

Regulating Bargaining and Contracting Systems in Australia

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Introduction

Bargaining and contracting are methods buyers and sellers of labour use to decide the terms on which labour is exchanged. Even so, they differ quite markedly from each other in several significant respects. Bargaining is a process of collective negotiation between an employer or employers and unions or groups of workers, while contracting is conducted by an employer with an individual worker, often with little real negotiation being involved.¹ The outcomes also differ; with empirical studies showing that union-bargained collective agreements deliver better wages and conditions than non-union collective and individual “agreements”, while women tend to fare worse than men under contracting, decentralised and non-union bargaining.² As bargaining has become more decentralised and individualised in Australia during the 1990s, the dispersal of wages and conditions of work has become wider, and systemic discrimination in the labour market more entrenched.³

The legislative and related judicial and arbitral rules in Australia provide an imposing regulatory framework for bargaining and contracting, and so would appear to be responsible for these distributive and social injustices. However, leaving it at that may limit and mislead our understanding of how regulation works, since other forms of regulation are likely to interact and possibly collide with and de-rail the declared purposes of state regulation. As Mitchell and Arup point out, Australian labour market regulation is increasingly both fragmented and decentred.⁴ Arup suggests, though, that it “should be possible to trace how (the different forms or legalities of regulation) interact”.⁵ This challenge is

1 Macdonald D, Campbell I and Burgess J, “Ten Years of Enterprise Bargaining in Australia: An Introduction” (2001) 12 *Labour and Industry* 1 at 3-4.

2 For example, Whitehouse G and Frino B, “Women, Wages and Industrial Agreements” (2003) 6 *Australian Journal of Labour Economics* 579 at 586.

3 Carlson E, Mitchell W and Watts M, “The Impact of New Forms of Wage Setting on Wage Outcomes in Australia” in Burgess J and McDonald D (eds), *Developments in Enterprise Bargaining in Australia* (Tertiary Press, Melbourne, 2003).

4 See the Introduction (ch 1) to this collection.

5 Arup C, “Labour Law as Regulation; Promise and Pitfalls” (2001) 14 *Australian Journal of Labour Law* 229 at 230.

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