

The roller coaster  
of reform politics  
and the  
implications for  
union organising

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# A brief history of the roller coaster

- Award system, reliant on tribunals 1904-1991
- Move to single-employer collective bargaining ('enterprise bargaining') 1991
- Encouragement of individual contracting
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  - Workplace Relations Act wef January 1997
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- 'Return' to collective bargaining
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  - Fair Work Act wef July 2009

# A brief history of the roller coaster

- Award system, reliant on tribunals 1904-1991
  - Labor government elected 1983, Accord 1983-1996
  - New Zealand National (conservative) government introduces Employment Contracts Act 1991
  - ‘Liberal’ (conservative) party adopts radical policy 1992, loses 1993 election
- Move to single-employer collective bargaining (‘enterprise bargaining’) 1991
  - supported by major legislative changes wef March 1994
- Encouragement of individual contracting
  - Liberal coalition government elected 1996
  - Workplace Relations Act wef January 1997
  - ‘WorkChoices’ (WC) amendments wef March 2006
- ‘Return’ to collective bargaining
  - Coalition defeated November 2007 election
  - transitional amendments wef March 2008
  - Fair Work Act wef July 2009

# Key elements of WorkChoices

- Ended unfair dismissal protections for workers in firms with 100 or fewer employees
- Abolished 'no-disadvantage test', removing most minimum conditions that agreements had to satisfy
  - especially important for 'Australian Workplace Agreements' (AWAs) – individual contracts registered under 1996 act – and non-union 'collective' agreements
- Enabled employers to make 'employer greenfields agreements' with themselves
- Changed minimum wage fixation – from tribunal to 'Fair Pay Commission'
- Took away most responsibilities of tribunal
- Restricted union access to workplaces through system of permits, notice and employer ability to determine conditions of entry
- Promoted individual contracting & restricted collective bargaining rights and rights to take industrial action
- Attempted to create single national system

## Some effects

- Only a small proportion of employees on AWAs or non-union 'collective' agreements (CAs)
- But majority of those lost some or all 'protected' award conditions in overtime and shift premiums, penalty rates for night & weekend work, etc
  - lower wages or lower wage increases
- Softening of gender pay ratio
- Those most insecure and most affected in weakest part of labour market
  - many not affected because of strong labour market at the time (pre- financial crisis)
- Many people knew someone adversely affected
- Union membership fell notably (though may have increased slightly in lead up)

## from 'Choice' to 'Fairness'

- New institution: 'Fair Work Australia'
  - Minimum wages, awards, grievances, disputes, unions, dismissals, good faith, compliance
  - 'one stop shop' (or at least one brand)
  - less partisan selection process
- New safety net
  - 10 'national employment standards'
    - including 'right to request' changes in work arrangements for parents of young or disabled children, or to extend maternity leave
  - 10 allowable minimums in flexible 'modern awards'
  - awards 'modernised' by 2010 – rationalising conditions within industries
  - 'flexibility' clauses for 'individual arrangements' within awards and collective agreements
- Unfair dismissal protections broadly reinstated with amendments
  - special provisions for firms with less than 15 employees

## from 'Choice' to 'Fairness'

- No new AWAs, transitional 'ITEAs'
  - Bargaining in good faith, incl union recognition where majority support
  - 'better off overall' test for agreements
  - Non-union CAs *retained*, no union right to be notified or heard
- Maintain hard line restrictions on union access to workplaces, prohibitions on 'pattern bargaining' and secondary boycotts, requirements for secret strike ballots
- Consolidates move to national system
  - referrals from state Labor governments
- 'Tough cop' regulation of construction industry retained
  - separate legislation, of greatest concern to unions – spectacle at ACTU Congress
  - construction industry employees can be jailed for refusing to answer questions about union meetings
  - mild easing blocked in Senate, personnel changes forthcoming



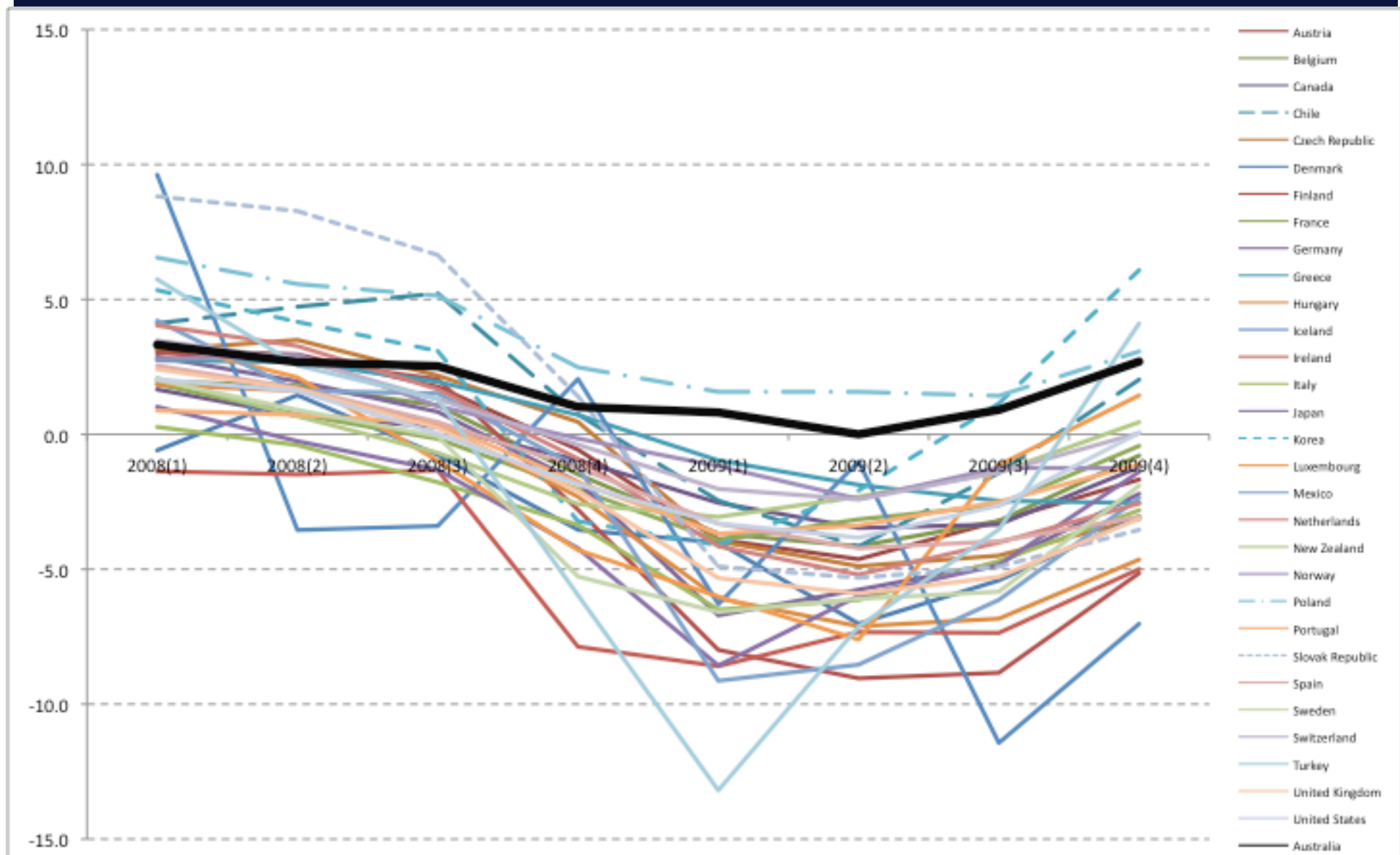
## from 'Choice' to 'Fairness'

- Some aspects of FW Act reverse even the 1996 WRA reforms; others maintain aspects of WC
- Continuing emphasis on flexibility, though it does not appear to go as far in flexibility for *employee* as in UK
- Better minimum standards for employees, though still limited
- Harder for employers to
  - exclude unions through individualisation strategies
  - refuse to negotiate with unions
- Easier to get disputes resolved
- But few major improvements for unions in terms of industrial action or right of entry
- Continuing issues in construction industry

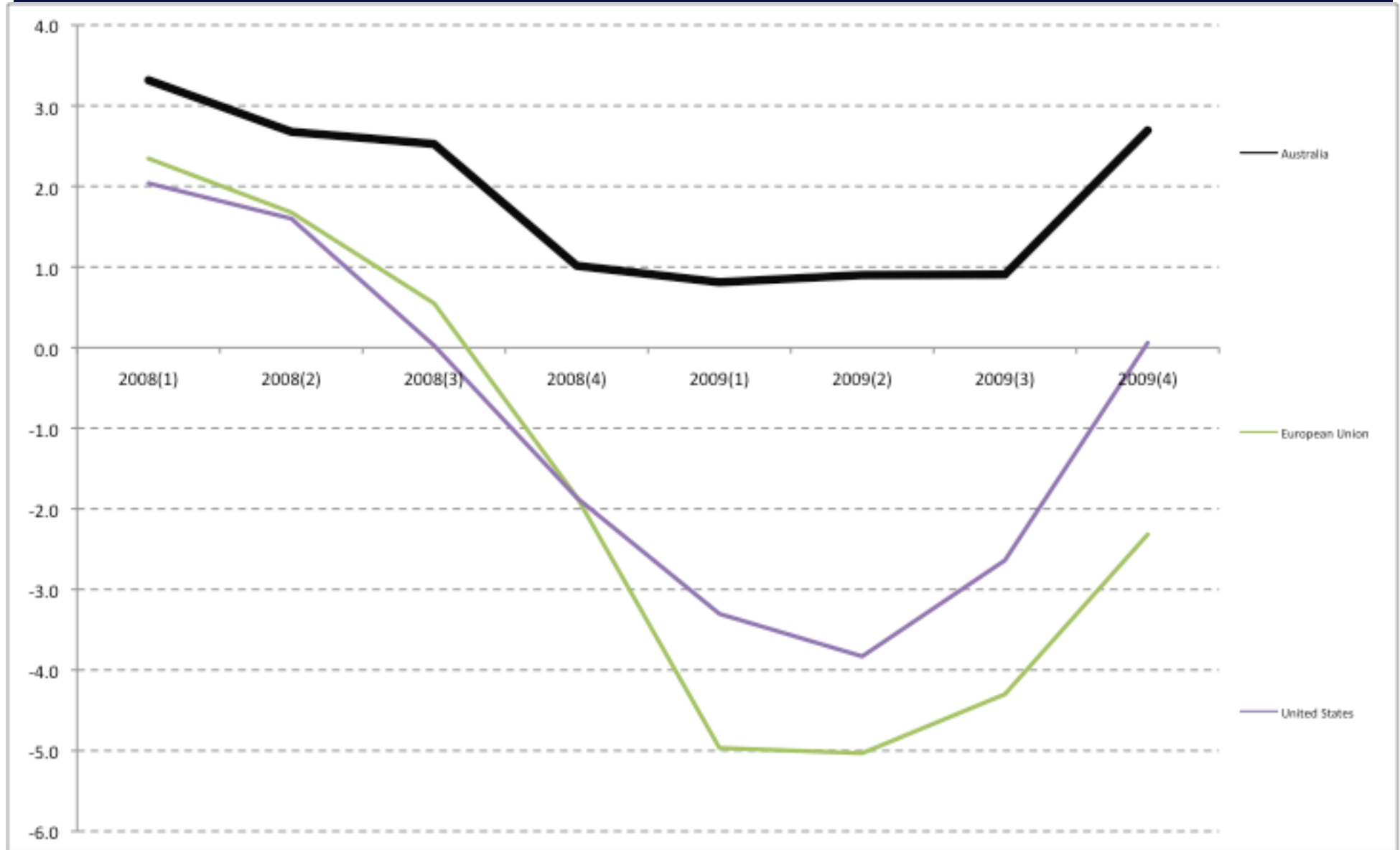
# Can we assess the effects of 'Fair Work'?

- At the macro level – everything dominated by Global Financial Crisis
  - Sudden slowing of GDP growth, sharp rise in unemployment,
    - since fallen
  - But Australia has performed better than most OECD countries

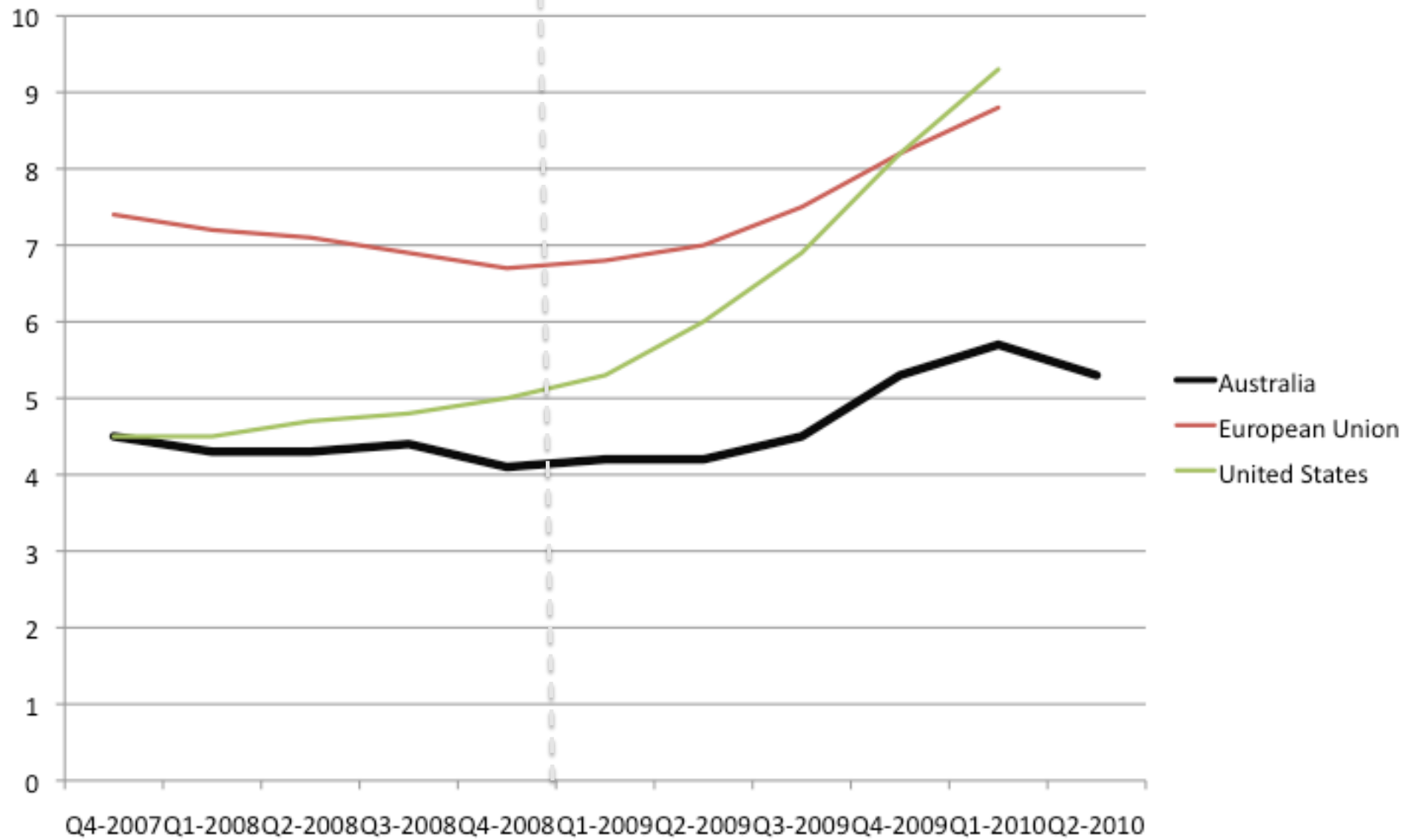
## GDP real growth rate compared to the same quarter of previous year



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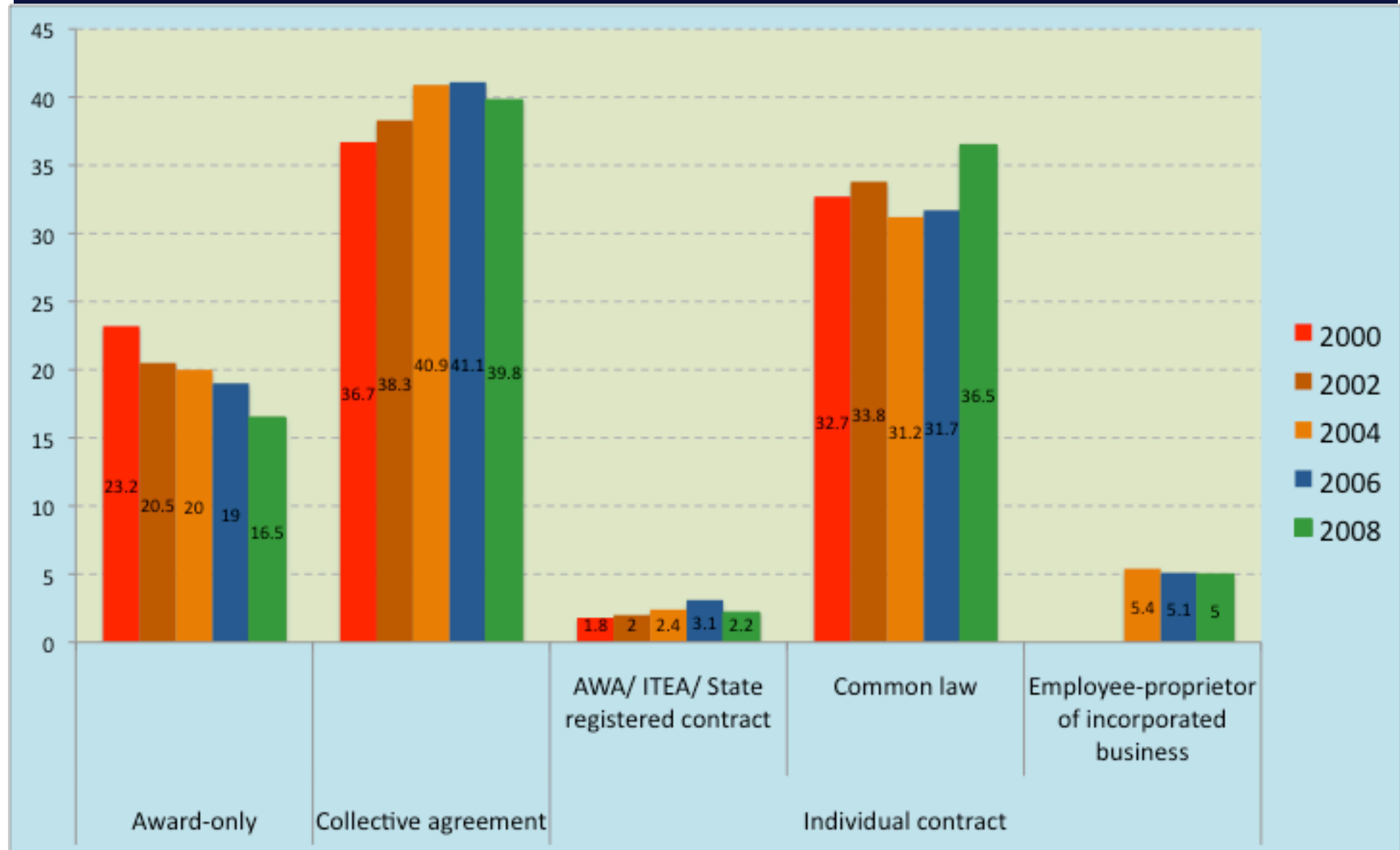
## Harmonised unemployment rates



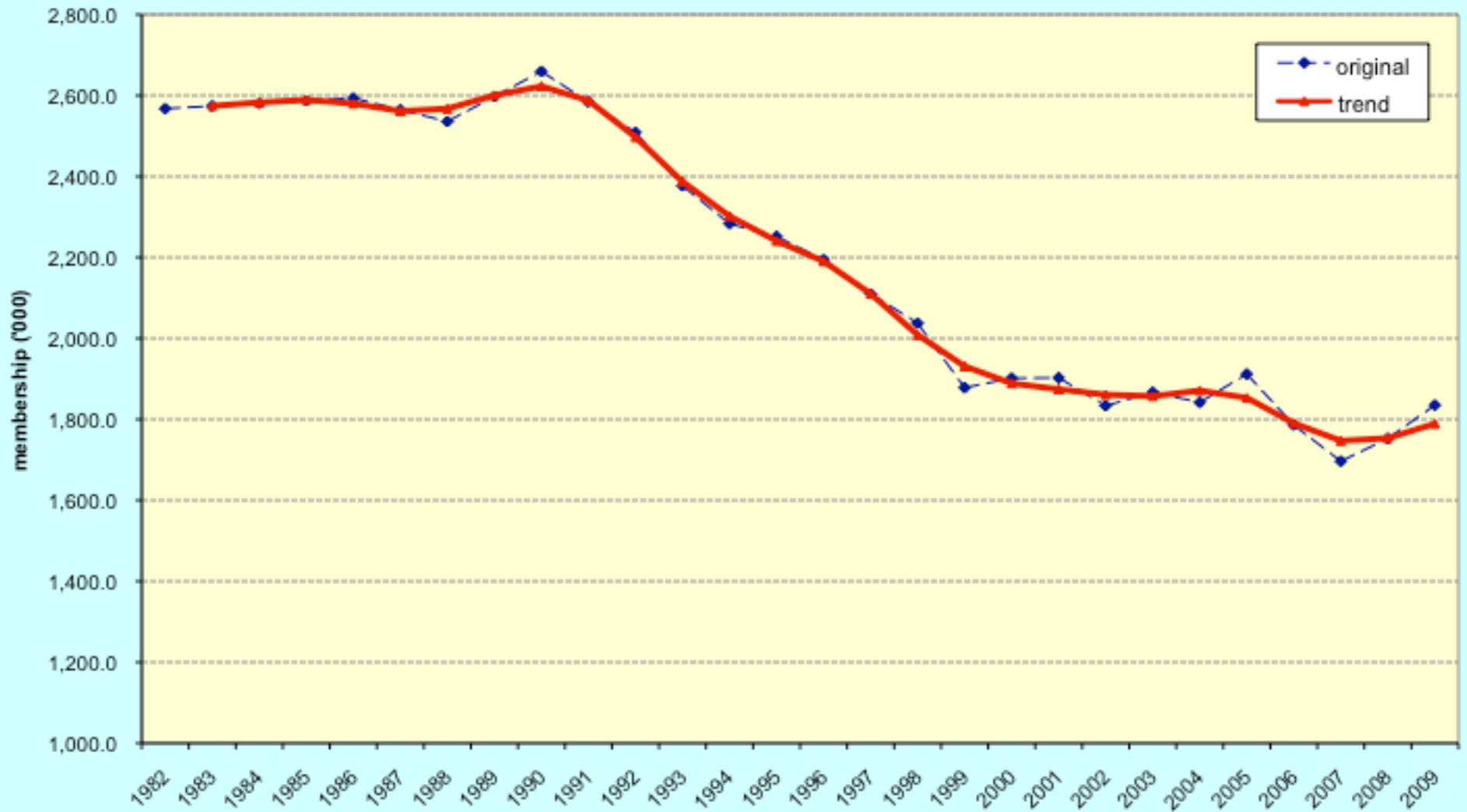
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- Data on
  - agreement coverage only up to transitional period
  - union membership to 2 months after FW Act commenced

## Instrument coverage, Australia, 2000-2008

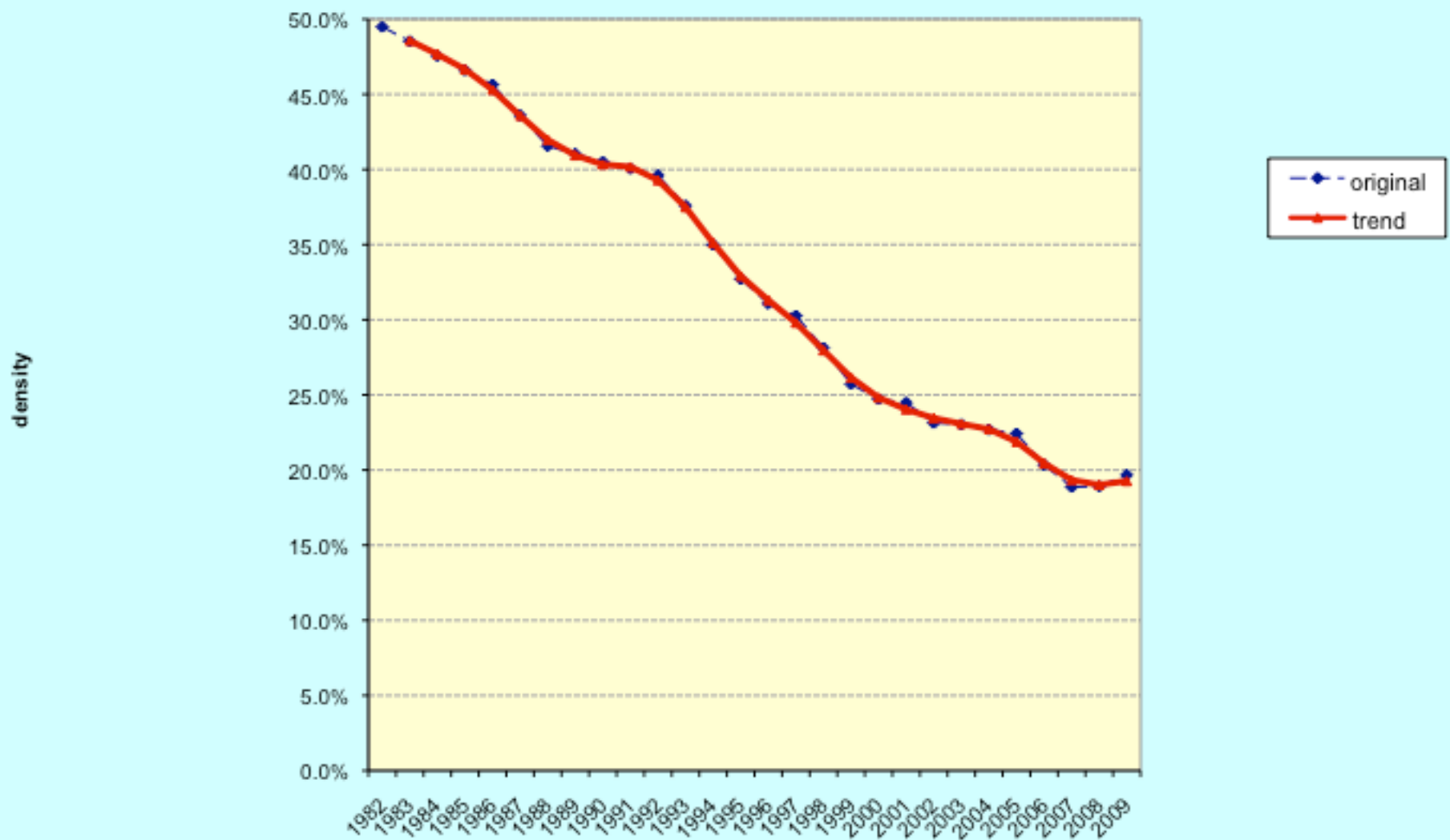


Trend and original union membership 1990-2009

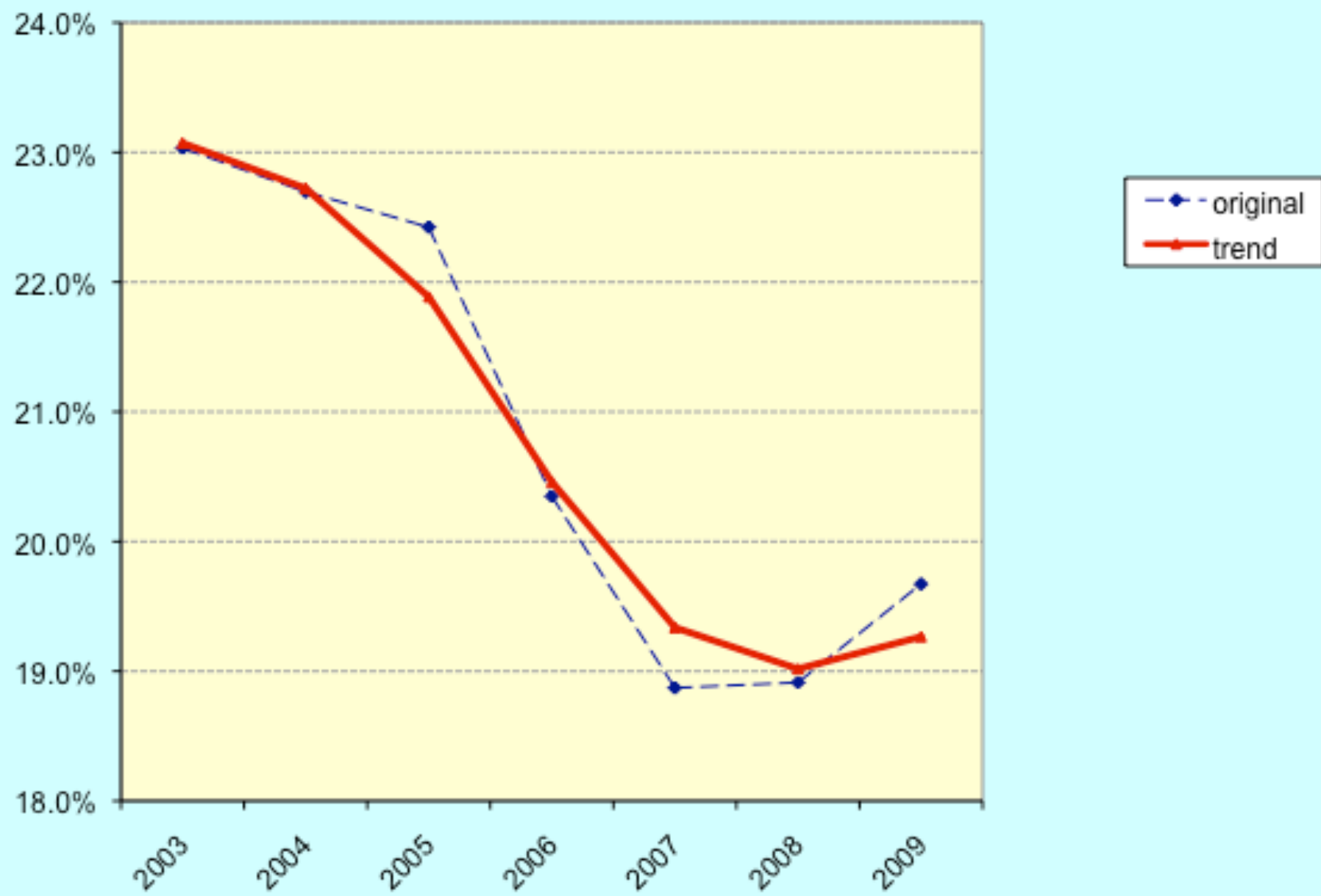




Trend and original union density 1990-2009



Trend and original union density 2005-2009



# Implications for union organising

- Reversal of membership & density declines reflecting reform effects within unions, plus abolition of WC
- Policy focus is still heavily on the workplace or enterprise, and so union skill sets still need to focus in developing power at this level
- Continuing difficult regime of permit-regulated access to workplaces emphasises continuing importance of having active delegates, as organisers have limited direct access to current and potential members
- But task is easier under FW than WC because it is harder for employers to be as actively anti-union as before
  - even Rio Tinto and Telstra have been forced to negotiate with unions they previously demonised
- Some unions question benefits for organising of legislated minima and would resist extension of NES
  - or are concerned about potential for misuse of flexibility clauses or right to request
- Alternatively, each gain is a platform from which new gains can be fought for

A photograph of a roller coaster with a large loop. The track is orange and yellow, and the structure is blue. In the background, there is a station with a red and white striped awning. The sky is blue with some clouds.

# Has the roller coaster stopped? Or will WorkChoices be resurrected?

- WC electoral poison in 2007
  - would expect no party could win office if advocated a return to WC
- 2010 election quite competitive
  - current polls suggest close result, after Labor (ALP) government dominance through most of cycle





# Has the roller coaster stopped? Or will WorkChoices be resurrected?

- Opposition Leader promised that WC would not be back 'in name'
- ACTU launched campaign saying Liberals would reintroduce WC
- Opposition denies but leadership ideologically aligned with WC
- ALP government will also push this line, but election likely to be dominated by other issues  
→ uncertain outcome