

Who Bargains?

A report prepared for the NSW Office of Industrial Relations
by the Workplace Research Centre, The University of Sydney

Brigid van Wanrooy
Sally Wright
John Buchanan
May 2009

Table of Contents

Executive Summary	2
1. Introduction	4
2. Methodology	8
3. Determining Who Bargains	9
4. Who Bargains?	14
5. The Quality of the Bargaining Relationship	25
6. Who Doesn't Bargain?	31
7. What is the Role of Awards? Insight from WIRS	37
8. The Fair Work Act: Who will Bargain?	45
References	50

Tables and Figures

Table 3.1 Self-reported agreement type, 2008	9
Table 3.2 Who negotiates your wages and conditions? 2008	10
Table 3.3 Pay setting by Award role in pay and conditions, 2008, per cent	11
Table 3.4 Self-reported bargaining of pay and conditions, 2008, per cent	12
Table 4.1 Self-reported bargaining by sex and age, 2008, per cent	14
Table 4.2 Self-reported bargaining by ANZSCO skill level, 2008, per cent	15
Table 4.3 Self-reported bargaining by qualification level and English-speaking background, 2008, per cent	16
Table 4.4 Self-reported bargaining by occupation, 2008, per cent	17
Table 4.5 Self-reported bargaining by form of employment, 2008, per cent	18
Table 4.6 Self-reported bargaining by usual hours worked in main job, 2008, per cent	19
Table 4.7 Self-reported bargaining by sector, 2008, per cent	20
Table 4.8 Self-reported bargaining by workplace size, 2008, per cent	20
Table 4.9 Self-reported bargaining by enterprise size, 2008, per cent	21
Table 4.10 Main type of bargaining by industry, 2008, % of employees in that industry	22
Table 4.11 Summary table of characteristics of self-reported bargaining groups	23
Table 5.1 Self-reported bargaining by opportunity to negotiate pay directly with employer, 2008, per cent	25
Table 5.2 Self-reported bargaining by Pay Setting, 2008, per cent	26
Table 5.3 Self-reported bargaining by Union Workplace, 2008, per cent	27
Table 5.4 Self-reported bargaining by Union Membership, 2008, per cent	28
Table 5.5 Self-reported bargaining by Union Delegate in Workplace, 2008, per cent	28
Table 5.6 Self-reported bargaining by Attitudes to Managers, 2008, per cent	30
Table 6.1 Variable descriptions	31
Table 6.2 Two logistic regression models of employees who do not negotiate	33
Table 7.1 Pay instrument ABS & Australia at Work comparison, 06, 07 & 08, per cent	37
Table 7.2 WAD Current Federal Agreements, March & September Quarters 2006 - 2009	39

Table 7.3 Estimates of the Incidence of Different Types of Employment Instruments and the number of workers covered, Victoria, May 2008	40
Table 7.4 Broadest measure of the incidence of different employment instruments, business unit size, Australia, May 2006, per cent	41
Table 7.5 Business reports of different instruments, by business size, Australia, May 2006, per cent	41
Table 7.6 Matters on which instruments are referred to when determining enforceable rights, August 2006, per cent	42
Table 7.7 Indicative estimates of employee coverage of different instruments based on a meta-analysis of employer surveys, Australia, 1990-2006, per cent	43

Executive Summary

The NSW Office of Industrial Relations commissioned the Workplace Research Centre to use existing data sources to determine, as precisely as possible, which employees are bargaining in the Australian labour market. Allied to this are the questions: to what level employers and their employees depend on awards, and to what degree those that are said to bargain depend on awards? These questions have become very important in recent industrial relations policy debates. Particularly given that the centrepiece of the Rudd Government's vision for the Australian industrial relations system, expressed in the *Fair Work Act 2009*, is collective bargaining.

The analysis draws on findings from the *Australia at Work* survey regarding employees' perspectives of workplace negotiation and the determination of pay and conditions. Other data sources used to determine the reach and use of awards are the Workplace and Industrial Relations Surveys (WIRS), the Australian Bureau of Statistics (ABS) and findings from the Award Review Taskforce (ART). To determine who bargains the analysis focussed on employees' reports of who negotiates their pay and conditions, and whether an award also plays a role. This produced six main bargaining types distinguishing between collective, individual and no negotiation; along with whether an award played a role. The most common forms of bargaining vary from 'not bargaining but with an award in place' (19 per cent); to 'individual negotiation and no award' (20 per cent); and 'collective bargaining with a union' (24 per cent). It is probably these three groups that people mostly think of when analysing employees' industrial relations arrangements.

Essentially, whether an employee does not bargain comes down to two main influences: the level of bargaining power and structural factors such as the size of the workplace. Employees with limited bargaining power are not involved in workplace negotiation. They tend to be the low-paid, low-skilled and those with weaker attachment to the workforce such as part-time workers and casuals. Of particular concern, is the fact that women, regardless of their position in the labour market are less likely to bargain. In part, this can be attributed to the fact that they have traditionally relied on institutional means of wage and condition setting such as awards and other determinations made by the Commission. Overall, the Australia at Work data clearly demonstrates that more than half of employees still perceive awards to play an important role in the determination of their pay and conditions, either directly or indirectly. Structural factors such as sector and the size of the workplace are also important bargaining influences. The domain of collective bargaining is essentially the public sector, while the private sector tends to rely more on individually bargaining and the award system. While bargaining does occur across both large and small enterprises, large enterprises tend to bargain collectively and small enterprises engage in individual negotiation. To date, collective bargaining has predominately been union-led. Due to declining union density, enterprise agreements will only become widespread if employers and employees engage in collective bargaining on their own.

Review of employer and business reports of award reliance confirm that the award system is an essential element of determining pay and conditions, either directly or indirectly. And importantly, awards are an important component of enterprise agreements. The majority (78 per cent) of businesses refer to an award when determining pay, and where there is a certified agreement in place 90 per cent refer to the award. There is a high reliance on awards and agreements across all businesses. The Award Review Taskforce found that 96 per cent of all businesses have at least one employee on either an award or agreement and 47 per cent have at least one employee paid the exact award rate. Generally speaking, awards and collective agreements are very important where enforceable rights are concerned. It is essential that awards continue to be updated and remain relevant to employees and employers.

Despite the gradual erasure of Australian Workplace Agreements (AWAs), there is still capacity for individual negotiation under the *Fair Work Act*, through the use of Individual Flexibility Agreements (IFAs) provided for in all awards and enterprise agreements. While the IFAs should not undermine the conditions provided in the award and agreement, there will be no registration processes in place for these agreements. This will make monitoring of terms in IFAs difficult, if not impossible. It is expected that these agreements will be popular among employers, particularly small businesses where there is a high degree of reliance on the combination of awards and individual arrangements. In small enterprises, the relative benefits from collective bargaining do not tend to outweigh the time and resources employed.

The analysis has shown that a substantial segment of the workforce, in particular the low-skilled and low-paid, are shut out from collective bargaining. Thus, the low-paid bargaining stream for multi-employer bargaining will be vital in enabling employees in these segments to access collective bargaining. Developments in this area are a 'must watch' to see how it is initiated among employees, whether it relies on union initiation and ultimately, who will have access to this type of collective bargaining.

1. Introduction

This report focuses on determining, as precisely as possible, which employees are bargaining in the Australian labour market. Allied to this, is the question: to what level employers and their employees depend on awards, and to what degree those that are said to bargain depend on awards. These questions have become very important in current industrial relations policy debates. The centrepiece of the Rudd Government's vision for the Australian industrial relations system is collective bargaining. As the Forward with Fairness policy document states:

Collective enterprise agreement making and democracy will be the heart of Labor's industrial relations system (Rudd & Gillard, 2007).

Substantial elements of the *Fair Work Act 2009*¹ appear to be founded on the assumption that bargaining is the central industrial relations activity of employers and their employees, or if not, it can be made so, given the appropriate incentives. This project aims to directly test this assumption.

Using the Australia at Work survey data the research primarily examines employees' perceptions of bargaining and how their pay and conditions are set. This report examines whether all employees are in a position to collectively bargain. This is done by determining whether bargaining is currently taking place, what forms of bargaining currently occur (e.g. collective or individual) and whether there is potential for collective bargaining to occur where it currently does not exist.

The *Fair Work Act* has reversed the strong emphasis on individual bargaining put in place by the Howard Government and has turned the focus back toward collective bargaining at the enterprise level. Centralised forms of wage and conditions setting have been watered down. The award system is in the process of being 'modernised', reducing the number and content of awards. The new collective bargaining agenda prescribed in the *Fair Work Act* does not distinguish between union and non-union collective agreements and relies on a notion of 'good-faith' bargaining.

The focus on enterprise bargaining for determining working conditions is based on an assumption that every workplace is interested in and equipped to bargain collectively. However, it is clear that this is not the case for many workplaces, particularly those with a small number of employees. According to employer reported data registered enterprise agreements determine the pay for 40 per cent of employees. However, the Australia at Work survey of employees finds that nearly half this proportion are aware that this is the case (van Wanrooy et al. 2008:22). The Government has acknowledged there are some difficulties in making collective bargaining widespread and has promised assistance to employers and employees, as well as making some concessions for employees in low-wage sectors.

¹ Hereafter it will be referred to as *Fair Work Act*.

Australia's system of compulsory conciliation and arbitration, introduced three years after Federation, set most market wage rates on an industry basis (Cooper & Ellem 2008; Peetz 2008; McCallum 2002). From 1987 onwards, wage setting policies have become increasingly decentralised from the national and industry level, down to the workplace and individual (McCallum 2002; van Gellecum et al. 2008). Federal enterprise bargaining was first introduced in 1992. It was union-based and operated within the confines of conciliation and arbitration and had a number of safeguards for employees including a 'no disadvantage test' and close scrutiny of the content of agreements by the Australian Industrial Relations Commission (AIRC) (Cooper & Ellem 2008). The *Industrial Relations Reform Act 1993* codified union-based enterprise bargaining and introduced a limited right to strike and established a non-union bargaining stream (Briggs & Cooper 2006; Cooper & Ellem 2008; McCallum 2002). The introduction of this stream was criticised at the time for undermining union collective bargaining and for the lack of requirements for the parties to genuinely bargain (Bennett 1994, 1995; Cooper & Ellem 2008; Peetz 2008).

Then for nearly 12 years from 1996, the Howard Liberal Government sought to break down structures based on collective bargaining and trade unions (Cooper & Ellem 2008). The *Workplace Relations Act 1996*, among other things, undermined collective bargaining and the award system, diminished the role of trade unions and curtailed the power of the AIRC. The Act also provided for individual statutory agreements - known as Australian Workplace Agreements (AWAs) - which individualised employment relations, excluded unions and undermined some award conditions. Cooper & Ellem (2008) argue that while the take-up of AWAs was slow between 1996 and 2005, their existence threatened collectively bargained and determined rights, conditions and wages as well as union power. At this time, awards were also stripped back to only 20 'allowable matters' undermining the safety net for enterprise bargaining. Non-union collective agreements also became more attractive to employers as they were no longer required to notify the relevant union of their intention to make such an agreement.

The *Workplace Relations Amendment (Work Choices) Act 2005* continued the assault on conditions, rights and unions and to change the face of enterprise bargaining (Cooper & Ellem 2008). Enterprise agreements were no longer required to be certified by the AIRC and a list of 'prohibited content' for agreements was introduced. AWAs remained with fewer controls and employer Greenfield agreements - which employers could make unilaterally - were introduced. The minimum wage-setting function was shifted from the AIRC to the newly created Australian Fair Pay Commission and no new awards could be made, while existing awards were 'rationalised'. So-called 'protected' award conditions such as loadings and penalty rates, overtime rates, incentive payments, and public holiday penalties were frequently removed from AWAs and agreements that were registered during this time (Baird et al. 2007; Cooper & Ellem 2008; Evesson et al. 2007; Peetz 2008, Pocock et al. 2008; van Wanrooy et al. 2007).

Under the *Workplace Relations Act 1996*, enterprise agreements spread slowly, from 35 per cent of employees covered in 1995 to 41 per cent in 2004 (Briggs & Cooper 2006:5). Employees covered by federal awards were also more likely to be covered by enterprise agreements, with

56 per cent covered in 1995 (Boreham et al. 1996:51). However, awareness of enterprise agreement making among employees appears to remain relatively low. Data from the Australia at Work survey shows that while 52 per cent of employees recognise that their pay and conditions are set collectively, they are more likely to attribute the setting of their pay to the award system rather than enterprise bargaining (van Wanrooy et al. 2008:23).

Historically, collective agreement making has been far more pronounced in the manufacturing and construction industries than in the service industries. The low incidence of collective agreements in service industries (such as retail trade, accommodation and cafes, and personal services) can be attributed to the higher incidence of State award coverage in these sectors (ACIRRT 1999; Smith 2003). The incidence of enterprise bargaining is far greater in the public sector and larger private sector workplaces than it is in the private sector, particularly, workplaces with less than 100 employees (Smith 2003:96). Many women remain outside the enterprise bargaining stream as they tend to work in poorly paid occupations and industries, in positions of low skill and traditionally have had limited representation in bargaining and minimal access to over-award payments.

Many employers in small workplaces have traditionally relied on the award system to establish conditions of employment and have been reluctant to establish their own agreement-making processes. Many employees, too, have depended on the award system for the provision of a standardised and equitable safety net of working conditions. With a continuing decline in union membership it may be fair to say that many workers do not consider collective bargaining to have a key role in their work environment. Further, small workplaces are much less likely to be unionised primarily due to diseconomies of scale. Employees working in small workplaces are sometimes unaware of which union to join or hold the view that unions are not applicable to them in their workplace (Pocock et al. 2008:485).

The Rudd Government has claimed that by introducing the *Fair Work Act 2009* they have scrapped *Work Choices*. While some elements of *Work Choices* have remained, the main function of the new laws has been to reverse the trend toward individual negotiation back to collective agreements made at the enterprise level. Bargaining agents' capacity to represent the interests of their clients and to initiate bargaining has been improved. The new Fair Work Australia institution can facilitate collective bargaining by making good-faith bargaining orders. In contrast to most industrialised countries where there is no scope for collective agreements that do not involve trade unions, the *Fair Work Act* continues to decouple unions from collective bargaining by providing the option to collectively bargain without a union. So while the focus on collective bargaining potentially provides a greater role for unions, no legal distinction is made between union and non-union collective agreements. The *Fair Work Act* has strengthened the safety net and puts life back into the award system, however, it will be only a fraction of its former self. The 10 National Employment Standards (NES) will apply to all employees and the 'modern' awards will contain a further 10 award-specific matters.

In addition to the standard collective agreements made between employers and employees, Greenfield agreements are also provided for in the Act but these must be made with union involvement. There are also provisions for multi-employer agreements to cover a designated group of low-paid employees and their employers, under the facilitated low-paid bargaining stream. These agreements are intended to assist low-paid workers who have not historically had access to the benefits of collective bargaining and face substantial difficulty in bargaining at the enterprise level. While low-paid sectors are not defined, a Government fact sheet states that there will be strict criteria for access to such a workplace determination and suggests this bargaining stream will help employees who are often paid the award rate (DEEWR 2009). By introducing the low-paid bargaining stream, the Rudd Government acknowledges that employees in these sectors may lack the skills and bargaining power to negotiate improved wages and conditions at the single enterprise level. Similarly, some employers in low-paid sectors may lack the time, skills and resources to bargain collectively with their employees.

There is further recognition by the Government that many workplaces have yet to venture into collective bargaining. Funding has been promised to employer organisations to assist their members with enterprise bargaining. Assistance will also be given to both employers and employees in the form of providing sample agreements. However, this is unlikely to build employees' knowledge about their rights and the processes involved in enterprise bargaining.

This report attempts to determine who is currently bargaining and the degree of reliance on the award system among employees who don't bargain but also those that do. The next section details the methodology used. Section 3 explains the primary measure of 'bargaining' and the following section explores the characteristics of employees in the different bargaining groups. Section 5 goes further to explore the employee reports of bargaining among the different bargaining groups and attitudes toward their relationships with managers. Section 6 provides further analysis of the employees who do not bargain, in turn, providing a more comprehensive picture of those who are covered by collective and individual bargaining. Section 7 uses other data sources to determine the degree of reliance on the award system. The final section concludes with a discussion of the implications of the results for the *Fair Work Act 2009*, and in particular, points to 'must watch' areas of the new laws.

2. Methodology

The aim of this paper is to determine who bargains in the Australian labour market, and if employers and their employees do bargain, what it is they bargain about. Allied to this, is the question of what level employers and their employees depend on awards, and to what degree those that are said to bargain depend on awards.

The majority of the analysis has been conducted using data from the Australia at Work study in which the perspectives of more than 5,500 employees were gathered in 2008 (representing almost 8.7 million people). Of relevance to this research are the questions:

1. Did someone negotiate your wages and conditions with your employer on behalf of you or your workplace?
 - a. Did you negotiate directly with your employer?
 - b. Or was there no negotiation of your wages and conditions?
2. Does an award play a role in your pay and conditions?
3. How are your pay and conditions set?

These questions indicate whether bargaining is taking place, who is undertaking the bargaining and whether an employee is falling back on the award system in place of bargaining at the workplace. From these data items we formed six main categories that indicate the whether bargaining is taking place and the employee's level of engagement in it and whether the level of bargaining is supported or has been replaced by the award system. Each employee will fall into one of the following categories:

- Employees who don't bargain and award plays a role
- Employees who don't bargain and no award role
- Individual bargaining with an award role
- Individual bargaining with no award role
- Collective bargaining with a union (and a group of employees).
- Collective bargaining with a group of employees.

The report draws on other data sources, in particular, findings about the instrument used to set pay and conditions are compared with data collected by the Australian Bureau of Statistics (ABS) and the more recent Workplace and Industrial Relations Survey (WIRS) conducted in particular States (Considine & Buchanan 2007). Further information is drawn from the Award Review Taskforce which published its results in 2006. These results are discussed in Section 7.

3. Determining Who Bargains

In the Australia at Work survey, employees are asked a number of questions about how their pay and conditions are set such as who is involved in bargaining and the type of instrument that is used. The results from these questions have been analysed with the aim of identifying an indicator for understanding which employees are currently bargaining in Australian workplaces.

In the labour contract module of the Australia at Work survey, one of the first and last questions asked of employees is how their pay and conditions are determined. It is expected that many respondents do not know the answer to this question so they are asked additional questions about union involvement, negotiation, and pay-setting. It is hoped that these issues may 'trigger' a more accurate answer to what instrument is used. The results are displayed in Table 3.1. Two-fifths (39 per cent) of employees consider themselves to be relying on the award system for the determination of their pay and conditions, either receiving basic award conditions (29 per cent) or over-award conditions (10 per cent). According to the Australian Bureau of Statistics (ABS) this reliance on basic award conditions has been over-estimated by employees, compared to reports from employers. However, a major weakness in the collection of the ABS data is that it does not provide an indication of the reliance on the award system as it does not differentiate between the individual arrangements of over-award pay and pay determined by individual common law contracts.

Table 3.1 Self-reported agreement type, 2008

	Population estimate	Per cent	n
Award only	2,516,322	28.9	1710
Over-Award	894,307	10.3	510
Collective agreement with a union	1,303,657	14.9	1064
Collective agreement without a union	520,872	6.0	288
Collective agreement (union not known)	153,912	1.8	98
AWA	482,895	5.5	285
Individual contract	1,905,181	21.8	1048
Other	34,189	.4	24
No agreement	459,025	5.3	257
Do not know	431,539	4.9	245
ITEA	5,709	.1	3
Refused	13,405	.2	9
Total	8,721,012	100.0	5541

Population: Employees only

Source: Australia at Work W2

Weight: Cross-sectional 2008

Table 3.1 also shows that 23 per cent of employees' pay is set by collective enterprise agreements. However, this is an under-estimation compared to employer reports collected by the ABS which find that 40 per cent of employees' pay are determined by registered collective agreement. It is possible that Australia at Work respondents may be confusing the collective arrangements of awards and enterprise agreements with one another. However, for the

purposes of this analysis the most obvious weakness of the data item in Table 3.1 is that it does not indicate whether bargaining is actually taking place, and instead relying on employees' recollection of the name of the formal instrument that may be in place. It is, perhaps, more useful to examine employees' reports of the type of negotiation taking place.

In the first instance, it is necessary to consider the extent to which bargaining is occurring. Once this has been determined it is possible to look at the forms of bargaining that are underway. One way to get an indication of the extent to which employees are bargaining is by asking the employees themselves who, if anyone, is responsible for negotiating their wages and conditions at their workplace. The findings reveal that while almost two-thirds of employees (63 per cent) report some form of negotiation around their wages and conditions, around one-third of employees (35 per cent) report that there is no negotiation with their employer around their pay and conditions, Table 3.2. Of all employees, one-third (34 per cent) report individually negotiating with their employer and around one-quarter (23 per cent) report that the union negotiates on their behalf; this comprises of those who say a union negotiates or it is a union and group of employees. Very small proportions of employees report that a group of employees at their workplace negotiate on their behalf (4 per cent) or that it was another bargaining agent such as a lawyer, an employment agency or labour hire company (2 per cent). The small minority who report workplace bargaining without a union indicates that collective bargaining, in the 2008 legislative environment was unlikely to occur at the workplace level without the intervention of a third party.

Table 3.2 Who negotiates your wages and conditions? 2008

	Population estimate	Per cent	<i>n</i>
There is no negotiation	3,080,406	35	1,849
Negotiation directly with employer	2,949,725	34	1,639
Union negotiated	1,960,514	23	206
Group of employees negotiated	353,824	4	1,624
Another person or group negotiated	168,516	2	95
Don't know	194,988	2	121
Refused / missing	9,864	0	6
Total	871,7837	100.0	5,540

Population: Employees only

Source: Australia at Work W2

Weight: Cross-sectional 2008

Focussing solely on employees' report of who negotiates their wages and conditions on their behalf does not provide us with the full picture of employees' bargaining situation. For example, while this data may provide some insight into the extent to which employees are offered employment on a 'take it or leave it' basis (i.e. no bargaining), it does not tell us whether this is because employees are instead relying on institutional arrangements, that is, the award system. For this reason it is useful to look at whether employees report that an award plays a role in setting their pay and conditions. The data shows that more than half of employees (55 per cent) report an award a role.

Another indicator of the type of bargaining that is taking place is whether wages are set individually or collectively. Respondents were asked whether any wage increases they may receive would apply to them only, to their whole workplace or a combination of both. In the cases where employees were unable to answer this question they were asked whether their pay is set out in a document that applies to everyone at their workplace or if it is set individually. The responses were collated from the two questions to provide respective proportions of employees who report that their pay is set individually, collectively or both individually and collectively. Table 3.3 provides the results to this along with employees' responses to the award role question.

Table 3.3 Pay setting by Award role in pay and conditions, 2008, per cent

	Award role	No award role	Don't know	Total
Pay setting	<i>n</i> =3,216	<i>n</i> =1,914	<i>n</i> =404	<i>n</i> =5,534
Individual	22	53	31	34
Collective	73	42	63	61
Both individual & collective	4	4	*5	4
Don't know	*1	*1	*2	1
Total	100.0	100.0%	100.0%	100.0%

* Estimate not reliable *n*<20

Population: Employees only

Source: Australia at Work W2

Weight: Cross-sectional 08

Three-fifths (61 per cent) of all employees report that their pay is set collectively and one-third report individual pay-setting. Among employees who say an award plays a role in their pay and conditions, 77 per cent say their pay, or part of their pay, is set on a collective basis. One-fifth (22 per cent) of employees who say an award plays role also say their pay is set individually. This may be because they have an over-award rate that is determined on an individual basis.

The more intriguing aspect of Table 3.3 is the 42 per cent of employees who report an award plays no role but that their pay is set collectively. This is interesting because it is often the case in many workplaces where collective bargaining takes place that there is also an underlying award. However, collective pay-setting is possible in workplaces where there is no relevant award, such as in professional industries such as accounting or law firms. Another explanation may be that State common rule awards or enterprise awards may be in place. It is possible that employees may see their enterprise award as an enterprise agreement and therefore not realise the role of the award. On the other hand, it is not surprising that more than half (53 per cent) of the employees who do not report an award role in their pay and conditions say their pay is determined on an individual basis. The role of the award appears to be a useful indicator of the arrangements in place that influence the nature of bargaining that does or does not occur.

To describe the type of bargaining that an individual employee reports a variable was created using award role in pay and conditions, negotiation behalf and self-reported agreement type (Table 3.1). Using these variables six categories to describe bargaining were developed, as follows:

- Employees who don't bargain and award plays a role
- Employees who don't bargain and no award role
- Individual bargaining with an award role
- Individual bargaining with no award role
- Collective bargaining with a union (and a group of employees).
- Collective bargaining with a group of employees.

As the purpose of this analysis is to determine who is covered by collective bargaining, those who don't report collective negotiation occurring on their behalf but do report being covered by a collective agreement will be classified as the latter. Among these employees who are covered by a collective agreement, those who did not know whether a union was involved with that agreement were assigned to the category of collective bargaining with a group of employees. Table 3.4 displays the incidence of the different types of bargaining reported by employees. The most common forms of bargaining vary from 'not bargaining but with an award in place' (19 per cent); to 'individual negotiation and no award' (20 per cent); and 'collective bargaining with a union' (24 per cent). It is probably these three groups that people mostly think of when analysing employees' industrial relations arrangements. Where bargaining does not take place it is often because there is an underlying 'safety-net' in the form of the award. Where collective bargaining takes place it is usually because it has been initiated by a union. And individual bargaining usually occurs for those employees in a stronger bargaining position where an award is not deemed necessary, resulting in an individual contract based on the common law.

Table 3.4 Self-reported bargaining of pay and conditions, 2008, per cent

	Population estimate	Percent	<i>n</i>
No negotiation and Award role	1,657,111	19	1,036
No negotiation and no Award role	1,214,038	14	686
Individual negotiation and Award role	1,060,866	12	600
Individual negotiation and no Award role	1,730,626	20	953
Collective negotiation with a union	2,047,403	24	1,686
Collective negotiation with employees	749,134	9	430
Other	168,516	2	95
Don't know	80,279	1	48
Total	8,707,972	100.0	5,534

Population: Employees only ('Refused / missing' have been excluded).

Source: Australia at Work W2

Weight: Cross-sectional 2008

There is another group who appears not to be bargaining and unaware if they are captured by the award safety-net; this 'no negotiation and no award role' group make up 14 per cent of employees, equivalent to more than 1 million people. Analysis of these employees shows that many of them should technically be covered by an award. That is, young employees and those from a non-English speaking background in low-skilled jobs are more likely to report that no negotiation takes place and there is no award role. However, awards generally cover low-paid employees (Buchanan 1997; McGuinness & Freebairn 2007). There are two likely scenarios here for the employees with an applicable award. First, the employer may not be adhering to the applicable award. For example, they may be taking advantage of their employees' limited knowledge of their employment rights or paying cash-in-hand to escape the formal system. Alternatively, these employees may not be aware that their employer is in fact paying them the award rate. Young employees are more likely to report no knowledge of how their pay and conditions are set. As mentioned in the introduction, the award system has been scaled down substantially. So when looking at the impact of the *Fair Work Act* and the emphasis on collective bargaining it is useful to examine all employees who report no negotiation, as one group.

Another 12 per cent of employees say that they negotiate directly with their employer but an award plays a role. These employees are likely to have over-award arrangements in place. While collective bargaining accounts for nearly a third (33 per cent) of employees, a minority of these employees collectively bargain without a union. The Government has advocated for employers and employees to take up bargaining at the enterprise level regardless of whether a union is present. However, the results from 2008 suggest that there will be need to be major incentives or assistance for collective bargaining to occur without a union.

The difficulty with this measure is that it does not provide an indication of whether the negotiation is genuine nor does it provide an indication of the types of matters being negotiated (i.e. start date, remuneration, hours of work, attendance pattern, leave arrangements). However, the main focus of the analysis is to determine whether any bargaining is taking place at all. And the advantage of this measure is that it examines employees' perspectives of bargaining and not employer reports, which may account for some aspect of 'genuineness'.

The next section of this report will examine the individual, employment and workplace characteristics of the six bargaining groups to determine whether there are certain employees who are more likely to participate in bargaining and whether there is scope, under the new legislation, for employees to try their hand at bargaining.

4. Who Bargains?

This section examines the demographic, employment and workplace characteristics of the various bargaining groups defined in the previous section. Table 4.1 shows the age and sex of the six bargaining groups. Young men and women are most likely to report that there is no negotiation of their pay and conditions and there is no award role (they account for 15 and 17 per cent of this group, respectively). Due to the low-paid and often low-skilled jobs that young people are in, it will be rare that there is not an applicable award. What is likely to be the case is this group of employees lack knowledge of how their pay and conditions are determined. Men aged 25 to 44 years are more likely to report individual negotiation without an award (accounting for 34 per cent of this group compared to 26 per cent of all employees). This is likely to be a reflection of the types of jobs these men are employed in, that is, high skilled and managerial jobs. Women above the age of 24 are more likely to be in the group that report no negotiation but a reliance on the award system, again, this is likely to be a reflection of the public sector and low-paid jobs that they tend to be employed in. Older men aged 45 and above are also more likely to report individual negotiation (making up 23 per cent of this group) but also collective bargaining with a union (24 per cent of this group compared to 18 per cent of all employees). It must be noted that in terms of overall proportions middle-aged men make up one-quarter (26 per cent) who bargain collectively with a union, and 30 per cent who bargain collectively without a union.

Table 4.1 Self-reported bargaining by sex and age, 2008, per cent

	16-24 years		25-44 years		45+ years		Total
	Male	Female	Male	Female	Male	Female	
No negotiation & Award (<i>n</i> =1,035)	11	10	17	26	11	24	100
No negotiation & no Award (<i>n</i> =686)	15	17	19	20	14	16	100
Individual & Award (<i>n</i> =600)	8	6	30	24	18	15	100
Individual & no Award (<i>n</i> =931)	7	6	34	20	23	10	100
Collective with a union (<i>n</i> =1686)	5	3	26	20	24	22	100
Collective with employees (<i>n</i> =429)	8	8	30	20	19	15	100
Other (<i>n</i> =94)	*20	*6	26	23	*12	*13	100
Don't know (<i>n</i> =48)	*14	*4	*21	*19	*18	*24	100
Total (<i>n</i> =5,529)	9	8	26	22	18	17	100

* Estimate is unreliable *n*<20

Population: Employees only ('Refused / missing' have been excluded).

Source: Australia at Work W2

Weight: Cross-sectional 2008

While men and women of certain ages are more likely to be involved (or not involved) in particular types of bargaining, apart from the younger employees where knowledge is a factor, it is probably not so much their demographic characteristics that are the reason for this but more the types of jobs they are employed in. Table 4.2 examines the skill level in which a person is employed and the type of bargaining they report. The ANZSCO skill level categories, as devised by the ABS, indicate the skill level which all 4-digit ANZSCO occupations fall into. Under the ABS classification, skill level is not a reflection of qualifications obtained by the

worker but is predicated on their occupation. Collective bargaining is the least common among the lowest qualified employees (25 per cent compared to 33 per cent of all employees). Instead, more than half (53 per cent) of this group report their pay and conditions are not negotiated, with 28 per cent reporting an award role and 25 per cent reporting no award role. The next lowest skill level, level 4, are more likely to report no negotiation but reliance on awards (23 per cent) and nearly a third (31 per cent) report collective bargaining.

Table 4.2 Self-reported bargaining by ANZSCO skill level, 2008, per cent

	Level 1 <i>n</i> =2,172	Level 2 <i>n</i> =646	Level 3 <i>n</i> =659	Level 4 <i>n</i> =1,315	Level 5 <i>n</i> =742	Total <i>n</i> =5,534
No negotiation & Award	14	16	17	23	28	19
No negotiation & no Award	10	12	12	15	25	14
Individual & Award	10	15	16	14	8	12
Individual & no Award	28	22	16	14	12	20
Collective with a union	28	22	26	20	18	24
Collective with employees	7	9	10	11	7	9
Other	2	*2	*2	2	*1	2
Don't know	*1	*1	*0	*1	*2	1
Total	100	100	100%	100	100	100

* Estimate is unreliable *n*<20

Population: Employees only ('Refused / missing' have been excluded).

Source: Australia at Work W2

Weight: Cross-sectional 2008

For the purpose of simplified analysis, the five skill levels have been grouped into two (high and low). High skilled workers have been defined as those employed in the top three skill levels and low skilled workers are employed in the remaining bottom two levels. This distinction was made due to the obvious difference in outcomes and experiences for these two clusters. These two groups are aligned to competencies equivalent to education qualification levels. The low skill group is indicative of Year 12 and below while the high skill group reflects above Year 12 skills. These categories have been used when examining whether people from a non-English speaking background are more likely to be participate in different types of bargaining. It is important to control for any differences in bargaining power within this group. Previous analysis has shown that the two-skill levels are a good proxy for bargaining power (van Wanrooy et al. 2007). Table 4.3 shows that among both skill groups, employees from a non-English speaking background are less likely to be aware of the role of awards. More than one-quarter (28 per cent) of low-qualified employees from a non-English speaking background report no negotiation of their pay and conditions and no award role, the proportion is half that among all employees. There are two possibilities here: either they aren't aware that an award is applicable and used as a base, or that an award does not have a role in the setting of their pay and conditions. It would be assumed that most low-qualified jobs in Australia would have the safety net of an applicable award and that many of these employees are not aware of some of their rights and how their conditions of employment are determined. In comparison, low-skilled employees from an English-speaking background who do not negotiate their pay and conditions are more likely to report reliance on awards (25 per cent).

Table 4.3 Self-reported bargaining by qualification level and English-speaking background, 2008, per cent

	High qualifications		Low Qualification		Total n=5,534
	English n=3,146	Non-English n=331	English n=1,847	Non-English n=207	
No negotiation & Award	15	14	25	20	19
No negotiation & no Award	11	14	18	28	14
Individual & Award	12	13	12	11	12
Individual & no Award	24	29	13	14	20
Collective with a union	27	19	20	14	24
Collective with employees	8	7	10	*10	9
Other	2	*2	2	*2	2
Don't know	1	*2	*1	*2	1
Total	100	100	100	100	100

* Estimate is unreliable $n < 20$

Population: Employees only ('Refused / missing' have been excluded).

Source: Australia at Work W2

Weight: Cross-sectional 2008

Employees from a non-English speaking background are much less likely to have their pay and conditions collectively bargained, particularly, with union involvement. While high qualified employees are more likely to report collective bargaining with a union, it is those from an English speaking background who report it most (27 per cent) compared to those from a non-English speaking background (20 per cent). Among low-qualified employees, 20 per cent of those with an English speaking background report collective bargaining with a union compared to only 14 per cent from a non-English speaking background. High qualified employees from a non-English speaking background are most likely to report individual bargaining without an award role (29 per cent).

Table 4.4 shows that bargaining tends to occur in certain occupations with employees in other occupations more likely to rely on the award system instead. The bulk (55 per cent) of managers individually negotiate, and as would be expected 42 per cent do so without an award playing a role. Still, one-quarter (24 per cent) of managers have their pay and conditions determined by collective bargaining. However, it is professionals who rely the most on collective agreement-making, in total 38 per cent have their pay and conditions determined this way, with 33 per cent having a union lead the bargaining.

Table 4.4 Self-reported bargaining by occupation, 2008, per cent

	No neg & Award	No neg & no Award	Individual & Award	Individual & no Award	Collective with a union	Collective with employees	Other	Don't know	Total
Managers (<i>n</i> =711)	8	10	13	42	15	9	*2	*1	100
Professionals (<i>n</i> =1,582)	17	11	9	21	33	6	2	*1	100
Technicians & trades workers (<i>n</i> =649)	19	10	16	18	25	9	*2	*1	100
Community & personal service workers (<i>n</i> =531)	28	17	10	8	24	10	*2	*1	100
Clerical & administrative workers (<i>n</i> =947)	19	14	16	16	21	11	2	*0	100
Sales workers (<i>n</i> =475)	26	24	12	16	12	9	*1	*2	100
Machinery Operators & drivers (<i>n</i> =280)	18	13	13	14	27	10	*3	*1	100
Labourers (<i>n</i> =359)	25	24	6	15	20	7	*1	*1	100
Total (<i>n</i> =5,534)	19	14	12	20	24	9	2	1	100

* Estimate is unreliable *n*<20

Population: Employees only ('Refused / missing' have been excluded).

Source: Australia at Work W2

Weight: Cross-sectional 2008

There are certain occupations that tend to rely heavily on awards and at the same time are more likely to report no negotiation of their pay and conditions taking place; these are community and personal service workers, sales workers, and labourers. Among the latter group, 25 per cent rely on awards, while it is 26 per cent of sales workers and 29 per cent of community and personal service workers. We know, that in most cases these occupations are likely to have applicable award, so where these employees do not report the role of the award it is probably due to lack of knowledge or their employer is not complying with award conditions. Nearly a quarter (24 per cent) of both labourers and sales workers say that there is no negotiation and an award does not play a role; among community and personal service workers it is 17 per cent. Employees in the blue-collar occupation of machinery operators and drivers, one that has traditionally been unionised, are slightly more likely to be collectively bargaining - 37 per cent compared to 33 per cent of all employees, with 27 per cent of employees reporting union involvement.

Permanent employees are more likely to be covered by collective bargaining, or conduct individual negotiations with their employer without the role of an award, Table 4.5. Casual employees are much more likely to report no negotiation taking place. Casual employees make up 27 per cent of those employees who rely on the award and 35 per cent who report no negotiation and no award role (compared to 18 per cent of all employees). It is not particularly surprising that casual employees are less likely to have knowledge of awards as they may have less involvement in bargaining and with a weaker attachment to the workplace they may be less aware of how their conditions are determined.

Table 4.5 Self-reported bargaining by form of employment, 2008, per cent

	Permanent	Fixed term contract	Casual	Total
No negotiation & Award (<i>n</i> =1,036)	65	8	27	100
No negotiation & no Award (<i>n</i> =686)	58	7	35	100
Individual & Award (<i>n</i> =600)	78	7	15	100
Individual & no Award (<i>n</i> =953)	83	4	13	100
Collective with a union (<i>n</i> =1,686)	85	6	9	100
Collective with employees (<i>n</i> =430)	81	6	13	100
Other (<i>n</i> =95)	66	*11	23	100
Don't know (<i>n</i> =48)	60	*12	*28	100
Total (<i>n</i> =5,534)	75	6	18	100

* Estimate is unreliable *n*<20

Population: Employees only ('Refused / missing' have been excluded).

Source: Australia at Work W2

Weight: Cross-sectional 2008

Employees who work part-time hours are less likely to negotiate their pay and conditions, Table 4.6. Further, more than half (58 per cent) of employees who work shorter part-time hours (i.e. 1 to 15 hours per week) report no negotiation, with 29 per cent not reporting the role of an award. Similar to casual employees, the employees with the least attachment to the workforce may have limited knowledge of how their pay and conditions are set, and in particular, the award system.

Table 4.6 Self-reported bargaining by usual hours worked in main job, 2008, per cent

	1-15 <i>n</i> =506	16-34 <i>n</i> =1,199	35-40 <i>n</i> =1,856	41-49 <i>n</i> =981	50 plus <i>n</i> =965	Total <i>n</i> =5,507
No negotiation & Award	29	29	17	14	10	19
No negotiation & no Award	29	15	11	10	13	14
Individual & Award	8	12	13	15	11	12
Individual & no Award	11	12	18	22	35	20
Collective with a union	13	22	28	26	21	24
Collective with employees	8	7	9	11	7	9
Other	*1	*2	3	*1	*1	2
Don't know	*2	*1	*1	*0	*1	1
Total	100	100	100	100	100	100

* Estimate is unreliable *n*<20

Population: Employees only ('Refused / missing' have been excluded).

Source: Australia at Work W2

Weight: Cross-sectional 2008

The type of bargaining in place may also impact on the resultant working conditions of employees. Table 4.6 shows that people working 50 hours or more per week are more likely to individually negotiate their conditions without an award safety net (35 per cent). Again, this could be the nature of the jobs that dominate this bargaining type, in that managers tend to work the longest hours. Employees working either 'standard' hours (i.e. 35 to 40) or longer full-time hours (41 to 49) are more likely to have collective bargaining in place, accounting for 37 per cent of both groups of employees. It is possible that the collective bargaining taking place may address issues such as working hours, rosters and overtime payments. The longer the hours worked the more likely that individual negotiation is reported, with 37 per cent and 46 per cent of employees working 41 to 49 hours per week and 50 or more hours per week individually negotiating their conditions.

We now turn to the characteristics of the workplaces where certain types of bargaining are more likely to occur. Table 4.7 shows that collective bargaining (particularly with a union) is primarily the domain of the public sector, with 53 per cent of employees in this sector reporting collective bargaining with a union. There is a lot of work to be done if collective bargaining is to become 'mainstream' in the private sector, as currently only 21 per cent of private sector employees report this type of negotiation. Instead, individual bargaining is more common, at 42 per cent of private sector employees. There also appears to be a substantial degree of reliance on the award system in the private sector, with 32 per cent of employees reporting that an award plays a role in their conditions (and they don't collectively bargain). In the not-for-profit sector 34 per cent of employees report collective bargaining and 24 per cent say they rely entirely on the award for their pay and conditions.

Table 4.7 Self-reported bargaining by sector, 2008, per cent

	Private <i>n</i> =3,290	Public <i>n</i> =1,733	Not for profit <i>n</i> =466	Don't know <i>n</i> =43	Total <i>n</i> =5,532
No negotiation & Award	17	22	24	*17	19
No negotiation & no Award	17	7	11	*22	14
Individual & Award	15	6	15	*6	12
Individual & no Award	27	3	13	*29	20
Collective with a union	12	53	23	*13	24
Collective with employees	9	7	11	*7	9
Other	2	2	*2	*0	2
Don't know	1	1	*1	*6	1
Total	100	100	100	100	100

* Estimate is unreliable *n*<20

Population: Employees only ('Refused / missing' have been excluded).

Source: Australia at Work W2

Weight: Cross-sectional 2008

Collective bargaining with a union is relatively rare in small workplaces. Only 11 per cent of employees in workplaces with less than 20 employees report this type of negotiation, Table 4.8. It is possible that these workplaces, where it does occur, are part of larger enterprises that have a collective agreement. This is explored in the next table. Employees in large workplaces of more than 100 employees are most likely to report collective bargaining, at 43 per cent. Employees in small workplaces are more likely to individually negotiate their pay and conditions with their employer, either with the backing of an award (17 per cent) or no award (25 per cent).

Table 4.8 Self-reported bargaining by workplace size, 2008, per cent

	<20 employees <i>n</i> =1,686	20-100 employees <i>n</i> =1,890	>100 employees <i>n</i> =1,886	Total <i>n</i> =5,531
No negotiation & Award	21	21	15	19
No negotiation & no Award	16	14	12	14
Individual & Award	17	11	9	12
Individual & no Award	25	17	18	20
Collective with a union	11	26	34	24
Collective with employees	8	8	9	9
Other	2	2	2	2
Don't know	1	1	1	1
Total	100	100	100	100

* Estimate is unreliable *n*<20

Population: Employees only ('Refused / missing' have been excluded).

Source: Australia at Work W2

Weight: Cross-sectional 2008

Enterprise size is a more precise indicator of whether the size of the workplace is inhibiting collective bargaining. In small enterprises, of 100 or fewer employees, collective bargaining is rare - with only 16 per cent reporting this type of negotiation. Instead, individual negotiation is more common, with a total of 45 per cent of employees in small enterprises

reporting this type of bargaining. Small enterprises employ about 35 per cent of all employees. Collective bargaining is more likely to be conducted in larger enterprises of more than 100 employees (41 per cent compared to 33 per cent of all employees). In fact, it is union collective bargaining that is more likely to take place in large enterprises. We know that larger workplaces are more likely to be unionised and it seems that collective bargaining is more likely to occur if it involves a union. If collective bargaining is to permeate the workforce it will need to occur without the involvement of unions, and instead be led by employers or groups of employees.

Table 4.9 Self-reported bargaining by enterprise size, 2008, per cent

	<=100 employees <i>n</i> =1,762	>100 employees <i>n</i> =3,686	Total <i>n</i> =5,448
No negotiation & Award	20	18	19
No negotiation & no Award	16	13	14
Individual & Award	17	9	12
Individual & no Award	28	16	20
Collective with a union	9	32	24
Collective with employees	7	9	9
Other	2	2	2
Don't know	*1	1	1
Total	100	100	100

* Estimate is unreliable *n*<20

Population: Employees only ('Refused / missing / don't know' have been excluded).

Source: Australia at Work W2

Weight: Cross-sectional 2008

Due to small cell sizes across the 19 different industries specified by the Australian New Zealand Standard Industry Classification (ANZSIC) it is inaccurate to provide specific statistics on each type of bargaining across industry. Rather, Table 4.10, shows the *main* type of negotiation that occurs in each industry. The shading indicates if an industry has two main types of negotiation reported by its employees. For example, individual negotiation without a role for an award is the main type of negotiation that occurs in the professional, scientific and technical services industry, accounting for 45 per cent of employees. Individual negotiation accounts for more than half of employees in construction (54 per cent) and wholesale trade (52 per cent). However, 19 per cent of employees in each industry have an award underlying their conditions. Employees in information, media and telecommunications are most likely to individually negotiate (29 per cent), but no negotiation is also common (25 per cent).

As previously indicated, union collective bargaining is more likely to be practiced in the public sector. To be precise collective bargaining is more likely to occur in public administration and safety (covering 49 per cent of employees), and electricity, gas, water and waste services (41 per cent of employees). A union negotiating on the behalf of employees is also common in education and training (48 per cent of employees) but in this industry, awards are also relied upon (covering 24 per cent of employees). Employees in

health care and social assistance are most likely to report a reliance on awards (30 per cent) but union negotiation is equally important (29 per cent). Two industries are dominated by a lack of negotiation about wages and conditions: accommodation and food services (accounting for 57 per cent of employees) and retail trade (47 per cent of employees). Both these industries have applicable awards, however, it appears this is not known by at least one fifth of each of these industry's employees: 29 per cent of accommodation and food service employees and 20 per cent of retail trade employees.

Table 4.10 Main type of bargaining by industry, 2008, % of employees in that industry

No negotiation	Award & no negotiation	Collective negotiation with a union	Award & Individual	Individual & no Award
Accommodation & food services (29%)	Accommodation & food services (28%)	Public administration & safety (49%)	Construction (19%)	Construction (35%)
Retail trade (20%)	Retail trade (27%)	Electricity, gas, water & waste services (41%)	Wholesale trade (19%)	Wholesale trade (33%)
Information, media & telecommunications (25%)	Administrative & support services (27%)	Transport, postal & warehousing (36%)		Information, media & telecommunications (29%)
	Education & training (24%)	Education & training (48%)		Professional, scientific & technical services (45%)
	Health care & social assistance (30%)	Health care & social assistance (29%)		Finance & insurance services (34%)
				Agriculture, forestry & fishing (31%)
				Manufacturing (30%)
				Mining (27%)
14%	19%	24%	12%	20%

Note: Rental, hiring and real estate services have been excluded due to small sample size.

Population: Employees only ('Refused / missing / don't know' have been excluded).

Source: Australia at Work W2

Weight: Cross-sectional 2008

Table 4.11 provides a summary of the analysis carried out in this section. It shows the characteristics that are over-represented in each bargaining group. For example, it shows that 22 per cent of employees who do not negotiate and do not report an award are aged 16-24 years and while this is not a majority it is an over-representation of workers of this age (only accounting for 17 per cent of all employees). Thus, the table summarises the characteristics of people who are *more likely* to be found in the different bargaining groups.

Table 4.11 Summary table of characteristics of self-reported bargaining groups

	Sex	Age	Skill Level	Language Spoken at home	Occupation	Form of Employment	Usual work hours	Sector
No negotiation & Award (n=1,035)	F (60%)	16-24 (22%)	4 (31%) 5 (21%)	-	Community & Personal Service (14%)	Casual (27%)	16-34 (33%)	Public (29%) Not for 9profit (11%)
No negotiation & no Award (n=686)	F (53%)	16-24 (32%)	5 (25%)	Non-English (15%)	Sales workers (16%) Labourers (12%)	Casual (35%)	1-15 (20%)	Private (79%)
Individual & Award (n=600)	M (56%)	25-44 (54%)	2 (15%) 3 (16%) 4 (28%)	-	Technicians & trades (16%) Clerical & Admin (24%)	Permanent (78%)	41-49 (21%)	Private (78%)
Individual & no Award (n=931)	M (64%)	25-44 (54%)	1 (51%)	Non-English (12%)	Managers (28%)	Permanent (83%)	50+ (32%)	Private (90%)
Collective with a union (n=1686)	M (55%)	25-44 (46%) 45+ (46%)	1 (43%)	English (92%)	Professionals (36%)	Permanent (85%)	35-40 (39%)	Public (58%)
Collective with employees (n=429)	M (57%)	-	4 (33%)	-	Clerical & admin (23%)	Permanent (81%)	41-49 (23%)	Private (68%) Not for profit (10%)
All employees (n=5,529)	M (53%)	25-44 (48%)	1 (37%) 4 (25%)	English (90%)	Professionals (26%) Clerical & admin (18%)	Permanent (75%)	16-34 (21%) 35-40 (34%)	Private (65%)

Note: - indicates group is representative of all employees

The analysis in this section has shown that particular types of bargaining, or lack thereof, are concentrated in particular types of jobs and industries. No negotiation is common among employees with a relatively weak attachment to the workforce such as part-time and casual employees. Industries with a higher proportion of young employees and casual and part-time labour are more likely to rely on the award system and many employees report no-negotiation. Collective bargaining predominates in the public sector and in some traditionally blue-collar occupations. It is more likely to be reported by professionals, men and older employees.

Where bargaining power is relatively low, such as low-qualified and low-paid jobs, employees tend to rely on the award system rather than on collective bargaining. With the bulk of collective bargaining being led by unions it would appear that the only way to increase its incidence would be by increasing union representation. It is also important to recognise that the outcomes of collective bargaining may be different if it is not union led. The next section considers the type and quality of negotiation that is taking place under these different forms of bargaining.

An even more accurate indication of the characteristics of employees who do not bargain is provided in the following Section 6 where we detail the results of statistical modelling.

5. The Quality of the Bargaining Relationship

The previous section examined who is undertaking the different types of bargaining that we have highlighted and who isn't bargaining at all. This section now turns to the quality of bargaining, that is, the type of negotiation that is taking place under the different forms of bargaining and employees' reports of their relationship with managers.

Table 5.1 shows the type of bargaining that an employee reports to take place and whether they feel they have the opportunity to negotiate their pay directly with their employer. The results show that even though a particular type of workplace bargaining is practiced it doesn't always lead to or inhibit opportunities for direct negotiation with the employer. For example, while two-thirds of employees who rely on award conditions and do not participate in negotiation say they don't have the opportunity to negotiate pay, 31 per cent of these employees feel they do. While the majority of employees who report individual negotiation and an award, say they can approach their employer to negotiate pay, 20 per cent feel that they can't. Implying that for these employees, even though pay is set individually, it is not the result of one-on-one negotiation.

Table 5.1 Self-reported bargaining by opportunity to negotiate pay directly with employer, 2008, per cent

	Yes	No opportunity	Don't know	Total
No negotiation & Award (<i>n</i> =1,036)	31	67	*2	100
No negotiation & no Award (<i>n</i> =686)	40	56	4	100
Individual & Award (<i>n</i> =600)	78	20	*2	100
Individual & no Award (<i>n</i> =952)	84	14	*2	100
Collective with a union (<i>n</i> =1,685)	29	69	2	100
Collective with employees (<i>n</i> =430)	54	45	*2	100
Other (<i>n</i> =95)	58	39	*3	100
Don't know (<i>n</i> =48)	*31	67	*3	100
Total (<i>n</i> =5,532)	51	47	2	100

* Estimate is unreliable *n*<20

Population: Employees only ('Refused / missing' have been excluded).

Source: Australia at Work W2

Weight: Cross-sectional 2008

The opportunity to negotiate pay does not always have to align with the more formal methods of setting pay that may already be in place. That is, even though there is an award or collective agreement in place, the employee may still feel they have the opportunity to personally approach their employer for a promotion that they feel more adequately reflects their role, which would also be linked to a pay increase. This is the case for 29 per cent of employees who report collective bargaining with a union, who still feel they have the opportunity to negotiate their pay with their employer. The individual negotiation opportunities are more common among employees who report collective bargaining without a union, of whom 54 per cent say they have the opportunity to negotiate pay directly with their employer.

Another aspect of the bargaining relationship is how pay is set at the workplace. Employees were asked whether pay increases they receive apply to only themselves or to a group of workers at their workplace to determine whether pay is set on an individual or collective basis. The results for each bargaining group are displayed in Table 5.2. In some cases employees receive pay increases that apply to the whole workplace as well as individually set increases that may be related to performance. It is not surprising that the vast majority (92 per cent) of employees who report collective bargaining with a union also report that their pay is set collectively. What is surprising is that of the employees who report collective bargaining with a group of employees, almost one-third (30 per cent) report that their pay is set individually. This may be because conditions such as core working hours and annual leave are uniformly negotiated across the organisation while pay is individually set based on factors such as the employee's skills, experience and performance. It is also of interest to note that one-fifth (22 per cent) of employees who report 'Individual bargaining and no award' also report that their pay is set collectively. This may be explained by employers setting uniform pay increases, despite the fact that these employees are engaged on individual contracts. It appears that in these cases of individual negotiation, bargaining outcomes may largely be employer-driven as they seek uniformity in pay and/or conditions across the organisation.

Table 5.2 Self-reported bargaining by Pay Setting, 2008, per cent

	Individual	Collective	Both individual & workplace	Don't know	Total
No negotiation & Award (<i>n</i> =1,036)	21	76	3	*1	100
No negotiation & no Award (<i>n</i> =685)	38	57	3	*2	100
Individual & Award (<i>n</i> =600)	51	42	5	*1	100
Individual & no Award (<i>n</i> =953)	72	22	4	*1	100
Collective with a union (<i>n</i> =1,686)	4	92	5	*0	100
Collective with employees (<i>n</i> =430)	30	64	5	*1	100
Other (<i>n</i> =95)	47	49	*1	*2	100
Don't know (<i>n</i> =48)	*8	84	*7	*2	100
Total (<i>n</i> =5,533)	34	61	4	*1	100

* Estimate is unreliable *n*<20

Population: Employees only ('Refused / missing' have been excluded).

Source: Australia at Work W2

Weight: Cross-sectional 2008

Evidence indicates that unions typically bargain better quality outcomes for low-skilled workers than those achieved when low-skilled employees bargain for themselves (for example, see van Wanrooy 2007; Cai & Lui 2008). This being so, it is important to analyse the role that unions play in bargaining. The Australia at Work study asks participants a number of questions about unions, including whether a trade union is represented in their workplace, if they are currently a member of a union and whether there is a delegate in their workplace. Table 5.3 shows that 17 per cent of employees who report no negotiation and no award did not know whether a union was represented in their workplace. Further to this, one-fifth (22 per cent) of employees who were unsure about bargaining arrangements also reported not knowing whether a union was represented in their workplace. This

indicates that these groups of employees have limited knowledge about industrial relations at their workplace. Among those employees who report collective bargaining with a union, we find that 12 per cent of them say that there is no union present in their workplace. Thus, when unions are involved in the enterprise agreement, their presence is not always visible to the employees they are representing.

Table 5.3 Self-reported bargaining by Union Workplace, 2008, per cent

	Union Present	No Union Present	Don't know	Total
No negotiation & Award (<i>n</i> =1,036)	38	49	14	100
No negotiation & no Award (<i>n</i> =686)	25	58	17	100
Individual & Award (<i>n</i> =599)	28	62	10	100
Individual & no Award (<i>n</i> =953)	18	71	11	100
Collective with a union (<i>n</i> =1,686)	84	12	4	100
Collective with employees (<i>n</i> =430)	29	59	12	100
Other (<i>n</i> =95)	28	45	27	100
Don't know (<i>n</i> =48)	36	42	22	100
Total (<i>n</i> =5,533)	41	48	11	100

* Estimate is unreliable *n*<20

Population: Employees only ('Refused / missing' have been excluded).

Source: Australia at Work W2

Weight: Cross-sectional 2008

It is also important to investigate whether there are any observable differences between the self-reported types of bargaining for union and non-union members, Table 5.4. The proportion of employees who are union members (19 per cent) is half the proportion of employees who report that a union is present in their workplace (41 per cent). It is not surprising to find that trade union members (72 per cent) are far more likely than former union members (29 per cent) and employees who have never been a union member (20 per cent) to report collective bargaining. Among non-union members, it is those who no longer belong to a union that are more likely to report being covered by union bargaining, 20 per cent compared to 10 per cent of employees who have never been a member of a union. It is possible that these ex-union members may have left the union due to disenchantment or gaining more managerial responsibilities, but are still covered by the enterprise agreement in place.

Before enterprise bargaining was introduced unions' main way of influencing the pay and conditions of their members was through the award system. A further 19 per cent of union members report the role of an award in their pay and conditions, leaving a marginal proportion who don't have their conditions determined by some collective means (i.e. either award or enterprise agreement), Table 5.4. However, it appears to be non-union members who are relying more on awards, either directly or indirectly, with 34 per cent either not bargaining or doing so individually with the awards underlying their conditions. Non-union members are the most susceptible to being excluded from bargaining. In

particular, it is employees who have never been a union member who do not bargain their pay and conditions and do not report an award role, 18 per cent.

Table 5.4 Self-reported bargaining by Union Membership, 2008, per cent

	Union member (n =1,692)	Non-union member		Total (n=3,778)	Don't know (n=63)	Total (n=5,334)
		No longer a member (n=1,264)	Never a member (n=2,514)			
No negotiation & Award	14	20	20	20	*24	19
No negotiation & no Award	4	13	18	16	*28	14
Individual & Award	5	12	15	14	*10	12
Individual & no Award	4	23	24	24	*15	20
Collective with a union	68	20	10	13	*11	24
Collective with employees	4	9	10	10	*8	9
Other	*0	2	2	2	*4	2
Don't know	*1	*1	1	1	-	1
Total	100	100	100	100	100	100

* Estimate is unreliable $n < 20$

Population: Employees only ('Refused / missing' have been excluded).

Source: Australia at Work W2

Weight: Cross-sectional 2008

Many Australian unions have shifted from the 'servicing' to the 'organising' model. Under the latter model, workplace delegates are viewed as central to recruitment and building collectivism in workplaces (see Crosby (2005) for the rationale behind the 'organising' model). Among the employees who report 'collective bargaining with a union', 30 per cent report that there is no union delegate in their workplace, Table 5.5. While this may be the case it could also be due to union delegates not having a high profile in some of these workplaces. In addition, the presence of a union delegate by no means guarantees that bargaining is occurring. For example, union delegates are found in the workplaces of 15 per cent of employees who report 'no negotiation and no award'.

Table 5.5 Self-reported bargaining by Union Delegate in Workplace, 2008, per cent

	No delegate at workplace	Delegate at workplace	Total
No negotiation & Award (n=1,036)	73	28	100
No negotiation & no Award (n=686)	85	15	100
Individual & Award (n=600)	83	18	100
Individual & no Award (n=953)	90	10	100
Collective with a union (n=1,686)	30	70	100
Collective with employees (n=430)	81	19	100
Other (n=95)	81	19	100
Don't know (n=48)	74	*26	100
Total (n=5,534)	70	30	100

* Estimate is unreliable $n < 20$

Population: Employees only ('Refused / missing' have been excluded).

Source: Australia at Work W2; Weight: Cross-sectional 2008

Australia at Work participants are asked about their attitudes to several aspects of their relationship with their workplace managers: consultation, trust and fairness. These findings may provide additional clues about the quality of the bargaining relationship across the different bargaining groups. Respondents are asked whether they are consulted by and trust their workplace manager, and whether they feel employees are treated fairly at their workplace. Generally, there is a high level of contentment among Australian employees with these aspects of their workplace relations; however there are some differences across the bargaining groups worthy of comment.

Table 5.6 illustrates that the largest discrepancy in responses across bargaining groups was for the statement 'Managers at my workplace can be trusted to tell things the way they are', where 29 per cent of employees who collectively bargain with a union disagreed with the statement. Employees from all other groups reported considerably higher levels of agreement, with the average across all employees at 70 per cent. As outlined in the previous section, collective bargaining with a union is more likely to occur in the public sector and in larger workplaces. Perhaps the hierarchical structures found in many public sector and large workplaces impinge on the relationships between managers and their subordinates in these workplaces. Alternatively, it may be the union-led bargaining which may agitate relations between employers and employees at the workplace.

Overall, it appears that employees who are covered by union collective bargaining are the most disgruntled by relationships with managers. Another 17 per cent of employees in this group disagree that employees are treated fairly at their workplace. However, there are equivalent proportions of employees who are not involved in bargaining who are unhappy with the level of consultation. Around one-fifth of employees who do not negotiate (with and without an award role) and who have a union collectively negotiate for them disagree that managers consult about issues affecting them. It is interesting to note that across all three attitudinal measures, employees who collectively bargain with employees report a higher degree of satisfaction than employees who are collectively bargaining with a union.

Employees who report individual bargaining (either with or without an award role) report high levels of agreement that they are consulted, trust management and are treated fairly. For both groups, the highest level of agreement was found with the statement 'I feel that employees are treated fairly at my workplace', at 87 per cent for those engaged in individual bargaining with an award and 86 per cent for those individually bargaining without an award. It is possible that this is due to the seniority of people in these positions or that these employees are more likely to work in small workplaces, where there may be a more 'familial' relationship between staff and management (Ingham 1970; Scott & Rainnie 1981; Burgess 1992; Barratt 1999; Sappey et al. 2006).

Table 5.6 Self-reported bargaining by Attitudes to Managers, 2008, per cent

	Agree	Neither/ can't choose	Disagree	Total
<i>'Managers at my workplace consult employees about issues affecting staff'</i>				
No negotiation & Award (n=1,036)	74	6	20	100
No negotiation & no Award (n=686)	68	10	22	100
Individual & Award (n=600)	81	6	13	100
Individual & no Award (n=953)	79	8	13	100
Collective with a union (n=1,685)	70	9	21	100
Collective with employees (n=430)	79	8	13	100
Other (n=95)	73	*9	*18	100
Don't know (n=48)	78	*6	*16	100
Total (n=5,533)	75	8	18	100
<i>'Managers at my workplace can be trusted to tell things the way they are'</i>				
No negotiation & Award (n=1,036)	71	9	20	100
No negotiation & no Award (n=686)	68	10	22	100
Individual & Award (n=600)	80	8	12	100
Individual & no Award (n=953)	78	9	13	100
Collective with a union (n=1,686)	58	13	29	100
Collective with employees (n=430)	74	9	18	100
Other (n=95)	64	*7	*28	100
Don't know (n=48)	81	*4	*15	100
Total (n=5,534)	70	10	20	100
<i>'I feel that employees are treated fairly at my workplace'</i>				
No negotiation & Award (n=1,036)	77	9	14	100
No negotiation & no Award (n=686)	77	7	15	100
Individual & Award (n=600)	87	7	7	100
Individual & no Award (n=953)	86	7	7	100
Collective with a union (n=1,686)	73	10	17	100
Collective with employees (n=430)	81	9	10	100
Other (n=95)	76	*13	*11	100
Don't know (n=48)	81	*9	*10	100
Total (n=5,534)	79	8	12	100

* Estimate is unreliable n<20

Population: Employees only ('Refused / missing' have been excluded).

Source: Australia at Work W2

Weight: Cross-sectional 2008

Overall, it is difficult to assess the quality of the bargaining relationship. What we can see is that employee reports about the opportunity to bargain and the incidence of bargaining is not necessarily aligned. It is also apparent that employers seem to play a crucial role in determining whether pay and conditions will be bargained and if so, whether these matters are bargained on an individual or collective basis. Unions undoubtedly have an important role to play in collective bargaining. However, given the low trade union density, gaps in the workplace delegate structure and as employees who report collective bargaining with a union are less likely to hold positive attitudes towards their managers; we could reasonably expect that unions will find it difficult to improve the quality of bargaining for members.

6. Who Doesn't Bargain?

This section uses the Australia at Work data to further explore the factors that contribute to employees being shut out of the bargaining process. To do this, two logistic regression models were developed to compare employees who do not negotiate their pay and conditions with employees who are covered by 1) collective bargaining and 2) individual negotiation. These models establish the main demographic, employment and workplace characteristics that explain if an employee is not collectively negotiating. Descriptions of the variables used are provided in Table 6.1 and the results of both models are provided in Table 6.2.

Table 6.1 Variable descriptions

Variable	Description
No negotiation – Model 1	All employees who reported no negotiation of pay and conditions compared to all employees covered by collective bargaining.
No negotiation – Model 2	All employees who reported no negotiation of pay and conditions compared to all employees who reported individual negotiation.
Female	Dummy variable for female respondent
Aged under 25 years	Dummy variable for aged under 25 years, based on date of birth
Low-qualified job	Dummy variable for current job classified as ANZSCO skill level 4 or ANZSCO skill level 5.
Usually works part-time	Usually works less than 35 hours per week in main job (dummy)
Casual employee	Casually employed in main job (dummy)
Award role	Employee reports that award plays a role in pay and conditions (dummy)
Union member	Currently a union member (dummy)
Small enterprise	Enterprise has 100 or fewer employees (dummy)
Public sector	Employed in the public sector (dummy)
Industry	Industry employed in main job categorical variable: <ol style="list-style-type: none"> 1. Base: Blue collar industries consisting of agriculture, forestry and fishing; mining; manufacturing; electricity, gas, water and waste services; construction; wholesale trade; transport, postal and warehousing. 2. 'Pink' collar services: retail trade; accommodation and food services; administrative and support services; health care and social assistance; arts and recreation services; other services. 3. White collar: information, media and telecommunications; finance and insurance services; rental, hiring and real estate services; professional, scientific and technical services; public administration and safety.
Income	Yearly salary in main job categorical variable: <ol style="list-style-type: none"> 1. Base: less than \$48,000 per year. 2. \$48,000 to less than \$100,000 per year. 3. \$100,000 or more per year.

Table 6.1 shows that industry has been divided into three groups which try to account for female and male dominated industries, where the 'blue collar' industries are predominately male, the 'pink' industries are female dominated services industries and the professional 'white collar' industries are generally not dominated by either sex. It is

important in the model to account for income, particularly when some of the provisions in the Fair Work Act have income thresholds and multi-employer bargaining has been restricted to low-paid industries. The first category of less than \$48,000 per year was based on the fact that the average weekly earnings of all employees are \$912.40 (ABS 2009) and the second category of \$100,000 per year was chosen as this is the income threshold for award covered employees.

Model 1 in Table 6.2 shows that employees who are currently covered by collective bargaining differ significantly to those who report that their pay and conditions are not negotiated. In terms of personal characteristics females are less likely to be covered by collective bargaining arrangements. This is once skill, pay, part-time hours, female-dominated industries, union membership and small enterprises have all been controlled for. Thus, it appears that women are just less likely to collectively negotiate. Previous analysis of the Australia at Work data has found that despite women's position in the labour market, they are less likely to participate in bargaining and more likely to rely on more centralised pay-setting arrangements (van Wanrooy, forthcoming). Women have traditionally looked to tribunals, such as the AIRC and State Commissions, and the award system to deal with pay equity issues (Pocock 1999; Smith & Lyons 2006; Baird & Williamson 2009).

Young people are also less likely to be involved in collective bargaining and more likely to report no negotiation of their pay and conditions. We already know that young people have limited experience and knowledge of how their pay and conditions are set and it is possible that they may be accepting the pay and conditions that are offered to them on a 'no questions asked' basis. Analysis of employees on AWAs found that young employees on these types of agreements were much more likely to say their pay was not negotiated (van Wanrooy et al. 2007:52). Young employees' lack of experience and knowledge is precluding them from collective bargaining.

Casual employees are more likely to say that their pay and conditions are not negotiated. Casual employees' weaker attachment to the workplace may mean that they are not involved in bargaining at the workplace and are not aware if it is taking place. It is harder to involve casual employees who may be at the workplace for fewer hours and may have other commitments which they are focussed on such as study or the care of children.

Whether an award plays a role in pay and conditions was not significant in explaining whether an employee does not negotiate or is covered by collective bargaining. This is likely to be because awards can be the reason why employees do not negotiate but they can also underlie enterprise agreements. Not surprisingly, union members are strongly associated with collective bargaining. Traditionally there has been a strong link in the labour laws between unions and enterprise bargaining. As mentioned previously, this link has been weakened by the *Fair Work Act* in that it promotes collective bargaining between employers and employees more generally. Time will tell whether this will lead to more collective bargaining among non-union members.

Table 6.2 Two logistic regression models of employees who do not negotiate

	Model 1: Employees who do not negotiate compared to employees covered by collective negotiation	Model 2: Employees who do not negotiate compared to employees who individually negotiate
<i>Demographics</i>		
Female	0.470**	0.243**
Aged under 25 years	0.551**	0.538**
<i>Employment characteristics</i>		
Low-qualified job	0.038	0.471**
Usually works part-time	0.157	0.318**
Casual employee	0.476**	0.412**
Award role	-0.112	0.460**
Union member	-1.436**	0.551**
<i>Workplace characteristics</i>		
Small enterprise	0.637**	-0.702**
Public sector	-0.554**	1.245**
<i>Industry (base: blue collar)</i>		
'Pink' collar services	0.362**	0.301**
White collar	0.131	0.230*
<i>Income (base: >\$48,000 p.a.)</i>		
\$48,000 > \$100,000	-0.383**	-0.427**
\$100,000 or more	-0.069	-1.235**
<i>n</i>	3577	3028
Nagelkerke R Square	0.333	0.290

Notes: ** $p < 0.01$; * $0.01 < p < 0.05$

Model 1 confirms that employees who are not involved in collective bargaining are more likely to be employed in small enterprises. As mentioned previously, employers in small businesses are less likely to have the time and resources to initiate bargaining with their employees. And unions are less likely to be present in these workplaces due to poor economies of scale. There will have to be significant incentives and resources given to these employers if collective bargaining is to be practiced in these areas. Further, the public sector is also a significant factor determining whether an employee is covered by collective bargaining. Unions have a much higher density in the public sector. It was also in the public sector where enterprise bargaining first 'took off'. Keen to show the rest of the labour market how it was done, Government employers were strongly encouraged to introduce collective bargaining.

Both skill level and part-time work is not significant in Model 1, however, pay is. Part-time hours were significant until the model controlled for income. Employees who earn between \$48,000 and \$100,000 are more likely to be covered by collective bargaining compared to those who are earning less than average weekly earnings on an annual basis. It is difficult to determine the direction of the causal relationship. Employees who earn more may do so because of collective bargaining. Research has shown that union representation

and collective bargaining can produce higher monetary outcomes. However, it is also possible that collective bargaining has not been initiated among lower-earning employees due to their weaker bargaining power.

The industry an employee works in has been divided into three groups that account for female-dominated service industries and the more male-dominated production and manufacturing industries. It was also necessary to distinguish between the more 'professional' services and the more female-dominated service industries. The model shows that employees in the lower paid, female-dominated industries such as retail, accommodation, administration and health care are less likely to negotiate their pay and conditions compared to employees in the male dominated industries such as construction and manufacturing who are more likely to collectively bargain. The low paid bargaining stream is aimed at employees in these lower paid service sectors. While low paid sectors have not been defined by the Act, some examples of industries that may be assisted by this provision include child care, community services, security and cleaning (DEEWR 2009).

Model 2, in Table 6.2, shows that all demographic, employment and workplace factors entered into the model are significant in distinguishing employees who do not negotiate their pay and conditions to those who do on an individual basis. Individual negotiation is intended to be the domain of employees who are not covered by the award system and instead have common law employment contracts, for example, managers and certain professionals such as accountants and lawyers. The other area of individual negotiation is those who have over-award payments that have been arranged on an individual basis. Ultimately, it is employees who are in a stronger bargaining position who are expected to individually negotiate. Therefore, it is not surprising that those who are employed in low-qualified positions are more likely to not bargain than participate in individual negotiation. In fact the model confirms that the jobs where no negotiation occurs compared to those in which individual negotiation occurs tend to be polar opposites. Females and young employees are more likely to not negotiate their pay and conditions than individually negotiate. The same reasons that these groups of workers do not report collectively bargaining and instead report no negotiation are likely to apply in this second model as well. Part-time and casual employment - two indicators of a weaker attachment to the workplace - also appears to be the domain of jobs where no bargaining occurs. Individual negotiation is more likely to occur with employees who are on a 'career path' and in jobs with high levels of responsibility, and although part-time work is common, it is less common in these types of jobs.

Where award role was not significant in Model 1 it is in Model 2. This is because individual negotiation often occurs where there is no applicable award. As mentioned before, over-award arrangements can occur through individual bargaining, however, the most common arrangement is individual common law contracts. The model shows that awards are more likely to play a role in determining pay and conditions where no bargaining occurs (compared to individual bargaining). Employees who do not report bargaining are also more

likely to be union members compared to those who report individual bargaining. Union membership is scarce among employees with individual common law contracts but employees who are covered by awards may still see a role for the union in enforcing the award conditions or advocating for improved award conditions.

Employees who individually bargain their pay and conditions are more likely to be in small enterprises compared to those who don't bargain. Along with the findings from Model 1 which shows that large enterprises are more likely to collectively bargain than not negotiate. This indicates that if employers are inclined to bargain, it is more likely to be on a collective basis in large enterprises and an individual basis in small enterprises. Thus, it is not the size of the workplace that precludes bargaining but more the type of bargaining that is engaged. It seems intuitive that in particularly small enterprises it would be more efficient to talk to each employee on an individual basis rather than establish a consensus on a collective basis.

A person employed in the public sector is a strong indicator that they are more likely to not negotiate than individually negotiate with their employer. We know from previous analysis that the public sector is dominated by collective bargaining and award arrangements (accounting for 88 per cent of the workforce), with individual bargaining being relatively rare. Therefore it is likely 'no negotiation' in this model is referring to those employees on award arrangements. Thus the model is confirming that employees in the public sector are more likely to have award conditions than individually negotiate with their employer.

Industry is another significant factor in modelling employees who don't negotiate compared to those who individually negotiate. Employees in 'pink' collar services industries such as accommodation and food services, and administration are more likely to not engage in bargaining compared to those in the 'blue' collar industries such as manufacturing and construction. We know the lower-paid and low-skilled that are common in the former industry group are typified by either a lack of bargaining and a reliance on the award system. Of significance, but to a lesser degree, are the white collar industries such as finance and insurance services and public administration and safety that are more likely to not negotiate than to individually negotiate, compared to the blue collar industries. Employees in the blue collar industries may be individually negotiating over-award rates or as Table 4.10 illustrates it is just individual negotiation with awards that is the most common.

Finally, Model 2 shows that, unsurprisingly, income is significant in comparing employees who don't bargain to those who do individually. Individual bargaining is seen as the domain of high earners who have a higher degree of bargaining power. This view has been reinforced by the Government in the *Fair Work Act 2009* which enables employers and employees to enter into a 'guarantee of annual earnings' that exceeds \$100,000 p.a. to exclude them from award conditions. The model shows that employees earning more than \$48,000 per year are more likely to individually negotiate than not bargain at all. While the

relationship is strong for those earning between \$48,000 and \$100,000 per year, it is almost three times as strong for those earning above this. These results, along with those for income in Model 1, confirm that low-paid employees tend to be shut out of bargaining, whether it is collective or individual.

Model 1 identifies some of the significant factors that preclude employees from being covered by collective bargaining, such as weakened bargaining power, attachment to the workforce, and ability to be organised. Workplaces that are small or where unions are not present do not have ready access to collective bargaining. It is also difficult to engage employees who have a marginal attachment to the workforce, including casual employees, and students and carers in part-time work. Further for those who are in a weakened bargaining position, the award safety net is likely to provide a more reliable outcome than collective bargaining. Model 2 confirms that employees with weak bargaining power are unlikely to participate in negotiation. Also, if an employee is inclined to bargain, it is likely to be structural influences which will affect whether it is on an individual or collective basis. These factors can be summarised into two: workplace practices, and employee voice and bargaining power. The former will depend on workplace size and structures and whether the benefits from bargaining outweigh, in relative terms, the time and resources employed. In terms of the latter factor, there will always be some employees in the workforce with limited bargaining power due to their skills and knowledge. It is these employees who rely on the protections and safety nets provided by the government, which has historically come in the form of the award system.

7. What is the Role of Awards? Insight from WIRS

Thus far, the analysis has relied on employees' reports of their perceptions of workplace bargaining and negotiation. As discussed at the beginning of Section 3, employees' reports of the formal instrument for determining pay and conditions substantially differ from payroll clerks' reports of the primary method of setting pay collected by the ABS through the Employee Earnings and Hours (EEH) survey. This is illustrated in Table 7.1. While there is no doubt that employers' payroll clerks have a better understanding of the details of the formal instruments setting wages in their organisation, it is important not to regard the ABS material as 'correct' and dismiss the account based on workers' perceptions. The ABS data are concerned with the formal instrument primarily involved in setting the actual rate paid. *Australia at Work* collects data on how wages *and* conditions are set more generally. The two estimates can be reconciled if it is appreciated that they are capturing information on two slightly different dimensions of the wages system. Further, the ABS statistics do not capture the true degree of influence of the award system, as they do not distinguish between unregistered individual arrangements that are over-award payments and unregistered individual arrangements that are based on the common law; collecting only basic award pay determination.

Table 7.1 Pay instrument ABS & Australia at Work comparison, 06, 07 & 08, per cent

Method of setting pay (and conditions)	ABS		Australia at Work [^]		
	2006	2008	2006 (n=6479)	2007 (n=5816)	2008 (n=5516)
Award only	20.0	17.4	33.4	30.7	29.0
Registered collective agreement	40.1	41.3	21.7	21.1	22.9
Unregistered collective agreement	3.2	0.6	-	-	-
Registered individual arrangement	3.3	2.3	4.7	6.6	5.6
Unregistered individual arrangement [#]	33.4	38.4	28.8	30.9	32.2
No agreement	-	-	4.7	3.3	5.3
Don't know	-	-	6.6	7.5	5.0
Total	100.0	100.0	100.0	100.0	100.0

[#] Includes common law contract and an agreement to receive over-award payments.

[^] Does not include the responses: no agreement, don't know.

Note: The ABS question asks employers about the method of setting the main part of an employee's pay. The Australia at Work questions asks employees how their pay and conditions are set.

Population: Employees not including working proprietors of incorporated business.

Weight: Cross-sectional 06; Cross-sectional 07; Cross-sectional 08

Source: ABS 6306.0 May 2006 (reissue); Australia at Work W1 & W2

Table 7.1 shows that employees in the Australia at Work survey appear to have underestimated the role of collective agreements and over-estimate the role of awards in determining pay and conditions. While this may be in part due to employees under-reporting over-award arrangements (which come under the unregistered individual arrangement category); another factor is likely to be the fact that the EEH includes enterprise and consent awards under the collective agreement category.

The EEH representatively samples employers from the Australian Business Register and then asks employers to select a random sample of employees from their payroll. In effect, selecting a representative sample of employees for which they report the *main* method used for setting their pay. Thus, the statistics do not reveal what instruments are used in conjunction with the main pay-setting method.

The Commonwealth Department of Education, Employment and Workplace Relations (DEEWR) also collects information on Federal agreement-making through the Workplace Agreements Database (WAD).² The WAD collects information from all federal enterprise agreements that have been certified by the AIRC or approved by the Workplace Authority. This information includes the number of employees covered by the agreement. However, this information is subject to considerable variation during the life of the agreement due to workplace fluctuations. Further, where an agreement's coverage is not known it is estimated using a 'modified mean' technique. However, this approach does not account for any response bias effects. For example, it may be relatively new enterprises that are being established that do not specify the number of employees therefore it may over-represent the number of employees. Alternatively, it may be in large employers with several workplaces who are unsure of the employee coverage. It is also important to note that the WAD relies on the expiry date as the duration of the agreement; however, it is common for an agreement not to be immediately replaced with a new agreement after it has expired. In fact, some enterprises continue to use the expired agreement while continuing to update pay rates outside of the agreement. Thus, it is likely that this figure provides an under-representation of the number of collective agreements in use. It is important to keep these limitations in mind when observing DEEWR's employee estimates of agreement coverage.

Table 7.2 shows the number and type of current Federal agreements in the WAD and the number of employees estimated to be covered by these agreements. According to the DEEWR estimates approximately 1.7 million employees are covered by current agreements. The last two rows of Table 7.2 include ABS estimates of total employees and the proportion of employees the current agreements are estimated to cover; according to these estimates around one-fifth of employees are covered by current Federal collective agreements. In Table 7.1 the employee population does not include working proprietors of incorporated businesses to allow comparability with Australia at Work data. We could not use this population in Table 7.2 and so this makes a slight adjustment to the proportions. However, the DEEWR estimate is substantially below the EEH estimate of 39.2 per cent (of all employees including working proprietors of incorporated entities).

When looking at the results in Table 7.2 it is important to remember that the statistics only refer to Federal collective agreements, whereas the EEH data includes both state and

² See *Trends in Federal Enterprise Bargaining March Quarter 2009* and the associated technical notes: <http://www.workplace.gov.au/NR/rdonlyres/6C8D95CF-8BCD-4567-9A24-B0B6FA3072F3/0/TrendsM09.pdf>; <http://www.workplace.gov.au/NR/rdonlyres/F05F8F35-3154-441F-91D5-2F7D5423A1BA/0/TrendsTechnicalNotes.pdf>

federal collective agreements (and enterprise and consent awards). While EEH data on State and Federal agreements is not available for 2008, in 2006 federal registered collective agreements accounted for 26.2 per cent of all employees and state registered collective agreements account for 11.9 per cent. This equates to 2,185,600 employees covered by current Federal agreements in 2006. This is somewhat closer to the DEEWR figure of 1,732,100 in September 2006, but still leaves some 450,000 employees unaccounted for. Discrepancies in expiry dates and employee estimates may make up some of the shortfall.

Table 7.2 WAD Current Federal Agreements, March & September Quarters 2006 – 2009

Current Agreements	Mar-06	Sep-06	Mar-07	Sep-07	Mar-08	Sep-08	Mar-09
ALL AGREEMENTS	13,888	14,246	16,366	18,250	19,526	18,239	18,843
Employees ('000)	1,804.1	1,732.1	1,877.2	1,792.8	1,883.4	1,736.3	1,723.4
Employee collective	3,401	3,869	5,009	6,131	7,783	8,890	9,855
Employees ('000)	181.7	199.3	238.5	278.1	322.3	347.8	367.4
Union collective	8,614	8,989	9,812	10,591	10,327	7,997	7,681
Employees ('000)	1,464.2	1,398.1	1,502.2	1,412.9	1,479.1	1,346.7	1,321.6
Employer Greenfield	2	178	421	476	499	521	623
Employees ('000)	0.1	806	18.5	17.3	15.5	15.7	17.8
Union Greenfield	814	768	803	838	765	768	667
Employees ('000)	19.4	19.0	19.8	21.2	19.4	19.5	16.1
Section 170LN	1,057	442	321	214	152	63	17
Employees ('000)	138.8	107.1	98.2	63.2	47.2	6.6	0.5
Total employees ('000) ^{(a) (b)}	8,776.9		8,989.2		9,268.5		9,066.8
Approximate % of all employees	20.6	19.7	20.9	19.9	20.3	18.7	19.0

^(a) Estimates for the month of August 06-08, Source: ABS Catalogue 6310.0 August

^(b) Estimate for the month of May 09, Source: ABS Catalogue 6310.0

Notes: Agreement and employee estimates are for all federal wages agreements in the period.

Population: All employees including working proprietors of incorporated business.

Source: Workplace Agreements Database (WAD), DEEWR,

Another factor that could explain the discrepancy is that DEEWR collects only information about registered agreements. It is possible that some of the EEH respondents do not distinguish between registered and unregistered agreements. While they may have collectively agreed on pay and conditions with their employees they may have not formalised this by registering the agreement.

On the basis of the insights into the limitations of existing data on the influence of the award system we added a new question to the 2008 Victorian survey of workplace industrial relations examining the role of awards in conjunction with other instruments to provide a real indication of the influence of awards. The same question has been added to the 2009 NSW WIRS. The results for Victoria are reported in Table 7.3. The basis for reporting estimates is slightly different to that used by the ABS and *Australia at Work*. In surveys of this type the business organisation is taken as the unit of analysis. As a result workplaces are classified as having a 'predominant' basis for wage determination. This is defined on

the basis of the instrument that covers 60 per cent or more a business's businesses workforce. This reveals that while just under a third (31 per cent) of businesses report that they have a system based primarily on awards and over-awards, such workplaces only account for 20 per cent of the workforce. This is because they are mainly employed at smaller workplaces. Conversely, while only 11 per cent of business report collective agreements being predominant they cover nearly one worker in three (33 per cent). What is most revealing about this table, however, is the proportion of businesses with agreements reporting that these are read in conjunction with the award. Among those with collective agreements, 89 per cent read them in conjunction with awards and among those with individual arrangements, 58 per cent read these in conjunction with awards.

Table 7.3 Estimates of the Incidence of Different Types of Employment Instruments and the number of workers covered, Victoria, May 2008

Predominate Instrument (60%+ employees)	Businesses	Employees	Total Employees	Businesses where instrument works in conjunction with Award	Workforce estimates: Awards directly or indirectly operate
Award	10%	10%	227,631	-	227,631
Over-award	31%	20%	441,974	-	441,974
Collective agreement	11%	33%	742,045	89%	660,420
Individual agreement	38%	33%	730,132	58%	423,476
AWA/ITEA	-	3%	74,041	58%	42,943
Total	100%	100%	2,215,824		1,796,444

n=800

Note: those workplaces with any kind of individual instrument (e.g. over-award as well as more formal arrangements) were asked if the instrument operated in conjunction with the award. The number of employees covered by an amalgam of award and individual arrangements was 657,767 or 27%.

Population: Business units as defined by Dunn and Bradstreet and weighted to ABS population estimates of corresponding industries and size bands.

Source: Victorian Workplace Industrial Relations Survey 2008.

Given these numbers it appears that employers' accounts help make sense of the ABS and *Australia at Work* differences. Whereas the ABS only reports on awards separately where workers are paid at precisely the award rate, many workers and employers report awards are integral to the determination of pay in their businesses. Indeed, depending on how it is calculated the proportion of Victorian employees that are affected directly or indirectly by awards in the determination of their pay could be as high as 81 per cent (equivalent to 1,796,444 employees).

The significance of awards in the wage determination process was explored in great detail for the Award Review Taskforce in 2006 (ART 2006). One of the many initiatives associated with the *Work Choices* legislation was a full scale review of award coverage and classification arrangements. As part of this process a large scale study of the 'Use and Relevance of State and Federal Awards' was undertaken, involving telephone interviews with over 2,408 workplace managers. One of it's major insights is neatly captured in the following:

... there is no single indicator of the level of award 'relevance'. Even where businesses may not set pay and conditions exactly according to an award, in many cases awards are used to inform the setting of wages and conditions. (ART 2006:154)

The report provides over 50 tables of very detailed breakdowns documenting the reach and relevance of awards. The key findings have been consolidated into the following three tables. Table 7.4 summarises the survey's findings about how many business have at least one employee covered by any of the major instruments used for determining pay. This shows that nearly all businesses (96 per cent) have at least one employee on either an award or agreement. Nearly half (47 per cent) have at least one paid exactly the award rate. This table begs the question: how many employees within each workplace are covered by such arrangements? The answer is provided in Table 7.5.

Table 7.4 Broadest measure of the incidence of different employment instruments, business unit size, Australia, May 2006, per cent

Businesses where any employee is covered by ...	Business unit size (employees)		
	<20	20+	Total
...either an Award or agreement	92	98	96
...an Award or over-award	65	74	68
...exactly the Award rate	43	55	47
...a certified agreement	6	36	17
...an AWA	6	17	10

n=2,408

Population: All businesses in ACT, Northern Territory and Victoria and incorporated businesses in all other States.

Source: Award Review Taskforce, *Use and Relevance of State and Federal Awards*, Final Report, 1 August 2006

Table 7.5 Business reports of different instruments, by business size, Australia, May 2006, per cent

Instrument type	Incidence	Instrument replace Award	Average proportion of employees within the business covered by this instrument where it is applied		
			<20 employees	20+ employees	All businesses
Awards	83	0	75	74	75
Certified agreement	17	77	68	40	45
AWA	10	33	69	37	49
Unregistered arrangement	65	0	-	-	-

Population: All businesses in ACT, Northern Territory and Victoria and incorporated businesses in all other States.

Source: Award Review Taskforce, *Use and Relevance of State and Federal Awards*, Final Report, August 2006.

Table 7.5 reveals that awards operate in 83 per cent of businesses and where they operate they cover around three quarters of the business's workforce. The coverage of registered collective and individual agreements is not nearly as extensive, especially in businesses with 20 or more employees. Finally there is the issue of what the different instruments are

used for. Are awards dealing with some matters and leaving others to agreements? The best attempt at answering this question is summarised in Table 7.6.

Assessing what is covered in industrial instruments is very difficult. Table 7.6 reports on this matter in two ways. Columns 2, 3 and 4 report on the content of instruments reported by each business. Many businesses had more than one instrument, so the sample here is bigger than for businesses. The last two columns summarise the incidence per business of what the instruments are used for. So taking the first row of data concerning pay, it reveals the following: around 90 per cent of awards, unregistered arrangements and certified agreements are referred to when determining pay. Among businesses, however, while 78 per cent refer to an award when determining pay, where the business has a certified agreement 90 per cent refer to it when determining pay. Generally speaking awards and certified agreements are very important where enforceable rights dealing with pay and hours are concerned. On matters like incentives and bonuses all instruments are less commonly referred to. Unregistered agreements are significantly more concerned with pay than any other issue: where they exist they are referred to 88 per cent of time on the matter of pay. The next most common issue they are referred to is for hours of work.

Table 7.6 Matters on which instruments are referred to when determining enforceable rights, August 2006, per cent

Enforceable right subject matter	Incidence among instruments reported by businesses			Incidence among businesses	
	Awards	Unregistered arrangements	Certified Agreements	Award	Certified Agreements
Pay	90	88	94	78	90
Leave	88	54	85	76	82
Hours	84	68	91	74	87
Classification	80	57	87	68	82
Overtime & penalties	80	56	85	69	79
Incentives & bonuses	33	57	52	31	51

Populations: For columns 2, 3 & 4: All instruments referred to by any business involved in the study, n=3,704. For columns 5 & 6: All businesses in ACT, Northern Territory and Victoria and incorporated businesses in all other States, n=2,408.

Source: Award Review Taskforce, Use and Relevance of State and Federal Awards, Final Report, 1 August 2006

The previous tables have provided quite detailed information about award and agreement coverage. How can we integrate this information to capture change over time? Table 7.7 summarises how labour market coverage by different legal instruments has changed since 1990. The first six columns provide estimates of coverage of the different instruments; these fall into two categories: registered and unregistered arrangements. The former is comprised of awards and agreements. These can be defined with a fairly high degree of precision because, by definition, they are governed by registration requirements that result in them having legal force. Unregistered arrangements cannot be so precisely defined, but they remain a major part of the system. They are commonly classified as: unregistered collective agreements; over-award arrangements; and individual common law contracts. To

identify the relative extent to which the different regulatory structures are utilised, two summary measures are provided in the last two columns. The first concerns the reach of the award system. Given most agreements up to 2006 were still based on awards, these figures encompass workers wholly reliant on awards; those on registered collective and individual agreements; and those on over-award arrangements. The last column estimates the proportion of employees whose employment arrangements are governed, at least in part, by unregistered arrangements. Many of these arrangements operate in conjunction with awards and registered agreements, counted already in the 'award coverage' column, resulting in the last two columns not totalling 100 per cent.

Table 7.7 Indicative estimates of employee coverage of different instruments based on a meta-analysis of employer surveys, Australia, 1990–2006, per cent

Year	Instrument						Summary	
	Registered Agreements			Unregistered Agreements			Underlying Award coverage (1+2+3+5)	Unregistered arrangements (4+5+6)
	Award only (1)	Collective (2)	Individual (3)	Collective (4)	Over-awards (5)	Individual common law (6)		
1990	45	20	-	11	15	20	80	45
1995	40	30	-	3	15-20	10-15	85-90	30
2000	25	35	2	2	20	15	80	35
2006	20	40	3	3	15-20	15-20	80	35

Note: Because these are indicative estimates only most percentages have been rounded to the nearest 5 per cent to convey an order of magnitude as opposed to precise estimate of actual coverage.

Sources: ABS, Incidence of Awards Survey; ABS, [May survey for over-award data] Employee Earnings and Hours; AWIRS: Callus et al., 1990 and Morehead et al., 1997; WBS (Workplace Bargaining Survey) cited in DIR, Report on Enterprise Bargaining, 1995; DEWR (Department of Employment and Workplace Relations) Joint (Coalition) Governments' Submission, Safety Net Review – Wages, 1999-2000.

The key issues identified from the trends summarised in this table are as follows:

- Over the last 15 years the proportion of workers covered by awards and registered agreements has been stable, as has the proportion of those covered by some kind of unregistered arrangement. This stability should not blind us to significant changes occurring within these domains. For example, there has been a shift towards non-standard employment arrangements such as part-time and casual employment as well as a decline in traditional sectors such as manufacturing and an increase in the services sector (Watson et al. 2003).
- Within the registered domain there has been a dramatic decrease in the percentage of employees relying solely on awards - from around 45 to around 20 per cent. Most of this change has been associated with more workers being covered by registered collective agreements. Registered individual agreements account for only a small proportion of the change, and until 2006 the overwhelming bulk of these registered agreements operated in conjunction with an award.
- Data on the unregistered domain is less clear. The available data indicate that there has been a dramatic fall in the proportion of employees covered by unregistered collective agreements. These have probably been formalised into registered enterprise agreements or have disappeared as a result of external labour market forces. From the

evidence available, the balance between over-award arrangements and individual common law contracts appears to have been relatively stable, with both arrangements covering between 15 and 20 per cent of employees.

To date, most of the policy debate has focussed on awards and registered agreements. This table highlights the importance of other elements of the system of wage determination, especially relating to unregistered arrangements. It is possible that many new agreements may simply represent the codification of long standing unregistered agreements or over-award arrangements. In addition, it is important to appreciate the continuing reach of awards. While they may not be as directly relevant as they were once, they still remain a significant reference point for the determination of wages and working conditions. This is particularly so in relation to the role that awards play in determining whether an agreement passes the no disadvantage test or the 'Better Off Overall Test' (BOOT) as it is now called in the *Fair Work Act*. Moreover, it is reasonable to expect that, as awards diminish in influence, the regulatory gap is as likely to be filled by increased scope for managerial prerogative as it is to be filled by formally registered agreements.

In looking forward, it is important to ensure that the role awards and collective bargaining play – either directly or indirectly – in setting pay and conditions remains on the research agenda. That is, tracking which employees and employers are and are not engaged in bargaining, and the reliance on institutional arrangements. It is important that this research continues well after the implementation of the *Fair Work Act*. The ABS and DEEWR are likely to continue their data collections providing a source of aggregate data on the incidence of different types of agreements. Australia at Work will remain an important source of employees' perspectives on bargaining. The final data collection is set to take place in 2011, one year after the full implementation of the new laws.

8. The Fair Work Act: Who will Bargain?

Under the *Fair Work Act*, the centrepiece of the Australian industrial relations system is collective bargaining. The objective of this approach is to promote and encourage employers and employees to bargain, at the enterprise level, to improve pay and conditions beyond the award safety net. It remains unclear, however, whether the new system will extend collective bargaining to groups of employees who have not traditionally been included in the bargaining process. This report uses a variety of data sources to examine the extent of collective bargaining coverage and the other ways pay and conditions are determined. We examine whether those who currently do not participate in bargaining have the potential to be drawn into the Federal Government's collective bargaining agenda. The primary data source, *Australia at Work*, relies on employees' perspectives and therefore does not distinguish between the State and Federal systems. At this stage, it is unclear whether the States intend to refer their powers.

The *Australia at Work* survey examines, among other things, employees' perspectives of workplace bargaining and the labour contract. Using this data, a classification of six bargaining categories was developed to describe the type of negotiation taking place and the role of awards in determining pay and conditions. Almost two-thirds of employees (63 per cent) report some form of bargaining around their wages and conditions. Another third (35 per cent) report that they do not bargain with their employer; with half of these employees recognising that an award determines their pay and conditions. Of all employees, one-third (34 per cent) report individually bargaining with their employer and around one-quarter (23 per cent) report that the union negotiates on their behalf. The small minority (9 per cent of employees) who report collective bargaining without a union indicates that collective bargaining, in the 2008 legislative environment, was unlikely to occur at the workplace level without the direction of a union.

Overall, the most common forms of bargaining vary from 'not bargaining but with an award in place' (19 per cent); to 'individual negotiation and no award' (20 per cent); and 'collective bargaining with a union' (24 per cent). It is probably these three groups that people mostly think of when analysing employees' industrial relations arrangements. Where bargaining does not take place it is often because there is an underlying 'safety-net' in the form of the award. Where collective bargaining takes place it is usually because it has been initiated by a union. And individual bargaining usually occurs for those employees in a stronger bargaining position where an award is not deemed necessary, resulting in an individual contract based on the common law.

Drawing on analysis of the six bargaining groups and modelling of employees who do not bargain, it can be concluded that particular types of bargaining, or lack thereof, are concentrated among particular groups of employees and workplaces. Modelling of employees who do not bargain shows that they differ significantly compared to those who bargain collectively and individually. Collective bargaining appears to be limited to

particular types of workplaces, in particular the public sector, larger enterprises and certain, especially male-dominated, industries such as construction and manufacturing. Union activity is a significant influence on whether collective bargaining is practiced. Employees in these workplaces with collective bargaining tend to be men, employed on a permanent basis and earning middle-range incomes (i.e. above average weekly earnings).

There is a lot of work to be done if collective bargaining is to become 'mainstream' in the private sector, as currently only 21 per cent of private sector employees report this type of negotiation. There are significant factors that preclude an employee from being covered by collective bargaining. Relatively low bargaining power, a weak attachment to the workforce, and lack of union organisation are all factors that lead to an employee being shut out of bargaining. Structural influences are important. Workplaces that are small or where unions are not present do not have ready access to collective bargaining.

Individual bargaining was confirmed to occur among employees who typically are not covered by the award system and have a common law individual contract in place. That is, individual bargaining was more likely to be reported by men, in higher-skilled or managerial jobs, earning high incomes and working longer hours. Individual bargaining is more common among private sector employees, accounting for 42 per cent of them. Employees in smaller workplaces are not excluded from bargaining, per se, but they are more likely to bargain on an individual basis rather than collectively. It is unsurprising that employers adopt a more individualistic approach when they only have a limited number of employees to bargain with.

Employees who don't bargain can be classified into two groups: those who knowingly rely on the award system and those who don't. Young men and women are more likely to report no knowledge of how their pay and conditions are set, and even though they work in jobs that typically have awards such as low-paid jobs in the retail and accommodation sectors, they are less likely to report an award role. Further, employees from a non-English speaking background were the least likely to report the role of an award, across both high and low skilled occupations, indicating that knowledge is an issue.

Employees who don't bargain and knowingly rely on the award system equate to approximately 1.6 million employees. These employees tend to be slightly older women who are working in low-paid work and who can be considered to have relatively low bargaining power. They work in industries such as health care and social assistance. A substantial proportion of the private sector employees rely on the award system, with 32 per cent of employees reporting that an award plays a role in their conditions (and they don't collectively bargain). Statistical modelling confirmed that awards are more likely to play a role in determining pay and conditions where no bargaining occurs (compared to individual bargaining).

Examination of employees' reports of the quality and nature of bargaining showed employee reports about the opportunity to bargain and the incidence of different types of bargaining are not necessarily aligned. It was also confirmed that unions have an important role to play in collective bargaining. Trade union members are far more likely than former union members and employees who have never been a union member to report collective bargaining. But when unions are involved in the enterprise agreement, their presence is not always visible in the workplace. Further, where union collective bargaining is practiced, employees are more likely to report antagonistic relationships with their managers.

From the employees' perspective the award system still has a major role in setting the underlying safety net for their pay and conditions, or in directly determining them. Further information from employers was drawn on to examine the reliance on the award system. This only reinforces the findings that awards are still a central element of industrial relations in Australia, on which many employees and employers depend. While only a segment of the labour market relies wholly on awards for the determination of pay and conditions, many collective and individual agreements are read in conjunction with the awards. In Victoria, 89 per cent of business with collective agreements and 58 per cent of businesses with individual arrangements read them in conjunction with awards. These findings are further reinforced by the Award Review Taskforce which found that 96 per cent of all businesses have at least one employee on either an award or agreement and 47 per cent have at least one employee paid the exact award rate. Awards are important when determining pay, particularly where there is a collective agreement in place. Among businesses 78 per cent refer to an award when determining pay, but where there is a certified agreement in place 90 per cent refer to the award. Generally speaking, awards and collective agreements are very important where enforceable rights are concerned.

Over the past 15 years, while the proportion of workers covered by awards and registered agreements has been stable there has been a dramatic decrease in the percentage of employees relying solely on awards. Most of this change has been associated with more workers being covered by registered collective agreements. It appears that many of these agreements are the result of formalising unregistered collective agreements which have decreased over this period.

What does all this mean for bargaining and award reliance under the *Fair Work Act*? There are two important developments to take account of here. First, the 10 National Employment Standards confers individual statutory entitlements upon employees and award modernisation process sees awards reduced to 10 award-specific matters. Second, the focus on collective bargaining means that the main method of improving pay and conditions beyond this very basic safety net, is for employees and employers to bargain at the enterprise level. The analysis has shown that the award system could be argued to be the 'life-blood' of the industrial relations system. Matters which businesses refer to awards for are pay, hours, leave, classification and overtime and penalties; all of which are allowed under the 10-award specific matters. The reliance of both employers and employees on the

award system means that it is absolutely vital that it continues to be updated and maintained until we can be sure that the extra assistance and provisions the Government has put in place to increase the incidence of collective bargaining have been effective across all sectors of the workforce.

The Rudd Government has chosen to bolster the set of legislated minimum standards, introduced in *Work Choices*, through the establishment of the NES. Arguably, this has the effect of diminishing the impact of the award system. Even so, it is important to appreciate the continuing reach of awards. While they may not be as directly relevant as they were once, they still remain a significant reference point for the determination of wages and working conditions. If the influence of awards does in fact 'whither away' the regulatory gap will provide more scope for managerial prerogative either reflected in formally registered agreements or through informal arrangements. Considering the relatively limited prevalence of enterprise agreements to date, it is likely to be through the latter means.

To date, collective bargaining can be considered to be a union-led activity. According to employee reports collective bargaining is almost three times as likely to occur if a union is active in the workplace. Due to declining union density, increasing the prevalence of collective bargaining in the labour market rely heavily on increasing non-union collective bargaining. We are yet to see if the Government's encouragement and assistance to employers will be enough to make this happen. If it is, an important area of further research will be to monitor and track the content of these agreements. Research on agreements made under *Work Choices* found that non-union collective agreements reverted to the statutory minima and were rarely bargained (Evesson et al. 2007).

Employee reports show that both small and large enterprises are inclined to bargain, but if they do so, large enterprises do so collectively and it is expected that small enterprises will continue to do so on an individual basis. Despite the gradual erasure of Australian Workplace Agreements, there is still capacity for individual negotiation under the *Fair Work Act*. A clause allowing for Individual Flexibility Agreements (IFAs) is compulsory in all awards and enterprise agreements. This will allow for agreements to be made between employers and individual employees on matters such as working arrangements, overtime and penalty rates, allowances and leave loading. While the IFAs should not undermine the conditions provided in the award and agreement, there will be no registration processes in place for these agreements. This will make monitoring of terms in IFAs difficult, if not impossible. It is expected that these agreements will be popular among employers, particularly small businesses where there is a high degree of reliance on the combination of awards and individual arrangements.

The collective bargaining focus of the new legislation is likely to disadvantage employees who do not participate in workplace bargaining. Collective bargaining is not widely known among employees as a method for improving pay and conditions. There appear to be two main factors contributing to employees being shut out bargaining: workplace practices, and

employee voice and bargaining power. In the first instance small, particularly private, enterprises do not practice collective bargaining and tend to rely either on the award system or individual negotiation. In these workplaces, employers are unlikely to have the time and resources to instigate workplace bargaining and employees tend not to be unionised. In the second instance, the analysis shows that employees who do not negotiate tend to be from the more marginalised sectors of the workforce including the low-paid, those in precarious employment, young employees and women. These are all groups that have traditionally relied (whether they know it or not) on more centralised systems of pay and conditions setting. The outcomes for these workers under the *Fair Work Act* will rely heavily on the degree of success and coverage of the low-paid bargaining stream. Developments using this part of the legislation should be considered a 'must watch' area, as it is unclear how it will play out in practice. While low paid sectors have not been defined by the Act, some examples of industries that may be assisted by this provision include child care, community services, security and cleaning. Incidentally, these are sectors come are included in the industries that were found not to be engaged in bargaining. How multi-employer bargaining in low-paid sectors will be initiated is not clear. It seems it will require either a group of employers or a union to get the ball rolling. Which means, again, employees will need to be union members to take advantage of the benefits of collective bargaining.

This report has shown that there is a significant sector of the workforce who do not bargain. It is unlikely that the *Fair Work Act*, as it currently stands will result in the widespread collective bargaining, and particularly not to the benefit of employees. The award system remains a vital element of Australian industrial relations upon which both employees and employers rely.

References

- ACIRRT (1999). *Australia at Work: Just Managing?* Prentice Hall, Sydney.
- ART (Award Review Taskforce) (2006) *Use and Relevance of State and Federal Awards (final report), Appendix 1 of Award Relevance Study*, DEWR, Canberra.
- Australian Bureau of Statistics (2006) *Employee Earnings and Hours* (cat. no. 6306.0), Canberra.
- Australian Bureau of Statistics (2009) *Average Weekly Earnings, Australia, November 2008* Catalogue No. 6302.0, <http://www.abs.gov.au/ausstats/abs@.nsf/mf/6302.0/>, accessed 3 May 2009.
- Baird, M., Cooper, R. and Oliver, D. (2007) *Down and Out with Work Choices: The Impact of Work Choices on the Work and Lives of Women in Low Paid Employment*. Report to the Office of Industrial Relations, Department of Commerce, New South Wales Government, Sydney.
- Baird, M. and Williamson, S. (2009) 'Women, Work and Industrial Relations in 2008', *Journal of Industrial Relations*, 51(3) pp331-346.
- Bennett, L. (1994) 'Women and enterprise bargaining: the legal and institutional framework', *Journal of Industrial Relations*, 36(2):191-212.
- Bennett, L. (1995) 'Bargaining away the rights of the weak: non-union agreements in the federal jurisdiction' in P. Ronfeldt and R. McCallum (eds), *Enterprise Bargaining: Trade Unions and the Law*, Federation Press, Leichhardt.
- Boreham, P., Hall, R., Harley, B. and Whitehouse, G. (1996) 'What does Enterprise Bargaining Mean for Gender Equity? Some Empirical Evidence', *Labour & Industry*, 7(1) pp.51-68.
- Briggs, C. and Cooper, R. (2006) "Between individualism and collectivism? Why employers choose non-union collective agreements", *Labour & Industry*, 17(2), pp.1-23.
- Buchanan, J. (1997) *A profile of low wage employees*, ACCIRT Working Paper No 47, University of Sydney, Sydney.
- Cai, L. and Liu, A.Y.C. (2008) 'Union Wage Effects in Australia: Are There Variations along the Distribution?' *The Economic Record*, 84(267), pp. 496-510.
- Cooper, R. and Ellem, B. (2008) 'The Neoliberal State, Trade Unions and Collective Bargaining in Australia', *British Journal of Industrial Relations*, 46(3), pp.532-554.
- Considine, G. and Buchanan, J. (2007) *Workplace Industrial Relations on the Eve of Work Choices: A report on a survey of employers in Queensland, NSW and Victoria*. Report prepared for the Queensland Department of Employment and Industrial Relations, NSW

Office of Industrial Relations and Industrial Relations Victoria, Workplace Research Centre, Sydney.

Crosby, M. (2005) *Power at Work: Rebuilding the Australian Union Movement*, Federation Press, Sydney.

Department of Education, Employment and Workplace Relations (DEEWR) (2009) Government Workplace Relations Fact Sheet 7 *Assisting low-paid employees and those without access to collective bargaining*,

<http://www.deewr.gov.au/WorkplaceRelations/NewWorkplaceRelations/Documents/WR%20fact%20sheet%20RA%207.pdf>, accessed 30 April 2009.

Evesson, J. Buchanan, J. Bamberry, L. Frino, B. Oliver, D. (2007) *Lowering the standards: From Awards to Work Choices in Retail and Hospitality Collective Agreements: Synthesis Report*. Report prepared for the Queensland, New South Wales, and Victorian Governments. Workplace Research Centre, Sydney.

McCallum, R. (2002) 'Trade Union Recognition and Australia's Neo-Liberal Voluntary Bargaining Laws', *Industrial Relations*, 57(2), pp.225-251.

McGuinness, S. and Freebairn, J. (2007) 'Who are the Low Paid?', *Australian Journal of Labour Economics*, 10(1) pp.17-37.

Peetz, D. (2008) 'Equity and practical considerations in a system where 'collective' agreement-making can exist without collective bargaining', *An Industrial Relations System for the 21st Century Roundtable*, Working NSW, Sydney, 24 June 2008.

Pocock, B. (1999) 'The Equal Pay Case Thirty Years On: The Policy The Practice', *The Australian Economic Review*, 32(3), pp.273-285.

Pocock, B., Elton, J., Preston, A., Charlesworth, S., McDonald, F., Baird, M., Cooper, R., and Ellem, B. (2008) 'The impact of 'Work Choices' on women in low paid employment in Australia: A qualitative analysis', *Journal of Industrial Relations*, 50(3) pp.475-488.

Rudd, K. & Gillard, J. (2007) *Forward with Fairness: Labor's plan for fairer and more productive workplaces*. http://www.alp.org.au/download/now/fwf_finala.pdf, accessed 30 May 2008.

Smith, M. (2003) "Accepting mediocrity as progress: Gender pay equity and enterprise bargaining", *International Employment Relations Review*, 9(1), pp.89-104.

Smith, M. and Lyons, M. (2006) 'Women, Wages and Industrial Relations in Australia: The past, the Present and the Future', *International Journal of Employment Studies*, 14(2), pp.1-18.

van Gellecum, Y., Baxter, J. and Western, M. (2008) 'Neoliberalism, gender inequality and the Australian labour market', *Journal of Sociology*, 44(1), pp.45-63.

van Wanrooy, B (forthcoming) 'Women at work in Australia: Bargaining a better position?', *Australian Bulletin of Labour*, accepted February 2009.

van Wanrooy, B., Oxenbridge, S., Buchanan, J. and Jakubauskas, M. (2007) *Australia at Work: The Benchmark Report*, Workplace Research Centre, Sydney.

van Wanrooy, B., Jakubauskas, M., Buchanan, J., Wilson, S. and Scalmer, S. (2008) *Working Lives: Statistics and Stories*, Workplace Research Centre, Sydney.

Watson, I., Buchanan, J., Campbell, I. and Briggs, C. (2003) *Fragmented futures: new challenges in working life*, Federation Press, Sydney.