NOTES & ISSUES

Extended Working Hours In Australia

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Abstract

Average working hours of full-time employees in Australia are long, and since the early 1980s they have been steadily getting longer. This is a peculiar trend, at odds with both the long-term historical experience in Australia and the contemporaneous experiences in most other OECD societies. It constitutes a major issue for public policy. This article begins by summarising the evidence of extended working hours and the distinctive position of Australia in cross-national perspective. It then aims to push forward the discussion of possible policy responses. In response to the important question of why Australia seems distinctive, the article points to the pivotal role played by working-time regulation. Working-time regulation in Australia has been particularly porous, and it has provided rich opportunities for employer pressures on employees to spill over into extremely extended hours. Just as part of the problem is the inadequacy of the regulatory system, part of the solution must be sought in new regulatory initiatives. The article reviews a recent regulatory initiative in the United Kingdom that may offer some lessons.

A distinctive problem of extended (or 'long' or 'excessive') working hours has recently emerged in Australia. The problem is most clearly seen if we focus just on full-time employees – the core group within the workforce. Previous research (Campbell, 2001) confirms that average working hours of full-time employees in Australia are long, and since the early 1980s they have been steadily getting longer. This is a peculiar trend, at odds with both the long-term historical experience in Australia and the contemporaneous experiences in most of the other advanced capitalist societies grouped within the Organisation for Economic Cooperation and Development (OECD).

Extended working hours take different forms. They are best understood as working hours that are longer than the current standard for full-time work (Campbell, 2001, Attachment K).[1] This points to the fact that extended hours are made up of extra or additional working hours – what is conventionally called *overtime*. Overtime is itself a

heterogeneous and slippery phenomenon. It can, for example, be either paid or not paid (unpaid). Its significance as a component of an employee's total working hours can range from minor and occasional to major and relentlessly regular. Other differences emerge as a result of variations in the degree of predictability of overtime, the degree of employee choice, and the relation to usual hours. There can also be differences according to location and timing, eg whether extra hours are undertaken in the workplace or somewhere else (at home, on the train) and whether the extra hours are joined to the standard hours or undertaken in a block at another time (at night, on the week-end, during a public holiday).

Such differences clearly affect any evaluation. They suggest that extended working hours can occur in worse or better forms. Nevertheless, summarizing overall, most commentators agree that long working hours, especially 'very extended' or 'extremely extended' hours, involve significant risks. The most immediate risks are to the individual employee and to aspects such as health and safety (Dawson, McCulloch and Baker, 2001). In addition, long hours can be seen as bad for family relationships, children and the community fabric (Pocock 2001, 30; Pocock et al, 2001). Thus, long working hours threaten an incursion of work into non-work time, including precious time for family and leisure pursuits. They can affect the quality as well as the quantity of the hours left for non-work activities. For example, where long working hours lead to fatigue and stress, they can undermine the quality of the time devoted to social relationships. Where extra hours are irregular, unpredictable, poorly timed, and imposed or undertaken at short notice, the problems may be further compounded. They can lead to widespread feelings of a 'time squeeze'.[2]

When extended working hours become widespread, they unleash more sweeping effects that extend beyond the affected individuals and their families. For example, they can open up further competition over wages, hours and effort and thereby exert pressure on all employees within a workplace, occupational group or industry, including many employees not currently engaged in extended hours. Long hours also act to shape the composition of the paid (and unpaid) workforce. They signal the consolidation of barriers to entry into distinct occupational categories, industries or workplaces. Workers with family responsibilities, eg for child care or elder care, have difficulty accommodating demands for long hours, and they may feel obliged to leave jobs or to refrain from applying for jobs in which long hours are present. Extended hours can also consolidate unsafe and unhealthy conditions in the workplace. Similarly, extensive opportunities for employers to realise advantages through extended hours can deflect attention from the pursuit of long-term dynamic productivity growth through technological innovation or better work organisation. This is bad both for the individual enterprise and for the economy as a whole. More broadly, long hours represent a form of 'work hoarding' that inhibits employment growth.

Because of these potential effects, extended hours are a major public policy issue that requires careful analysis and action. The recent Reasonable Hours test case has helped to draw out crucial facts and arguments. But it did not produce a solution.[3] This article aims to present some elements that may be useful for continuing the policy discussion. The first section summ[illegible]

The second section moves on highlight the pivotal role that is played by the structure of working-time regulation. The third section considers the need for regulatory initiatives and presents an example of new regulatory initiatives in the United Kingdom.

Extended hours in Australia: an outline of the evidence

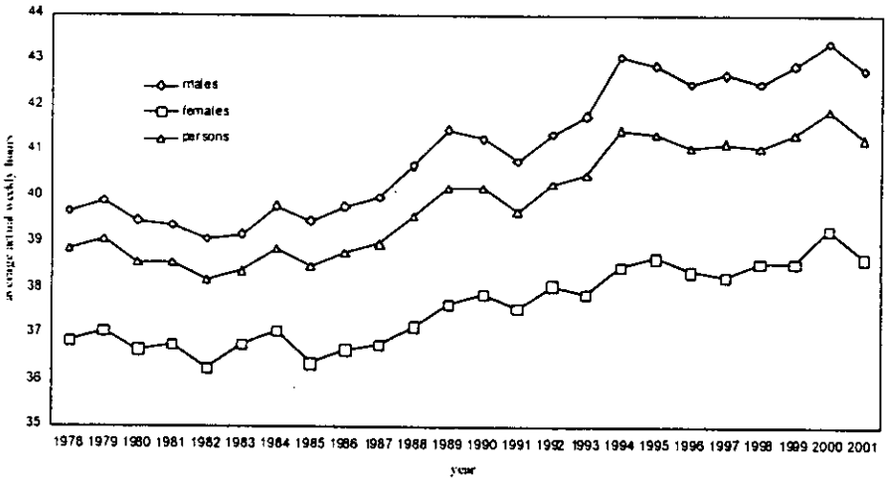
Cross-national comparisons in the area of working-time duration are difficult and bedeviled by pitfalls in relation to both concepts and data sources (Campbell, 2001, Attachment K). Even a more modest cross-national perspective on Australian practices can be tricky to implement. Nevertheless, it is possible to make cautious assessments. Conventional measures of average annual hours indicate that full-time working hours in Australia are now relatively long. They are broadly comparable with the United States and lagging behind only Korea in one list of 18 OECD countries (Campbell, 2001, 5-8).

However, the starkest and most important contrast with other comparable countries concerns the trend. As Figure 1 indicates, average actual weekly hours of full-time employees have risen strongly in Australia over the past two decades – jumping from 38.2 in 1982 to 41.3 in 2001.[4] This represents an increase of 3.1 hours (3.7 hours for males and 2.4 hours for females). It is a large increase. Moreover, the very fact of an increase is surprising, given that *declining* full-time working hours were the long-term historical experience in Australia up until the early 1980s. The long-term historical trend towards reduction proceeded in fits and starts, marked by the achievement of goals such as the 48-hour week, the 44-hour week and the 40-hour week. It advanced right up until the early 1980s, when a weekly standard of 38 hours (35 in some sectors) was introduced through vigorous and combative union campaigns (BIE, 1984). But since then, as Figure 1 indicates, the dominant historical trend has stalled and indeed moved into reverse.

This rise of average weekly full-time working hours in Australia also stands out in a cross-national perspective. Most OECD countries share a similar historical experience of declining average full-time working hours over the past century, driven primarily by trade union action aimed at improving the quality of life (sometimes at sharing available employment). In most countries this decline has continued in the recent period, especially in countries such as the Netherlands, Germany, Portugal, France, and Japan, where collective reductions in standard full-time hours continue to be discussed and implemented (OECD, 1998; Evans, Lippoldt and Marianna, 2001). Australia is one of only a handful of countries in which the long-term trend towards decline has been reversed, to be replaced by a new trend towards lengthening full-time working hours. The other members of this small group are the United Kingdom and the United States (and probably New Zealand). This small group of countries seems out of kilter with the dominant pattern. However, it is noteworthy that even in this (unfortunate) company Australia tends to stick out. Thus, the increase in average working hours for full-time employees in Australia appears much stronger than the increase in the UK and the US (Campbell, 2001, 7). Moreover, there appears to be a major difference according to the composition of the extra hours undertaken by full-time employees. Whereas the extra hours in the US appear to be largely in the form of paid overtime and the extra hours in the UK appear to be made up of increases in both paid and

unpaid overtime, the much more substantial growth in extended hours in Australia seems to be almost entirely composed of increases in unpaid overtime (Dawkins and Simpson, 1993, 7-13; Campbell, 2001, 12-15; Campbell, 2002).

Figure 1: Average actual weekly hours of full-time employees by sex, Australia, 1978-2001



Source: unpublished data from ABS, *Labour Force Survey, Australia*, ABS Cat. No. 6203.0; the full set of source figures can be found in Commonwealth Government, 2002, 39.

The fact that the average (mean) for full-time employees is rising does not of course imply that *all* full-time employees are working longer hours. As in the past, many full-time employees regularly work at (or very close to) the weekly standard of 38 hours. The mean in Australia is pulled upwards because of the presence of a relatively large – and growing – proportion of full-time employees who are working extra hours above the standard. Many of these full-time employees are working a substantial amount of extra hours. Table 1 provides data for the distribution of actual weekly hours for all employees. It points to the polarization of working-time patterns over the period since the mid-1980s, made up of increasing proportions of employees working either reduced (part-time) hours or very extended hours. In particular, it indicates that the proportion working very extended (45+) hours has increased sharply since 1985 (from 17.7 percent to 26.1 percent). This sharp increase encompasses both male and female employees, though male employees continue

to be much more likely to work very extended hours. It is the working-time practices of this large – and rapidly growing – minority of employees that seems to be at the source of the problem of extended hours in Australia.

Table 1: Distribution Of Actual Weekly Hours Worked, Employees, Aust., 1985, 1988, 1998, 1999, 2000

MALE EMPLOYEES

	0	1-15	16-29	30-34	35-39	40	41-44	45-49	50+	Total
	%	%	%	%	%	%	%	%	%	('000)
1985	5.1	3.5	6.0	8.8	20.3	25.0	6.8	9.9	14.7	3352.8
1988	5.3	4.0	5.2	6.8	18.8	23.5	6.8	10.9	18.6	3583.7
1998	4.5	6.5	6.7	6.3	16.4	18.8	5.9	11.1	23.7	3993.5
1999	4.5	6.6	6.7	6.5	15.9	18.2	6.0	10.7	24.8	4037.2
2000	4.0	6.3	7.3	5.4	16.1	18.6	6.0	10.9	25.3	4189.8

FEMALE EMPLOYEES

	0	1-15	16-29	30-34	35-39	40	41-44	45-49	50+	Total
	%	%	%	%	%	%	%	%	%	('000)
1985	5.0	16.0	17.4	9.9	20.8	19.5	4.0	4.0	3.5	2229.8
1988	5.1	16.4	17.9	9.1	20.2	17.4	4.5	4.4	5.0	2578.1
1998	4.7	17.9	19.7	9.8	17.6	13.1	4.1	5.6	7.5	3303.2
1999	4.5	17.6	20.8	9.9	17.5	12.3	4.3	5.6	7.6	3342.9
2000	4.4	17.7	19.8	9.0	17.4	13.0	4.4	6.1	8.0	3557.2

ALL EMPLOYEES

	0	1-15	16-29	30-34	35-39	40	41-44	45-49	50+	Total
	%	%	%	%	%	%	%	%	%	('000)
1985	5.1	8.5	10.5	9.2	20.5	22.8	5.7	7.5	10.2	5582.5
1988	5.2	9.2	10.5	7.8	19.4	20.9	5.9	8.2	12.9	6161.8
1998	4.6	11.6	12.6	7.9	17.0	16.2	5.1	8.6	16.4	7296.7
1999	4.5	11.6	13.1	8.0	16.6	15.6	5.2	8.4	17.1	7380.1
2000	4.2	11.5	13.1	7.1	16.7	16.1	5.3	8.7	17.4	7746.9

Source: unpublished data from ABS, *Labour Force Australia*, August issues, Cat. No. 6203.0.

Which employees are working very extended hours? Table 1 confirms that there are more males than females. Recent research (Buchanan et al; 2001; Wooden, 2001) indicates that employees in both the private and public sectors are involved. The group working extended hours can be found in many industries, but with concentrations in industry divisions such as finance, property and business services, mining, and construction. It includes employees from all major occupational groups, but with the highest proportions amongst managers and administrators, professionals and associate professionals.

Occupation seems to be particularly significant in influencing both the extent and – perhaps more important – the form of overtime (Campbell, 2002). Recent ABS data (Table 2) indicate that the proportion of full-time employees that had worked extra hours in the last four weeks was high in all major occupational groups, but it was highest amongst managers and administrators (though professionals were not far behind). Most important, the data also show that extra hours for some occupational groups predominantly take the form of unpaid overtime, while extra hours for other groups predominantly take the form of paid overtime. Unpaid overtime has at least a toehold in all occupational groups, but the range in its incidence is wide. The proportion of full-time employees that worked unpaid overtime in the previous four weeks is highest amongst managers and administrators (68.2 percent) and professionals (65.6 percent). However, it is also substantial amongst associate professionals (49.2 percent), advanced clerical and service workers (46.7 percent) and intermediate clerical and service workers (34.3 percent). In each of these five occupational groups unpaid overtime was clearly more widespread than paid overtime. On the other hand, the incidence of unpaid overtime amongst full-time employees is lower for labourers and related workers (8.4 percent), intermediate production and transport workers (11.2 percent), tradespersons and related workers (15.3 percent) and elementary clerical, sales and service workers (21 percent). In each of these four occupational groups unpaid overtime was less prevalent than paid overtime.

An increase in the proportion of full-time workers who work extended hours, predominantly in the form of unpaid overtime, can be detected in several other OECD countries (OECD, 1998, 157-160; Boulin and Plasman, 1997). However, the increases are generally slight and confined to a small proportion of workers, primarily high-level managerial workers. They do not surface in the averages, because they are generally counter-balanced by a continued decline in working hours for the majority of full-time employees. In Australia, by contrast, the trend towards longer hours is the dominant one for full-time employees. It is widespread and strong, spreading well beyond the ranks of managers and based on patterns of not just extended but often very extended and extremely extended hours.

In short, in cross-national comparisons of extended working hours, Australia seems highly distinctive. It seems to be a most peculiar case. It is one of a small group of countries that have exhibited a recent trend towards increasing average hours for full-time employees. Even within this small group, Australia stands out as a result of the size of the increase and the fact that much of the increase seems to take the form of unpaid

overtime. The increase seems to be anchored in the experiences of a substantial – and fast-growing – minority of full-time employees who are working very extended and extremely extended working hours.

Table 3: Full-time employees a) and overtime, by occupation, Australia, April to June 2000 (%)

	A	B	C	D	E	F	G	H	I	All ees·
Extra hours b):	72.4	70.9	62.9	59.6	57.7	52.1	60.7	52.3	45.3	60.6
Paid	6.2	10.7	20.3	50.1	17.2	22.4	54.3	35.1	39.9	27.9
Unpaid	68.2	65.6	49.2	15.3	46.7	34.3	11.2	21.0	8.4	37.7
Total ('000)	331.4	1013.7	644.5	703.8	178.3	809.4	523.8	271.3	361.8	4838.1

a) excluding owner managers of incorporated enterprises. 'full-time' is defined here as "usually works 35 or more hours in main job".
b) extra hours = "worked extra hours in last four weeks in main job". 'paid' comprises those who answered yes when asked whether they worked any paid overtime in the last four weeks. 'unpaid' comprises those who answered yes when asked whether they worked unpaid overtime or any other unpaid hours in the last four weeks. Employees may have worked both paid and unpaid extra hours.

Key: A - managers and administrators; B - professionals; C - associate professionals; D – tradespersons and related workers; E – advanced clerical and service workers; F – intermediate clerical, sales and service workers; G – intermediate production and transport workers; H – elementary clerical, sales and service workers; I – labourers and related workers; all ees – all employees.

Source: unpublished data from ABS, *Employment Arrangements and Superannuation Australia*, April to June 2000, Cat. No. 6361.0.

Why is Australia distinctive?

Why is Australia distinctive? This is a complex question, related to a larger question concerning the dynamics underlying the unusual experience of increasing working hours in the small group of Anglophone countries. More broadly, we can also ask about the dynamics behind the emergence of diversity and divergence in working-time patterns amongst all OECD countries in the past twenty years.

A full answer to this question would involve exploring a wide range of factors. One recent study identifies four 'dimensions' or 'analytical spaces' as the main sites for

interpreting cross-national differences in working-time configurations (in this case in food retailing). These are market structures, industrial relations, organizational structures, and domestic/ gender (Gadrey, 2000, 23-25; see Gadrey, Lehndorff and Ribault, 2000). It is impossible to explore all four dimensions here. However, it is useful to highlight the pivotal role played by one crucial aspect of the 'industrial relations' dimension – *working-time regulation*. The structure of working-time regulation is critical, because it helps to define the *opportunities* for extended working hours to emerge. As such, it helps to shape both the extent and the form of extended working hours.

Working-time regulation forms part of a broader system of labour regulation, generally aimed at protecting employees against 'adverse insecurities' (Standing, 1993, 426; Standing 1999). Such regulation is primarily located at the national level, though it is often supplemented by additional regulation at the sub-national (regional or state) level, the branch and industry level, the enterprise or workplace level, and the purely individual level. In addition, supra-national regulation in the area of working time is becoming more important (Anxo and O'Reilly, 2000, 62-63).[5] Each OECD country can be seen as characterised by a specific configuration of working-time regulation, generally made up of some mix of legislation and multi-employer collective bargaining (Bosch, Dawkins and Michon, 1994; Bosch and Lehndorff, 2001). As a result, some researchers (eg Rubery, Smith and Fagan, 1998) speak of distinctive *national working-time regimes*, defined in terms of a set of legal, voluntary and customary regulations that influence working-time practice.[6]

From the point of view of the length of working hours, six elements are fundamental in working-time regulation (OECD, 1998, 167; see also ILO, 1995). First is a definition of standard full-time working hours (and a definition of hours in addition to this standard as overtime). Second are rules governing overtime, most importantly rules for compensation (money or time-off-in-lieu, generally at premium rates) but also rules to ensure that any overtime is safe, planned, subject to agreement with the workforce and equitable. Third is a definition of maximum daily hours. Fourth is a definition of maximum weekly hours. Fifth is a definition of maximum permitted overtime hours (generally defined over a longer period such as one month, six months or a year). Sixth are entitlements to paid breaks during the year – paid annual leave and public holidays, but also paid breaks that may be specific to certain groups or certain circumstances such as sick leave, bereavement leave and parental leave.[7]

These elements are most effective when they are integrated. They limit the opportunities for extended working hours to emerge by operating in concert. It is important to note that they do not *proscribe* extended working hours. They permit overtime and therefore can be seen to permit extended hours. However, they are designed to limit the extent of such extended hours and to ensure that they take place without abuse. Extended hours in this case are formally regulated. Of particular importance are the three maxima – maximum daily hours, maximum weekly hours and maximum limits on overtime. These maxima are crucial in ensuring that extended hours do not spill over into very extended hours.

In addition to extended working hours that are formally regulated in this way, extended hours can also arise in a less regulated fashion, through what are in effect *gaps in the regulatory system*. Most cases of extended hours – often reaching out to extremely extended hours – emerge through gaps in systems of working-time regulation. All regulatory systems have such gaps. The three main gaps that perforate systems of labour regulation arise as a result of: a) incomplete coverage (for example due to poor specification of the boundary of employee and non-employee status); b) inadequate enforcement; and c) the insertion of exemptions into regulation (for example exemptions for certain classes of employees such as non-standard employees, managers and employees of small enterprises). Apart from these general gaps, there can also be specific gaps in working-time regulation if the six elements listed above are inadequately institutionalized. The problem here arises if some of the elements are missing or only incompletely applied. Depending on the specific element that is missing or incompletely applied, this opens up new opportunities for specific forms of very extended hours to survive and flourish.

Most OECD nations have succeeded in installing relatively comprehensive formal systems of working-time regulation over the course of the past century (OECD, 1998, 168; Bosch, Dawkins and Michon, 1994). This is perhaps particularly true in European nations, where formal systems of working-time regulation tend to be comprehensive, transparent and adaptable (Bosch and Lehndorff, 2001). Such systems contain few gaps, and the gaps that exist are relatively narrow. Where new challenges appear, there seems to be a rich capacity for modernisation, in order to tackle new abuses, to expand choices for employees and to accommodate responsible employer demands. Such systems seem to work well to inhibit the development of very extended working hours. Indeed they also serve as a supple framework for policy initiatives aimed at reducing working hours.

A good example is France. Working-time regulation in France is relatively comprehensive and transparent (Gauvin, 1994; Goetschy, 1998). In addition to a definition of standard hours (35 weekly and sometimes defined as 1600 annually) and the prescription that extra hours above the standard should be compensated with either money or time at a set premium, the regulatory system incorporates various maximum limits on working-time duration. As well as the cap on overtime (130 hours per annum for most workers, 90 per annum for those under averaging arrangements), there are maximum daily hours (10 in most circumstances) and maximum weekly hours (48 in most circumstances and never more than 60). Paid leave entitlements are generous (eg a minimum entitlement to annual leave of 25 days together with around 10 public holidays). Moreover, the system of working-time regulation has provided the framework for concerted efforts at reducing working hours, most recently through the 35-hour week legislation introduced in 1998 and 2000 (Jefferys, 2000; Bilous and Vincent, 2001). Of course, as in all regulatory systems there are still gaps, but these seem relatively small and are carefully scrutinised in order to ensure that they do not generate social problems.[8]

It is at this point that we can begin to appreciate the specific problems in Australia. In contrast to many other OECD countries, working-time regulation in Australia is extremely porous. It is riddled with gaps. As a result, it opens up extensive opportunities for the emergence of very extended working hours.

The problems in Australia are partly to do with the general gaps (Campbell and Brosnan, 1999). Unlike most other OECD countries, statutory regulation plays only a limited role in Australia with respect to the regulation of working conditions. Apart from anti-discrimination legislation at federal level, it is largely confined to legislation at state level and to a few matters such as public holidays, minimum standards of annual or long service leave, occupational health and safety, and workers' compensation. The inherited structure of British common law provides an underlying floor of regulation. However, the main avenue of formal labour regulation in Australia, at least for the first ninety years of the twentieth century, was through the distinctive system of compulsory conciliation and arbitration, characterised by permanent, independent quasi-judicial tribunals and by legally binding *awards* that had been arbitrated or certified by these tribunals. A state-of-the-art system in 1904, it was looking decidedly ramshackle by the last quarter of the century. The system was opaque, made up of a complex patchwork of diverse and numerous awards. In particular it was marked by several gaps in protection, which slowly widened and swallowed up an increasing proportion of the waged workforce. The most significant gaps in protection concerned workers outside the award system (as a result of limits in its coverage) and even some employees within the award system (as a result of either limits in the enforcement of award regulation or the insertion of exemptions and special provisions, in particular for the special group of 'casual' employees).

In addition, there are the specific gaps as a result of the inadequacy of working-time regulation. Only three of the six elements identified above are readily found in working-time regulation in Australia. A definition of standard (or 'ordinary') full-time hours (eg 38 per week) is relatively common in awards and agreements, and hours above the standard are commonly defined as overtime. Rules governing overtime are also present but are somewhat patchier. Many workers may have a formal entitlement to payment for overtime in awards and agreements, but it surprising how many do not (Campbell, 2002). Rules to ensure that overtime is safe, planned, equitable and subject to agreement with the workforce are even rarer. Instead overtime tends to be mandatory, and is often poorly timed and imposed at short notice. The third element concerns entitlements to paid breaks. These are present in many awards and agreements, though they tend to be relatively meagre and far from comprehensive. For example, paid annual leave is generally only 20 days and is not available to all employees (the large minority of the workforce that is classified as 'casual' is excluded). Similarly, some basic forms of leave such as paid maternity (and paternity) leave are available only to a small minority of workers. But the major deficit concerns the remaining three elements, ie the definitions of maximum daily and weekly hours and maximum overtime hours. These are almost completely absent from working-time regulation in Australia. They may exist in isolated awards or agreements, but they do not constitute familiar or common elements of the system of working-time regulation (Heiler 2001).

The absence of the three maxima is a major weakness of the Australian system, since these maxima provide crucial barriers to extremely extended working hours. There are no ready substitutes for such maxima (but cf Commonwealth Government, 2002). It is sometimes suggested that provisions for overtime payments at a premium rate can act as

an indirect barrier. But these provisions are only found in some awards. The fact that so much overtime in Australia is unpaid is a good index of the limited reach of such provisions (Campbell, 2002). Moreover, even where they exist, they offer only a fragile barrier to employer pressures for extended hours, since, even with substantial premia, it can still be cheaper for employers to work long hours of paid overtime than to hire another worker. As Heiler notes (2001, 5, 14), the assumption that overtime premia can act as an effective disincentive to employers may have been apposite once upon a time, but it no longer holds true today.

Another oft-cited barrier is the common provision that overtime must be 'reasonable'. This clause in awards was introduced in the wake of the 1947 decision in the *40 hour Case*, when it was intended as a device to ease the transition to shorter hours (ACTU, 2002). As overtime became integrated as a systematic feature of many workplaces in subsequent decades, the significance of this provision as a short-term measure seems to have been overlooked. The problem here is the vagueness of the term 'reasonable'. It depends for its specification on the resolution of individual cases before the industrial tribunals, but this is a haphazard process. Scrutiny of practice in areas such as mining suggests that 'reasonable' overtime has been generously interpreted to include inordinately long and arduous working-time schedules (Heiler, 2001). Another oft-cited barrier is state health and safety legislation, which could treat fatigue as a workplace hazard with roots in long working hours. But this avenue is also subject to numerous weaknesses, including as a result of the absence of clear concepts and clear measures of fatigue and the fact that fatigue is not always a direct effect of long working hours (Heiler, 2001, 17-20).

The deficits in the Australian regulation system could be traced back to inherited weaknesses, linked to long-established features of the award system. But this would unfairly shift the responsibility. The deficits are best seen as a symptom of the failure to modernize the regulatory system in the past twenty years. Australia, together with its trans-Tasman neighbour, appears unusual in cross-national comparison in the extent to which it succumbed to neoliberal notions of labour market deregulation. Beginning in the early 1990s, policy makers in Australia grafted on to an inadequate inherited system of awards an even more inadequate system that fosters small islands of single-employer collective agreements and a sea of individual contracting (Campbell and Brosnan, 1999). This was labeled by its advocates 'workplace reform', but its main effect was simply to compound the weaknesses of the inherited system. From the point of view of extended hours, the main effect was simply to widen the many already-existing gaps through which very extended working hours – often in very poor quality forms – could emerge.

The distinctive experience of lengthening average hours for full-time employees in Australia is clearly linked to the inadequacies of the current system of working-time regulation. The numerous gaps in the regulatory system open up numerous opportunities for very extended hours to be worked by employees. These gaps help to shape both the extent and the forms of long working hours. At the same time, it is important to stress that opportunities are not identical to outcomes. Actual outcomes depend on the calculations and choices of the key social actors – employers and employees (and their trade unions).

A fuller account would therefore have to grapple with these calculations and choices. It would have to examine the shifting balance of power in the workplace. On the so-called 'supply side' of the labour market it would have to explore the choices of individual employees (taking into account that these are often choices from a limited palette of options and within a framework of background constraints such as household composition and household strategies). On the 'demand side', it would have to explore the strategies of employers, themselves constrained by competitive pressures.

Regulatory initiatives: the example of the UK

Just as part of the problem in Australia is the inadequacy of the regulatory system, part of the solution must be sought in new regulatory initiatives. The Reasonable Hours test case represented one step forward, but it clearly needs to be succeeded by other steps. Rather than launching in to a discussion of possible paths, it may be useful to conclude by once more bringing a cross-national perspective to bear.

In exploring new regulatory initiatives, it is necessary to start with the analysis of the specific conditions in Australia. However, it is possible to learn from initiatives in other countries. As implied in the previous section, most other OECD countries have something useful to offer as a result of their successful experiences in limiting and reducing opportunities for extended hours. But perhaps the best example is the UK, since this country has begun from a similar starting point, marked by similar problems of very extended working hours.

In cross-national comparisons, the experience of extended hours in the UK offers the closest comparison to the experience in Australia. The UK is often characterised by its culture of long hours, and it has shared a similar experience of increasing average working hours for full-time employees since the early 1980s, though at a much slower rate and with signs of a pause in the most recent period (Harkness, 1999). Rubery, Smith and Fagan (1998) use six dimensions of working-time practice in order to classify the EU member states according to their working-time regime. They suggest that four main groups of countries can be distinguished, with the UK standing out because of its high scores in relation to average full-time hours, the share of employees working long hours, the share of employees working Saturdays and the share of employees working Sundays (which are joined with high levels of part-time employment but only moderate levels of self-employment). They suggest that when considered in terms of gender equality, the UK and Ireland appear as the least gender-friendly working-time regimes. The parallel with Australia is closest in relation to the predominance of long working hours, based on the institutionalization during the 1950s and 1960s of a pattern of long overtime hours for men (Arrowsmith, 2001b; Fagan, 2001). However, on all counts, the national working-time regime in the UK seems remarkably similar to what could be called the dominant working-time regime in Australia.

The parallels between the UK and Australia can be plausibly linked to a parallel absence of effective working-time regulation. In the historical evolution of its industrial relations system, the UK stood out amongst European countries in an attachment to

voluntarism (Edwards et al, 1998). Working-time regulation tended as a result to be rather patchy, primarily produced at sectoral or enterprise level in the form of collective agreements or enterprise work rules. Comprehensive statutory rules governing working-time were lacking, and the little that did exist in the 1970s was wound back by the Conservative governments of the 1980s and early 1990s.

However, the specific situation of the UK has begun to change, as a result of the imperative to conform to the social program of the European Union (and as a result of the accession of a Labour government more prepared to grasp the nettle of this imperative). Several major pieces of legislation with implications for working-time patterns have been introduced since 1997. The most important is the *Working Time Regulations 1998* (for a useful summary see TUC, 1998).

The Regulations are in the first place a response to the need to comply with the 1993 EC *Working-Time Directive* (EIRR, 1994), after the Conservative government launched and lost a legal challenge to its validity in the European Court of Justice. They largely follow the terms of the Directive. They establish for most employees: a minimum period of three weeks paid annual leave (subsequently lifted to four weeks); a maximum average working week of 48 hours (with 17 weeks generally defined as the maximum period for averaging); minimum rest periods (defined daily and weekly); and maximum daily hours for night workers. As with all regulations, certain exemptions are present. The Regulations reproduce the standard exemptions from the *Working Time Directive* for groups such as transport workers, doctors in training and senior managers (though this will have to be amended as a result of the removal of some exemptions through recent EU Directives – Broughton, 2002). In addition, the Regulations open up opportunities at enterprise level for 'flexible application' through workforce agreements with worker representatives. The most controversial aspect is the inclusion of opportunities for 'individual opt-outs' from the maximum working week provisions, through agreements signed by employers and the individual employee. Such individual agreements are possible under the terms of the Working Time Directive, but the UK is the only country to have taken up the possibility.

It is too early to say whether the halt in the trend towards lengthening hours in the UK is due to the introduction of the Working Time Regulations. A full assessment of the effects of the UK legislation must wait a little while. However, some research has begun to appear, most recently through a Department of Trade and Industry (DTI) report, released in April 2001, which involved interviews with managers and worker representatives in 20 case-study organizations over a 12-month period (Neathey and Arrowsmith, 2001). As such, it is possible to make a preliminary assessment.

There is widespread agreement that the provisions for paid annual leave have been effective. They have been extremely important for that small minority of full-time employees (around 3 percent) and the larger minority (around one third) of part-time employees that had previously lacked this entitlement. The trickier question concerns the effect of the maximum limits on (average) weekly hours. As noted above, the Regulations allow for varied forms of 'flexible application', including through individual opt-outs. The evidence suggests that in industries characterized by extended hours substantial numbers of employees have signed such individual opt-outs (Hall, 2002).

A small minority of enterprises has changed their work organization in order to comply with the Regulations and have achieved productivity gains. In the DTI report (Neathey and Arrowsmith, 2001), seven of the twenty organizations felt that that the Regulations had contributed to operational efficiency in some way, in particular by focusing managerial attention on labour scheduling issues. However, in general, surveys of employers tend to indicate that the Working Time Regulations have so far had little impact. On the one hand, this is clearly a relief given the claims by some employer associations that compliance would be costly and burdensome. On the other hand, it could be viewed as a disappointment, given the prevalence of extended hours in the UK. The reasons for the reported lack of impact are varied (see Goss and Adam-Smith, 2001). First, many enterprises were already working in accordance with the terms of the Regulations and therefore had no need to adjust. Second, where enterprises were not working in line they were able to adopt one or another of the forms of 'flexible application', including individual opt-outs. Such opt-outs are designed to be voluntary, and it is indeed likely that in areas where workers are on low base wage rates and are dependent on long hours of paid overtime in order to achieve a satisfactory income there would indeed be pressure from employees to use individual opt-outs. The Regulations have not been designed to tackle the entrenched British culture of long hours of paid overtime. Third, is the general issue of non-compliance. Some recent research shows non-compliance with the provisions for paid annual leave amongst low paid and non-unionised workers (Arrowsmith, 2001). In addition, there have been several complaints about pressure on workers to sign an individual opt-out (Arrowsmith, 2001).

Researchers point to several factors that could lead in the long-term to a more substantial impact. Problems of non-compliance can be readily fixed by more vigorous enforcement, in particular to protect individual choice. Moreover, individual opt-outs are not a robust long-term solution for employers, and we can note that workers can easily opt back in (in most circumstances with only seven days notice). In any case, it is likely that the possibility of individual opt outs will be curtailed in the course of the EU review of the Working Time Directive that is scheduled for 2003 (Hall, 2002; Adnett and Hardy, 2001). In addition, there is a certain demonstration effect from enterprises that have achieved productivity gains through adjusting working-time schedules. More broadly, the Working Time Regulations bear a potent message that legitimizes controls on extended hours (and invokes the traditional goal of shorter working hours). In the medium term, this is likely to have a strong effect on both employers and employees.

Conclusion

The preceding sections point to a problem of extended (or 'long' or 'excessive') working hours in Australia. This is identified as a distinctive problem that is confined to a handful of OECD countries. The problem was in turn linked with deficits in the system of working-time regulation. The emergence of this distinctive problem presents significant challenges to policy makers. But the aberrant position of Australia should not be taken as a counsel of despair. The evidence of divergence amongst countries points to the importance of

societal differences and what can be called 'societal effects' (Rubery, Smith and Fagan, 1997). The Australian experience of increasing average working hours for full-time employees is clearly a contingent development, which can be seen as tied up with the evolution of a distinctive working-time regime. As such, it is amenable to change, given adequate social and political pressure.

Footnotes

1. This is a loose definition, similar to that offered by the ILO for the parallel notion of 'excessive' working hours (ILO, 1999: 145). In speaking of a standard for full-time work, I am referring to 'normal', 'contractual', 'ordinary' or 'agreed' hours, as laid down in one or another form of working-time regulation. Just as a standard applies at a daily, weekly or annual level, so too could extended hours be defined at a daily, weekly or annual level. There is no standard for lifetime working (though this may yet emerge, as social security and employment entitlements are increasingly integrated and as public policy is obliged to grapple with life course issues). We usually refer to a standard at weekly (and daily) level. For contemporary Australia, the 'norm' or 'de facto standard' for full-time work is said to be 38 hours per week (around 7.6 hours per working day in a five day working week). There is no need to spell out a numerical definition of extended hours. However, the above discussion would point to a (conservative) definition of 'extended' weekly hours in Australia as above 40. It could be useful to introduce a notion of *very extended* working hours, say 45 and over per week, and *extremely extended* working hours, say weekly hours that are 49 and over. For a fuller introduction to the central concepts in this article, see Campbell, 2001, Attachment K.
2. In this article I identify 'work' with *paid work*, ie employment. In reality, there is a complex relation between paid work in the workforce and unpaid work within the household. For a useful discussion of how long hours of paid work and a widespread sense of 'time squeeze' relate to the household, see Bittman and Rice, 2002.
3. The Test Case on 'Reasonable Hours' was launched in June 2001 and ended with a decision handed down by a Full Bench of the Australian Industrial Relations Commission (AIRC) in July 2002 (AIRC, 2002). This Case brought together the Australian Council of Trade Unions (ACTU), several individual unions and the state Labor governments around a claim that *inter alia* sought a new award sub-clause stating that "employers must not require an employee to work unreasonable hours...". The AIRC decision accepted much of the evidence that long hours were a problem in Australia but rejected the main regulatory solution proposed in the union claim. Instead, it designed a new sub-clause that would give employees the right to refuse overtime where it leads to unreasonable hours. The union movement may be able to use the new sub-clause as a mobilising tool, but it is likely that new regulatory initiatives will also need to be pursued.

4. An introduction to the different sources of data on working-time duration is provided in Campbell, 2001, Attachment K. Here I merely note two points. First, the data in Figure 1 are (unpublished) data for full-time *employees*. The more familiar published data are for employed persons rather than employees. Second, the data in Figure 1 are for *actual* rather than usual weekly working hours. Because such data include full-time employees who are away due to sickness or annual holidays (and whose actual weekly hours may be zero), the average is deflated. If the data were for usual weekly hours, as is more common in other OECD countries, the average would be significantly higher. A clue to the likely size of the effect can be found in the comparison of AWIRS 95 data, which indicated that usual weekly hours for all full-time employees in the survey were 44.1 (Morehead et al, 1997, 263), with the August 1995 ABS data, which indicated that actual weekly hours for full-time employees were 41.4 (Commonwealth Government 2002, 39).
5. The impact of Directives, such as the 1993 Working-Time Directive (EIRR, 1994), on countries of the European Union offers the best example of such supra-national regulation. However, ILO Conventions and Recommendations can also be important (Bosch, 1999).
6. I concentrate here on formal, state-sponsored regulation. Though crucial, this should not be identified as the only form of regulation. It is preferable to adhere to a broader notion that focuses on regulatory mechanisms rather than formal legal rules. Peck (1996, 17) offers a helpful concept of social regulation, encompassing "the disciplining effects of market regulation, purposive regulatory action on the part of the state, and the diverse effects of social institutions, practices and conventions".
7. This is a highly simplified outline. I bracket out complications that arise out of processes such as the averaging of working hours over a longer period than a week.
8. One interesting aspect of the recent 35-hour week legislation is the attention to the working hours of managerial employees (Bouffartigue and Bouteiller, 2001a, 2001b). France is one of the countries in which it has been possible to detect a small increase in the proportion of employees working extended hours in the last twenty years. This is usually identified with the work of managers (*cadres*). The law seeks to respond by dividing managers into three categories. At the top are 'executive managers' (*cadre dirigeant*), who are seen as completely independent in the organization of their working time and who are given exemption from most working-time regulation (though they do have paid holidays and maternity leave). At the other end are managers who are seen as integrated into the work organization, working on regular working-time schedules together with other employees. Such managers are subject to the provisions of collective agreements governing working-time reductions. The most interesting is the third category, seen as intermediate to the other two. The legislation attempts to ensure working-time reductions for such employees but in a way adapted to their style of working. For those managers whose work cannot be calculated in hours and who enjoy a great deal of autonomy in their work, the law seeks to ensure reductions in the form of extra days off – around 10 per year. Such employees do not have to

abide by daily or weekly maxima but must not work more than 217 days per year (ie 47 weeks of 5 days less 8 days for statutory public holidays less the 10 extra days). This picks up on research in many countries showing that such employees often want reduced working hours but would prefer them in the form of blocks of additional time off.

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