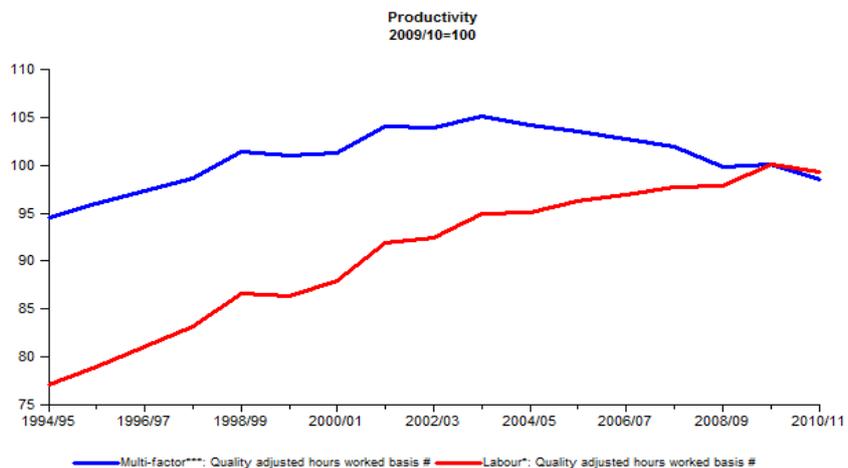
trend



## Labour and multifactor productivity



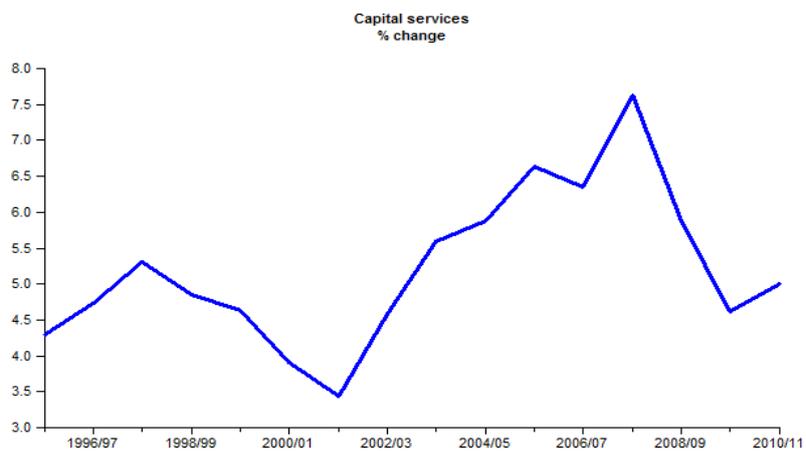
## MFP v Labour productivity



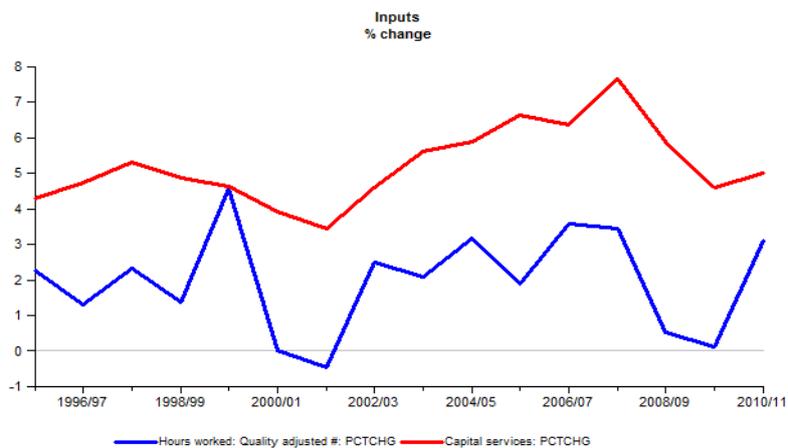
## Investment to GDP



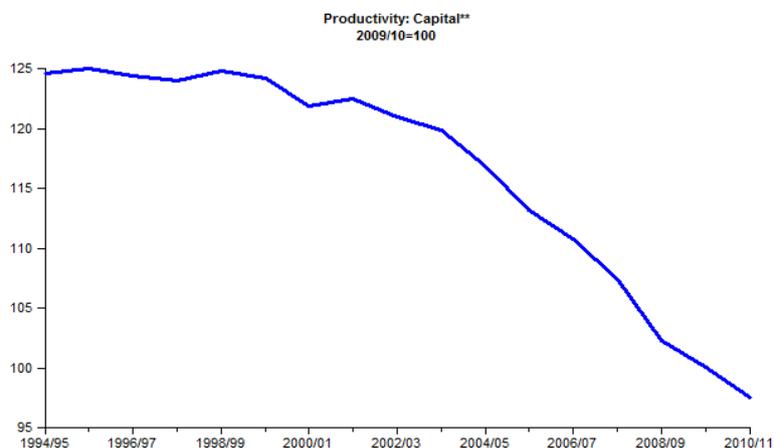
## Capital services



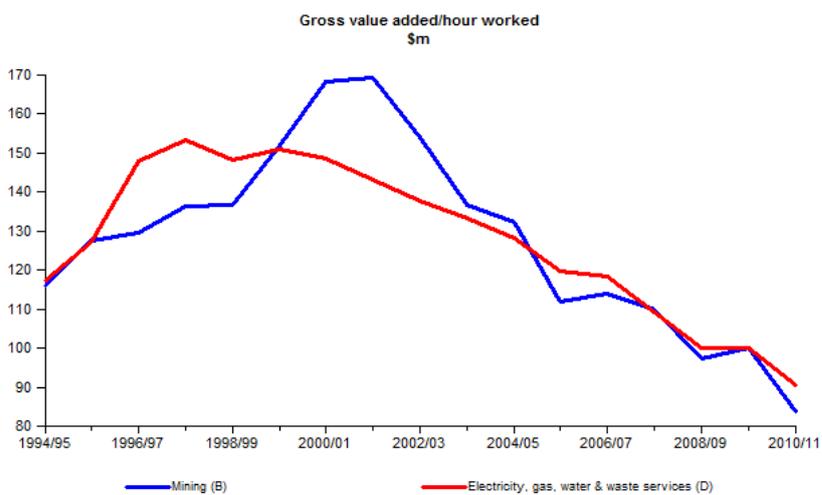
## Inputs



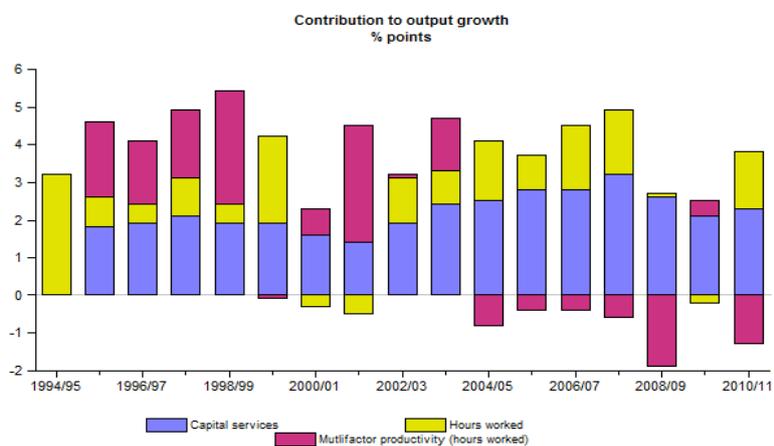
## Capital productivity



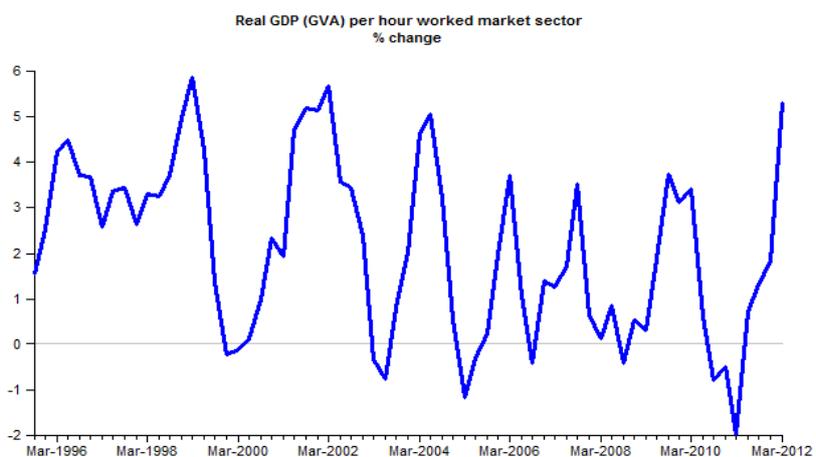
## Mining and utilities productivity



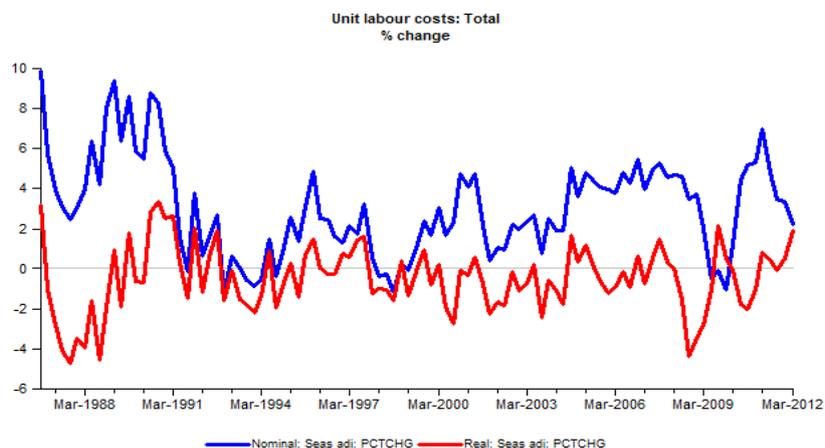
## Contributions to growth



## Labour productivity



## Real and nominal unit labour costs



## Contemporary industrial relations and the economy

- All four frameworks since the transition away from arbitration in the early nineties have been congenial to moderate real and nominal wages growth, low consumer price inflation, sustained output growth, rising employment and falling unemployment, and a markedly lower level of strikes than in earlier frameworks
- Productivity has varied between the frameworks, but the variations do not appear related to the framework.
  - Of the four, productivity growth was slowest under Work Choices
  - It was high under both Keating changes, and early years of the Howard changes
- There are some signs that productivity growth is returning to trend

## Findings

- The panel rejected:
  - Reintroduction of individual agreements that undercut award provisions, as inimical to both enterprise bargains and awards.
  - Extension of arbitration (beyond existing provisions) to long running disputes or poorly organised workers or prolonged strikes, as inimical to role of awards and enterprise bargaining
  - Restriction of permitted bargaining issues to those specified in Work Choices

## Findings

- The Act is working broadly as intended, but can be very significantly improved.
- The panel made 53 recommendations, including:
  - The role of the institutions created under the FWA should be extended to the active encouragement of more productive workplaces, including through dissemination of best practice agreements and techniques
  - Introduce good faith bargaining rules for greenfields projects, with possible recourse to arbitration
  - Deny possibility of taking protected action if bargaining has not commenced (JJ Richards case)
  - Make provisions for model individual flexibility arrangements mandatory for EBAs as well as awards, extend the term, give employers some assurance that the arrangement does not contravene BOOT
  - FWA be given power to initiate compulsory conciliation
  - Time limits for unfair dismissal applications and general protections action involving dismissal be aligned, and FWA be given authority to expedite unfair dismissal
  - Amend the act to preclude individual employees opting out of an EBA
  - Extend right to seek flexible work arrangements to a wider range of caring and other circumstances