

Reforming Collective Bargaining

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Introduction

Professor Isaac made a major contribution to the study of collective bargaining in Australia over a long period of time, with his deepest insights focused on the Australian employment relations system before the 1990s. That system, and the place of collective bargaining within it, has changed profoundly since then, arriving eventually at the Fair Work regime. Supporters and critics alike agreed that collective bargaining was central to the *Fair Work Act 2009* (Cth), but they differed in their hopes and fears about its impact. The aim of this chapter is to review three aspects of collective bargaining under the *Fair Work Act* that were the subject of their competing predictions: the incidence of collective bargaining, its impact on the balance of power between employers and unions, and its capacity to promote cooperation in the workplace.

To anticipate our conclusions, based on close analysis of the Act's idiosyncrasies and the available data on its operation, we find that the *Fair Work Act* has not produced any significant increase in the incidence of collective bargaining, it has not provoked a major shift in the balance of power between employers and unions, and the type of collective bargaining sponsored under the Act does not in itself advance cooperation in the workplace. These conclusions mean that conservative critics of the *Fair Work Act* have dramatically overstated their concerns, while supporters of unions and collective bargaining – who must be disappointed with modest achievements of their reforms – will need to seek further reforms if they are to achieve the benefits they associate with increased collective bargaining.

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Finally, our analysis suggests that going to the next step of real workplace cooperation requires legal and policy support well beyond the promotion of ‘good faith’ collective bargaining. The ‘New Approaches’ strategy of the Fair Work Commission has great potential to advance this objective (Fair Work Commission, 2015), but it is not sufficient. Most Australian employers, employees and union representatives do not have the experience, knowledge and skills that are necessary to operationalise cooperative workplace practices, even if they have the motivation. More systematic education and training supports are needed. Some of this responsibility rests on Human Resources departments, and those who train their members (that is, business schools in universities) to ensure that business managers and staff specialists have the necessary practical skills and confidence in negotiation. Government programs in support of the development of this capability, perhaps similar to the Best Practice Program of the 1990s (Rimmer et al, 1996; Macneil et al, 2011), union training initiatives, as proposed by Lyons (2011), and/or supports provided by employer associations to those of their members who can see the benefits of proper bargaining may also help.

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