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# Awards and collective bargaining in Australia: what do they do, and are they relevant to New Zealand?

DAVID PEETZ*

## Abstract

This paper explains, in some depth, how the system of awards, collective agreements and individual contracts works in Australia. It also describes how many people are covered by these arrangements, how much they are paid and how awards and agreements interact. It discusses the effects of the award system, which are probably greater on equity (compressing wage relativities, providing some opportunities for action on gender pay equity) than on productivity (though skill-based wage structures may have some effect). The issues raised by it are relevant to debates in New Zealand about fair pay agreements, wage levels and pay equity.

**Keywords:** awards, collective bargaining, collective agreements, Australia, New Zealand

## Introduction

The wage fixing system in Australia was, for a long time, unique amongst developed countries other than New Zealand. Minimum wages were set for large numbers of occupations and industries and varied according to the skill level of the job. These minimum wages were set by industrial tribunals through compulsorily arbitrated decisions that led to 'awards', and these awards contained provisions for minimum employment conditions and minimum wages for different jobs (in effect, for different skill levels).

While that system has persisted in Australia (it was abolished in New Zealand in 1991), there have been very substantial modifications since 2006 that limit its scope and impact, reduce geographic variation and emphasise horizontal consistency based on skill level. In addition, collective agreements set wages and conditions for many workers. In theory, these cannot provide lesser benefits, on average, for employees than the award.

The operation of the Australian system, particularly at present, is relevant to New Zealand, as policy makers seek to deal with both equity and efficiency objective in industrial legislation. Some, for example, see something like awards as providing a model for multi-employer bargaining or for introducing some form of skill-based, industry-level regulation.

This paper, therefore, seeks to investigate the following questions: how does the system of awards, collective agreements and individual contracts work in Australia? How many people are covered by these arrangements? What do we know about their effects? What is the relevance for New Zealand? The focus is mainly on awards because they are something not seen in New Zealand any more, but are relevant to the issue of 'fair pay agreements' that has been considered in New Zealand.

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## Awards and legislative minimums

The relationship between actual wages, awards and collective agreements in Australia is best illustrated by Figure 1, for three workers covered by the same award. Worker A is paid only the award rate, which is W1. They are entitled to the legislatively determined National Employment Standards (NES), which cover a number of employment conditions but not wages. Worker B is covered by the same award but they also receive an individual 'over award' payment, so their pay is W2, which may be set out in a written or unwritten employment contract. Worker C is covered by a collective agreement, and so is paid W3 which, in this case, is above W3, but can be anything not less than the award wage W1.

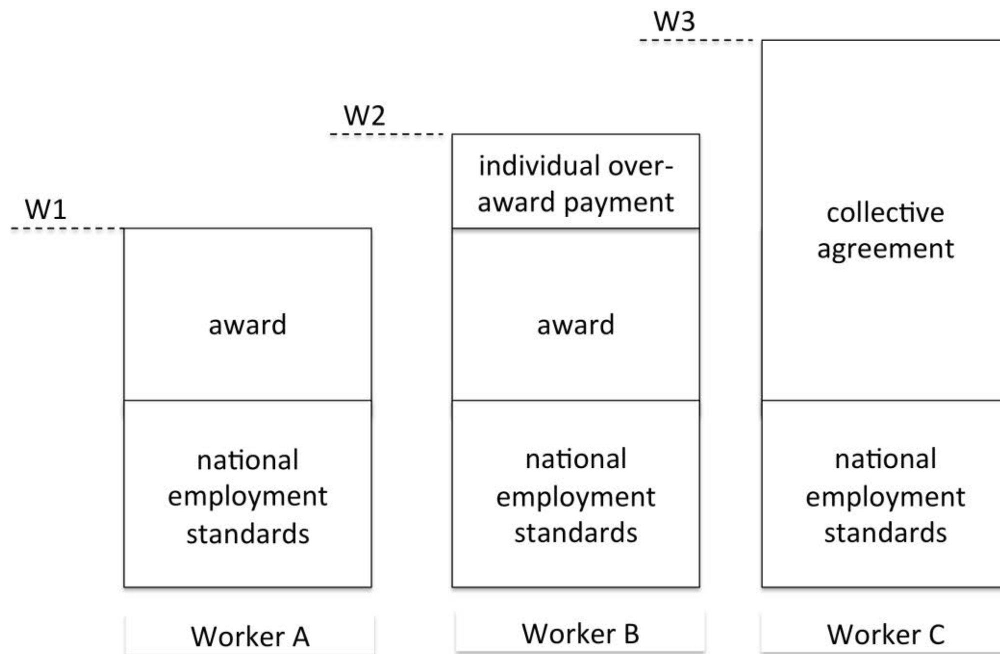


**Figure 1: Awards, agreements and pay in Australia**

Not just pay but also conditions of employment are set out in awards and collective agreements. A judgement is made by the tribunal as to whether, *overall*, workers are better off under a collective agreement than under an award, taking account of all pay and conditions provisions. This is referred to as the 'better off overall test' (BOOT). Collective agreements (CAs) are approved by a tribunal (presently called the Fair Work Commission), in a process that is usually very quick and perfunctory, especially for union CAs.

A simple timeline summarising key moments in the development of the award system is in Figure 2 below. While awards co-exist with collective bargaining, there have been major changes in that interaction over time.

| | | | | |
|---|---|---|---|---|
| 1890s & 1900s | Award system established in state systems and nationally | Awards set minimums and for some workers actual pay. | Awards set in federal and state tribunals | >1000 complex awards, by industry, occupation and company |
| 1980s | Process commences of restructuring/ simplifying/ modernising awards | Awards set minimums and for some workers actual pay. | Awards set in federal and state tribunals | >1000 complex awards, consistent structures, by industry, occupation and company |
| 1991 | Introduction of 'Enterprise bargaining' | Awards a 'safety net' of minimum pay & conditions | Awards set in federal and state tribunals | >1000 awards, consistent structures, by industry and occupation |
| 1996 | Workplace Relations Act' | Awards a 'safety net' of minimum pay & conditions | Awards set in federal and state tribunals | >1000 awards, limits on provisions, consistent structures, by industry and occupation |
| 2006 | WorkChoices amendments | Awards a 'safety net' of minimum pay & conditions | Awards mostly set in federal tribunal | 'Simplified' awards, limits on provisions, consistent structures, by industry and occupation |
| 2010 | Fair Work Act | Awards a 'safety net' of minimum pay & conditions | Awards mostly set in federal tribunal | 120 'modern' awards, limits on provisions, consistent structures, industry based |

**Figure 2: Key moments in development of awards in Australia**

*Awards and the move to enterprise bargaining*

Awards became part of the Australian industrial relations system before and through the beginning of the 20th century, first in various colonial or state jurisdictions and then in the federal (national) jurisdiction, where, constitutionally, they existed for the 'prevention or settlement' of interstate industrial disputes. Awards were established by tribunals through a process of compulsory arbitration (if one party wanted arbitration, the other could not avoid it). An award could cover an occupation, an industry or some combination. Some awards were quite extensive: the federal Metals Industry Award, often the 'pacesetter' for other awards, contained over 300 job classifications, each with its own wage.

Collective bargaining existed alongside awards. Sometimes this led to a separate award for a particular firm (an 'enterprise award'), other times it led to 'over-award payments', that is wages above the minimums specified in awards. Over-award payments could also result from individual negotiation or from unilateral management decision. Over-award payments were rare in the public sector but in 1989, around 77 per cent of private sector workplaces provided at least some workers over-award payments (Callus, Morehead, Cully, & Buchanan, 1991). Overall, though, award variations were the formal mechanism by which the majority of employees gained wage increases.

For differing reasons, peak unions and employers and the government came to support moving to a system of 'enterprise bargaining' in the late 1980s (Briggs, 2001; Business Council of Australia, 1989). In October 1991, the federal tribunal (by then called the Australian Industrial Relations Commission, AIRC) introduced a new wage system with a formal mechanism for progressing single-

employer bargaining, through the creation of a new wage principle (the 'Enterprise Bargaining Principle'). Dissatisfied with the slow spread of single-employer bargaining, the Labor Government in mid-1992 amended the *Industrial Relations Act 1988* to remove the tribunal's role in scrutinising proposed single-employer certified agreements by reference to the public interest, requiring it instead to ensure that agreements did not disadvantage employees, and satisfied some other more technical requirements. More substantial amendments in late 1993 made the encouragement of single-employer bargaining an explicit object of the Act, strengthened protections for some employees under single-employer agreements and clarified the distinction between the single-employer bargaining stream and the award system.

The impact of these changes was to dramatically change arbitration's role. Arbitration over interest disputes (Spielmans, 1939) was minimised by the primacy given to bargaining between the parties. The main role for arbitration became deciding safety net adjustments. However, these arbitrated safety net adjustments initially accounted for only a small proportion (about 10 per cent) of overall wage increases as reflected in average weekly earnings in the mid-1990s. The remainder of wage increases, set by bargaining or by unilateral determination by management, were not subject to arbitration.

Thus at broadly similar times, Australia and New Zealand shifted from emphasising awards to enterprise-level bargaining. But while New Zealand's radical shift, through the *Employment Contracts Act 1991* (ECA), abolished the award system altogether and any formal recognition of unions (Deakin, 2019; Deeks & Rasmussen, 2002), Australia retained awards as setting a safety net of minimum conditions, and prioritised collective over individual bargaining.

The *Workplace Relations Act 1996* (WRA), under a Coalition government in Australia, further restricted the scope for arbitration. Awards were limited to 20 'allowable matters'. Beyond these, the Commission could not arbitrate, except in more limited circumstances. The short-lived 'WorkChoices' amendments to the legislation, taking effect in 2006 and repealed between 2008 and 2010, sought to limit awards further. They took the wage fixing function in awards away from the AIRC, giving it to a newly created Fair Pay Commission. The lasting impact of the WorkChoices legislation was to largely abolish state jurisdictions, by making novel use of the federal Parliament's constitutional ability to legislate with respect to corporations. Most states referred their law-making powers over the remaining 'non-corporate' entities to the federal Parliament.

Through this period, collective agreements (CAs), known as 'enterprise agreements', became the main source of wage increases, particularly for unionised employees. The gap between pay rates in CAs and awards widened. Pay and classification structures for many employees were determined through CAs, not awards.

In 2010, the terminology was changed – 'awards' became 'Modern Awards' (but for the purposes of this paper, the term 'awards' covers either). The constitutional basis for the process was also changed. Up until 2006, awards were created in the settlement of industrial disputes (see figure 3). Since then, awards have been administratively created by tribunals in a process that is, in a formal sense, simpler (see figure 4). For example, in April 2020, award changes in response to Covid-19 were initiated by the tribunal, not requested by any party. (Other Covid-19-driven changes to worker entitlements resulted from legislation.) In all periods, however, awards set the floor for pay and conditions.

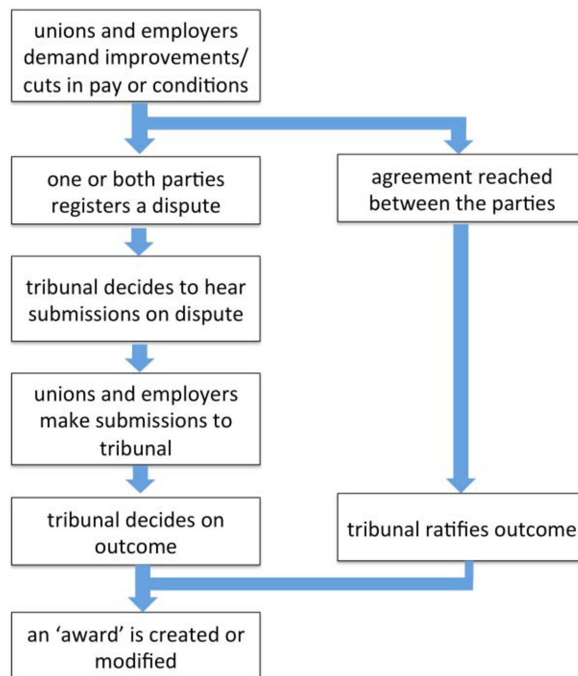


**Figure 3: How Australian awards were created before 2006**

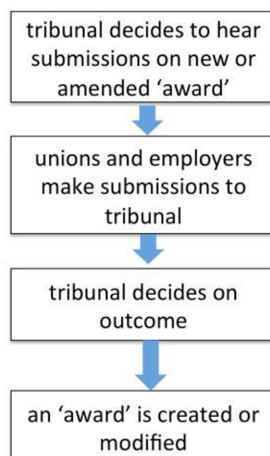


**Figure 4: How Australian awards have been created since 2006**

While these changes in award creation processes were significant, the shift towards single-employer bargaining in the 1990s was more momentous for the role of awards.

*Core concepts in the 'Fair Work' system*

In 2010, the Fair Work Act established minimum legislative standards in a range of areas previously covered by awards (the 'National Employment Standards'), but minimum wages and most aspects of working time remained covered by awards, renamed 'Modern Awards'. The coverage of awards was restructured by the tribunal (renamed 'Fair Work Australia' and later the 'Fair Work Commission'), to more closely coincide with orthodox definitions of industry, and their number was reduced 120. Pay rates in awards were restructured to remove inconsistencies, including between states, now that a single national system was largely in place.

There were less extensive changes to the WorkChoices provisions on industrial action and collective agreements. Despite amendments, these remained more favourable to employers than many of the provisions of the 1996 or especially the 1993 legislation, particularly in the context of subsequent decisions by the tribunal and federal court.

*How the modern award system operates*

Modern Awards should be seen as part of an overall mechanism for determining the minimum pay and conditions of employees.

The first element, outside of Modern Awards but crucial to understanding them, is the legislated National Employment Standards (NES). These include maximum hours per week, recreation leave, long service leave entitlements (additional leave that employees could access after a defined period with the same employer), rights to redundancy pay, and a right to request flexibility in working hours in certain circumstances or extensions of parental leave. The NES are not without problems, for example, some aspects still provide very wide discretion to employers (Peetz & Murray, 2015). Still, there were no legislated minimum standards before 2006. The NES can only be varied by Parliament and, so far, proposed amendments have only focussed on extending eligibility to the right to request flexibility. There is some limited similarity between Australia's NES and the various legislatively determined minimum standards in New Zealand, but the NES do not specify an adult or junior minimum wage, and cover some matters not encompassed by New Zealand legislation.

The second element is the minimum standards set out in awards. In addition to minimum wages, these include provisions on night and weekend premiums ('penalty rates' in Australian parlance), overtime pay, the ordinary span of hours, and other provisions relating to working time and several other issues. Almost all employees are now subject to the minimum standards set out in awards and the NES, and there is a Miscellaneous Award for employees not covered by one of the industry-specific awards. Modern Awards have fewer provisions than previous awards.

There is also a 'national minimum wage' (NMW) in Australia. It has for several years been set at the lowest rate in any award, and since the completion of award restructuring in the 1980s many awards have identical bottom rates. It is varied every year at the same time as the rest of the award pay. In Figure 1, for workers paid the lowest classification in an award, the NMW will normally be the same as the award rate, W1. Only one per cent of employers pay one or more employees according to the 'National Minimum Wage Order' (the mechanism by which the NMW is set and applied) and 0.2 per cent of employees are thereby paid the NMW (Fair Work Commission, 2017a).

By contrast, the minimum wage in New Zealand is set in legislation, and amended not by an independent tribunal, but by the government of the day (also annually, since 2000). In the absence of awards, it is significant for many workers.

Australian awards are now, broadly speaking, horizontally consistent (a basic trade-level job in one award will have the same minimum wage as a basic trade-level job in another award). Geographic differences are now essentially removed through the creation of the national system in which a Modern Award covers a whole industry regardless of state. So awards now, in effect, produce a set of minimum wages that vary according to the skill level of the job in a consistent manner. Employers who are not profitable enough to pay award wages are not generally permitted to pay sub-award wages – presuming those who do so get caught. (There are mechanisms for adjusting to temporary, special circumstances but these are not widely used in holding down award rates.) This system provides a contrast to some other countries where minimum wages vary geographically but not by skill level.

Awards are varied by the federal tribunal. Unions and employers make submissions. On matters where they agree, the tribunal would rarely come up with a different position, but there are many matters on which there is no agreement.

On top of awards and the NES sit collectively-determined CAs, and individual contracts. Employees guaranteed an income above a certain threshold (around $120,000 in 2013) are not subject to the 'better off overall' test (Munro, 2013).

## Collective bargaining

*Levels, scope, parties and processes of bargaining*

In Australia, collective bargaining is overwhelmingly at the single-employer level. This can be either a whole enterprise, a workplace, or some other part of an enterprise, such as an operational division or class of employees (for example, many universities have a CA for academic staff and another CA for general or professional staff). Multi-employer bargaining is made deliberately difficult – in contrast to the pre-enterprise bargaining system, where much negotiation took place at the industry level (for example, staff across all universities were covered by a single award). This is mainly because of the different laws regarding industrial action for single- and multi-employer agreements.

The taking of industrial action in Australia is illegal unless carried out in a prescribed manner. Amongst other things, it can only be done in the negotiation of a new CA while there is no valid CA still in place (that is, any pre-existing CA covering those employees must be expired, though it need not have been terminated), and after extensive procedural rules regarding prior bargaining in good faith, the holding of a secret ballot in a prescribed manner and the giving of notice as to the exact form of the industrial action are followed. These exemptions to the general illegality of industrial action are not available to unions seeking a multi-employer agreement, so in practice, the taking of multi-employer industrial action is illegal. This distinction between the legal treatment of single- and multi-employer bargaining – a feature of Australian law since 1993 – is not common in industrialised countries. These rules have not prevented all illegal industrial action, though, in very recent years, only a minority of disputes have been illegal (Peetz, 2016).

The scope of collective bargaining in Australia is restricted to matters defined as being within the employment relationship. Initially, this was for constitutional reasons but, more recently, this has been due to legislative restriction and judicial interpretation.

*Non-union collective agreements*

In Australia, CAs can be negotiated without a union. Technically, a CA is negotiated between an employer and employees, and is only validated after a majority of employees have voted in favour. The WRA had made non-union CAs considerably easier than previously. They had been originally enabled by the 1993 legislation, but initially showed little growth.

In unionised workplaces, unions represent employees in negotiations but in non-union workplaces there may occasionally be an elected or employer-selected negotiating committee, or an employer may simply put its proposal to a vote. Sometimes, when negotiations between an employer and union break down, the employer may put their version of the proposed agreement to a ballot of employees, often to be voted down by employees. CAs that do not involve a union are referred to commonly as 'non-union' collective agreements.

As a result, Australian CAs are analogous to New Zealand's former (ECA) system of 'collective contracts', though the similarity is stronger between non-union CAs and 'collective contracts', as there are institutional mechanisms by which unions can get involved in negotiating Australian CAs that never existed under New Zealand's 'collective contracts'. In 2000, the New Zealand law was changed so that only unions could make collective agreements, and these unions had to be registered for that purpose.

The threat of a non-union agreement is sometimes used in Australia to reduce the bargaining power of unions, or to pre-emptively thwart union organising or bargaining campaigns (as industrial action is illegal while even a non-union CA is in place). Occasionally, an employer extends an agreement originally agreed to be a handful of employees to cover a whole new function with hundreds of staff, though this can be the subject of litigation.

*Complexity*

Perhaps the main other distinctive feature of the Australian CA system is its legal complexity. The provisions on CAs in the Fair Work Act occupy over 75 pages (90 sections), and those on industrial action (which can only legally be taken in negotiation of a CA) occupy another 46 pages, not counting those relating to remedies and enforcement. Even the provisions on secret ballots (ss 435-469), while not quite as extensive as those under Work Choices, occupy 24 pages of the statute book – far more than in, say, the comparable UK statute. The CA provisions contains twice the number of pages of those in New Zealand's Employment Relations Act. The legislation seeks to impose requirements that are both complex and not common in other collective bargaining systems. For example, unions are prohibited from engaging in pattern bargaining (specifically, the terms of a proposed CA may not be the same as those in another CA), though no comparable prohibitions are placed on employer behaviour. Over time, development of these provisions has come to be seen as increasing restrictions on the right to strike (McCrystal, 2019). Outside the Anglophone countries this is unusual. Although a majority of countries have seen a movement towards greater decentralisation, this generally has not been accompanied by widespread reductions of the right to strike; overall, the international trend has been to maintain stability in the right to strike or even liberalise it (Peetz, 2016).

*The interaction between bargaining and awards*

The interactions between bargaining and the underpinning modern awards and bargaining vary by sector, as discussed later.

One general interaction, though, warrants consideration now. In most countries, the terms of agreements continue until a new one is negotiated, and this was typically the case in Australia until recently. However, changes in employer behaviour and tribunal decisions took advantage of a change introduced in WorkChoices, later amended slightly, allowing employers in most circumstances (and following a tribunal hearing) to terminate an agreement after its expiry (that is, once it exceeds its formal duration). Consequently, minimum employee conditions fall back to the those in the award. In most industries, the effect can be quite substantial. In 2015, a privatised railway corporation used termination of the CA to remove redundancy entitlements that were higher than those applying elsewhere. Since then, they have been used in major cases in coal, university education and confectionary manufacturing to enhance the power of employers. Rarely, however, do employers actually reduce pay to the rates applying in the award; the greater significance is in the impact of the threat to do so and the opportunity for unilateral flexibility that it provides.

## Individual contracts

Employers have mostly been entitled to pay employees above minima specified in awards and agreements, but until the mid 1990s, any such individual contracts could not be in conflict with awards or agreements in any respect. This changed after the Liberal-led coalition government won national office in 1996. Its new WRA imposed limitations on union actions, and enabled statutory individual contracts ('Australian Workplace Agreements' or AWAs) that could be inconsistent with awards or CAs.

In early 2006, the 'WorkChoices' legislation abolished the 'no disadvantage' test by which registered individual and collective agreements had been assessed and approved, replacing it with five minimum standards, and privileging AWAs over CAs, for example, by enabling them to override CAs at any time. Although many comparisons had correctly been made with New Zealand's ECA, there were also fundamental differences: while the ECA was radically deregulatory, WorkChoices was radically interventionist and detailed, with over 2,600 pages of legislation, regulation and explanatory memoranda. The Liberal-Nationals coalition lost the 2007 election, with WorkChoices possibly the key issue (Spies-Butcher & Wilson, 2008). Labor's Fair Work Act replaced it, and though Labor was defeated in 2013, the lingering political effects of the 2007 election defeat, and difficulties in passing legislation through the Senate, meant the incoming Liberal-Nationals coalition made few subsequent amendments.

As a result, individual contracts again must be consistent with (i.e. no worse to the employee than) the relevant awards, CAs (if applicable) and the NES. It has been possible, since the Fair Work Act was passed, to have working time arrangements that differ from the award if certain requirements for 'individual flexibility arrangements' are in place, but it is not possible to pay hourly wages below those specified in the award.

## Coverage of various instruments

The main source of data on coverage of instruments in Australia is the ABS employee earnings and hours publication (EEH), based on data collected through a survey of employers. It showed that, in 2018, just under 23 per cent of non-managerial employees had their pay determined by awards, with 40 per cent covered by collective agreements and 37 per cent on 'individual arrangements' (Australian Bureau of Statistics, 2018). Some of those on individual arrangements would be on pay rates only slightly above the award (over-award payments), with most of the rest of their conditions determined by the underpinning award.

*Award and collective agreement coverage*

The incidence of reliance on awards (and other instruments) for pay setting by industry for non-managerial employees is shown in Figure 5. Award reliance (that is, payment of wages equal exactly to the award wage) varied by industry, with the highest reliance in accommodation and food services (45 per cent), administrative and support services (41 per cent), health care and social assistance (38 per cent) retail trade (30 per cent), and 'other services' (38 per cent).

The highest rates of CA coverage were in public administration and safety (83 per cent), education and training (79 per cent), electricity, gas, water and waste (63 per cent), health care and social assistance (52 per cent), and transport, postal and warehousing (48 per cent) (Australian Bureau of Statistics, 2018). Econometric analysis showed that the major factors associated with higher CA coverage in 2016 were public sector employment, union density, and employer size (Peetz & Yu, 2018). While these factors helped explain industry variations in coverage by instruments, employer agency also made a difference.

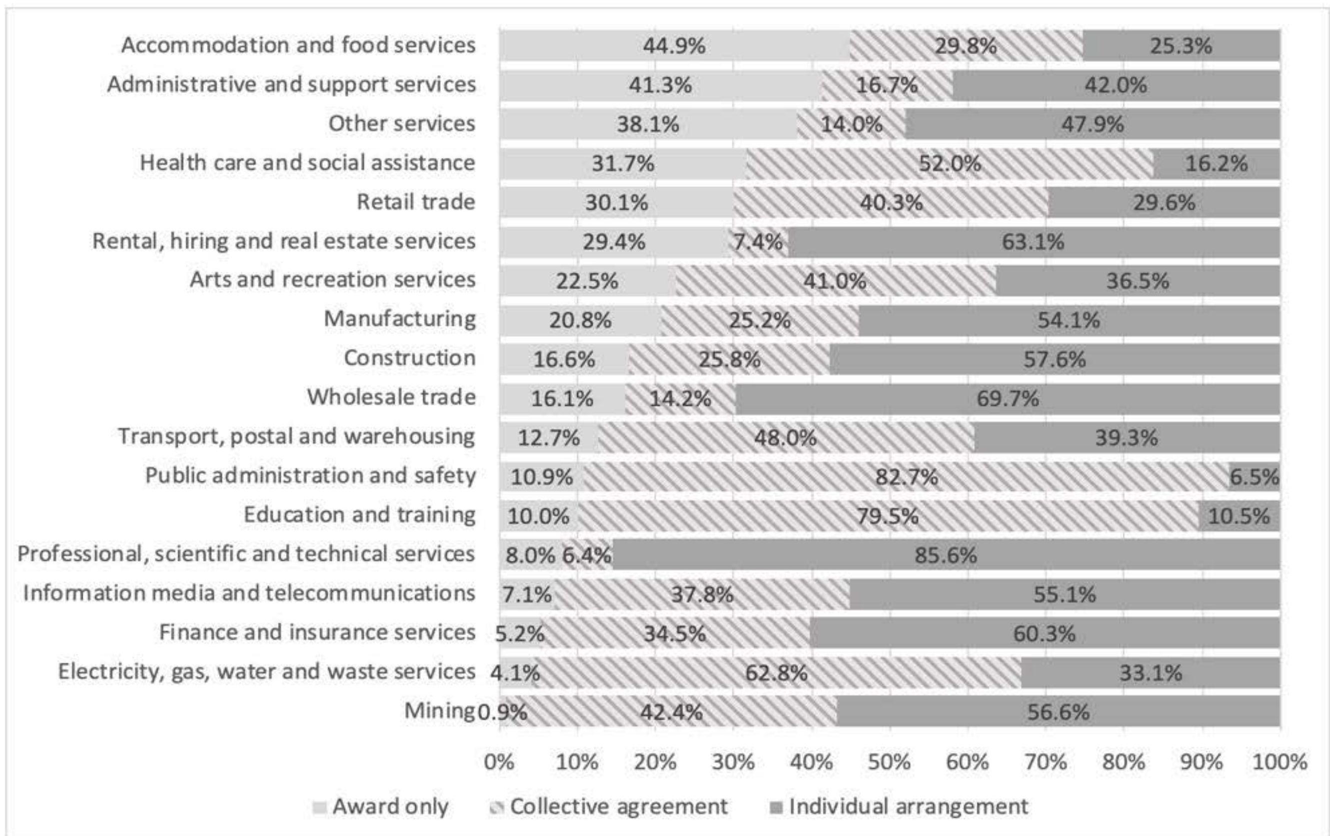


**Figure 5: Method of setting pay by industry, Non-managerial employees, Australia, 2018.**
Source: Australian Bureau of Statistics, 2018

Non-union agreements have never covered a large number of employees. From 1998 to 2006, a fairly stable one tenth of agreement-covered employees had been on non-union agreements under the Workplace Relations Act (Peetz & Yu, 2017; White et al., 2001). Before WorkChoices, they were rarely offered in well organised union workplaces, and were often used to easily effect changes to hours, but sometimes to exclude unions (Briggs & Cooper, 2006). WorkChoices made non-union agreements more attractive to employers while making it more difficult for unions to negotiate agreements, particularly to undertake industrial action in support of union demands, and non-union CAs rose to as much as a quarter of CA coverage by 2009, before declining thereafter. As a proportion of the total workforce, non-union CAs covered approximately two per cent from 2000 to 2006, growing to six per cent by 2009 (after many employers had sought to gain coverage by non-union agreements before the WorkChoices provisions were repealed). Coverage by non-union agreements then fell to 2.5 per cent of employees by 2016 – some 11 per cent of CA-covered employees (Peetz & Yu, 2017).

*Wages and instruments*

The relationship between awards and CAs also varies between industries, partly reflecting employer agency. Figure 6 shows average hourly earnings for workers on awards and CAs by industry (industries are ranked from low to high average wage). In most industries, CAs paid well above the award, with average hourly wages in CAs across all industries 43 per cent higher than hourly award wages. In retail trade, however, the average under CAs were only five per cent above those under awards while in accommodation and food services, average CA hourly wages were 12 per cent below average award wages. This reflected particular strategies by the parties in those industries. In retail trade, large employers negotiated CAs with the major retail union that paid quite close on average to

the award, such that some major CAs were challenged for failing the 'better off overall test' (BOOT) (Schneiders et al., 2016). In hospitality, many employers have used non-union CAs covering low-wage employees in place of awards: from 2014 through to mid-2016, 47 per cent of employees under CAs in accommodation and food services were on non-union CAs, compared to an all-industry average of 11 per cent over that period (Department of Employment, 2017). In health care and social assistance, CA wages were only 16 per cent above award wages, reflecting the constraints of government financing, while the almost equality of awards and CA wages in public administration reflected the fungibility of these instruments there (some state public administration agreements get labelled as awards).

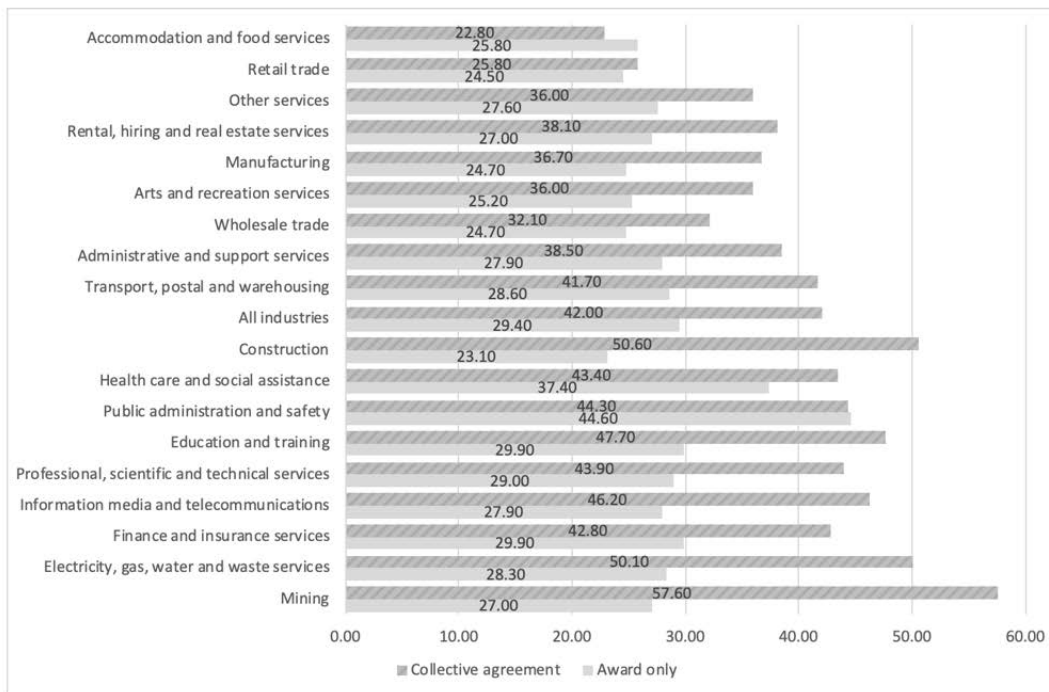


**Figure 6: Average hourly wages by industry and method of seting pay, Australia, 2018**
Source: Australian Bureau of Statistics, 2018

The incidence of awards reported by EEH is likely to underestimate the influence of awards, as those employees whose pay is above the award, but is set by reference to it, are treated as covered by 'individual arrangements'. The FWC undertook its own major survey in 2014. It also surveyed employers about their *main* method of setting pay. It implied that 37 per cent of employees were on enterprise agreements (close to the EEH figure), 28 per cent on individual arrangements excluding over-awards, and 36 per cent on award-based arrangements; of the latter group (or at least those about which data could be obtained), almost three quarters appeared to be award-reliant (employees were paid exactly the award) and a quarter on over-awards (that is, roughly nine per cent of all employees were on over-awards, if such extrapolations are valid) (Fair Work Commission, 2015).

*Awards as industry extension mechanisms*

Are awards like industry-wide CA extension mechanisms seen in other countries? This was arguably the case up until the early 1990s. Before then, union-driven wage increases were reflected in awards, and awards were used to then spread those union-driven wage increases across the rest of the (award-covered) workforce. The typical strategy of a union would be to focus on what were called 'hot spots' (e.g. in an oil refinery, or a large metals manufacturing company), obtain an increase in wages (or an improvement in other conditions) through collective bargaining there (or an arbitrated outcome), and

then persuade the tribunal to increase the award to spread the benefit to the rest of the workers covered by that award. It, or other unions, would then seek to have other awards increased to match the increase in the initial award, and the tribunal would usually be persuaded to agree. The Metals Industry Award was usually seen as the 'pacesetter' award, though sometimes other awards would perform that function.

That all changed from 1991, and further changes since then have reinforced the distinction. With the shift to 'enterprise bargaining', those increases obtained in 'hot spots' have been manifested as enterprise agreements, and never directly translated into awards. If the same union or other unions wanted to spread the union gain in wages achieved in a 'hot spot', they had to negotiate other enterprise agreements.

Awards do not play a role in that process. Instead, while award rates are increased (or at least examined) once a year in the annual wage reviews (referred to for a time as 'safety net' cases), there are many factors taken into account by the tribunal in determining the level of wage increases, including inflation, unemployment, the rate of wage increases in the rest of the economy and the needs of the low paid. The idea that going rates in Enterprising Bargaining Agreements (EBAs) should form any benchmark for awards is eschewed.

## Effects

There has been substantial controversy over the effects of the award system, and a full consideration of its effects would be too extensive to be encompassed in this article. However, the following points can be made from various studies over the decades.

Generally, it seems that ***wage relativities*** have historically been more compressed in Australia than in several other countries (Brown et al., 1978; Norris, 1980; 1983; Rowe, 1982). Arbitration has ranged, at varying times, from being 'accommodative' of market forces (Romeyn, 1980) to producing quite different outcomes (Dabscheck, 1983). At a given balance of power between labour and capital, the award system probably had only a small impact on that balance of power between labour and capital, and hence on the overall wages share, but it probably produced a more compressed wage rate structure than the market (which included collective bargaining) would have created.

In general, closer proximity to regulation enhances ***gender pay equity***, provided the content of the regulation differs from (is less sexist than) the norms of those in power (Peetz & Murray, 2017), and the award system appears to have enabled the relatively rapid introduction of equal pay for work of equal value, following two major decisions by the Australian Conciliation and Arbitration Commission (ACAC) in 1969 and 1972. Australia's rank on gender pay equity improved substantially with their implementation (Gregory et al., 1986). With the move to single-employer bargaining, the gender gap in hourly wages paid has not reduced further. This is also consistent with the international pattern whereby more decentralised wage systems tend to be associated with wider gender pay gaps (Whitehouse, 1990; 1992). The gender pay gap amongst award-reliant workers is close to zero in EEH data; the gap is larger amongst workers on CAs and substantial amongst workers under individual arrangements (Australian Bureau of Statistics, 2018; Peetz, 2007). That said, the award system has not always acted to promote gender equity. For the first half of the 20th century, it simply institutionalised the undervaluation of female-dominated occupations (Charlesworth & Macdonald, 2017). The more recent problem for tribunals has been that, with wage fixing dominated by CAs or individual arrangements, the tribunals have only limited influence, especially within organisations already paying above the award. Where tribunals have had an influence (such as in health and social care), substantial gains in women's relative pay have also relied on government financing, such as

two billion AUD announced in 2011 to fund pay equity increases in social and community services (Baird et al., 2012).

The ***employment*** effects of the award system are highly contested, though debate has mainly relied of the very extensive international literature on the effects of minimum wages – a literature that is too extensive to go into here (the few Australian award studies include Belchamber (1996). In its 2017 wage case decision, the tribunal concluded, on the basis of that research, that modest and regular wage increases do not result in disemployment effects and observed that its own "past assessment of what constitutes a "modest" increase may have been overly cautious, in terms of its assessed disemployment effects" (Fair Work Commission, 2017b, p. 2)

On ***productivity***, while most studies have concerned collective representation (such as through CAs) compared to some other benchmark (e.g. Hancock, 2012; Hull & Read, 2003; Quiggin, 2006) periods of Australian policy dominated by individual contracting have had no better, and in all likelihood have had worse, productivity outcomes than periods dominated by collective bargaining or even by awards (Peetz, 2012). This is consistent with evidence suggesting that the quality of employment relations, rather than the existence of a particular workplace regime, has a bigger impact on workplace level productivity (Black & Lynch, 2001). The wages policy regime appears to have a larger impact on equity than on productivity, though the indirect impact on productivity is relevant. Despite the expressed views of many employers and their representatives (Rasmussen et al., 2016), productivity is driven more by technology, innovation, skills, and education (Engelbrecht, 1997; Greenwood et al., 1997; Jorgenson & Vu, 2010) – and in Australia's and New Zealand's case, even geographical isolation (Battersby, 2006; McCann, 2009) – than by industrial relations arrangements in themselves. Evidence, including from New Zealand, suggests that upskilling workers helps stimulate productivity (Maré & Fabling, 2013).

Recent controversies in Australia regarding Modern Awards have focussed around several issues. One is reductions in weekend premiums ('penalty rates') and the effects on unsociable work, pay and employment in the retail and hospitality sector. Another has been the low rate of wages growth (something not restricted to Australia). Perhaps the most media exposure has been achieved through publicity about non-compliance with award wages and other forms of labour exploitation (Ferguson, 2017; Ferguson & Toft, 2015). Equally notable has been the complexity of the system – not due to awards themselves, but to the requirements for bargaining and industrial action, and the internationally unusual legal impediments to the use of multi-employer bargaining. The Australian system contains a lot of detailed statutory restrictions and requirement on parties engaged in industrial action. For example, prohibitions on 'pattern bargaining', as occurring under current legislation, are both asymmetric and inconsistent with approaches in most other OECD countries. It is an oddity that, while awards have been simplified, the process of collective bargaining has been made remarkably complex in Australia. There is no requirement that simplification of one should be linked to intensification of complexity in the other.

## Some recent relevance to New Zealand

From the 1990s, the relevance of the award system to New Zealand seemed very limited. However, recent events regarding multi-employer wage setting have changed that. Since the change of government in 2017, interest in Fair Pay Agreements (FPAs) has emerged, and the Labour government indicated its interest in pursuing their development. Although, at the time of writing, the fate and details of any such policy was unclear, the broad idea of FPAs has been to create a form of multi-employer (mostly industry-wide) wage determination, through some agreement between unions and employer bodies, that would set the floor for wage rates that could be contained in agreements, and encourage such things as skills development and training. A working group,

comprising of union, employer and government representatives and chaired by a former conservative politician, recommended an implementation model; the government released a discussion paper; and the Council of Trade Unions proposed a refined model. The final shape FPAs take, if any, including such matters as the role of arbitration if agreement is not reached, is yet to be determined (Fair Pay Agreement Working Group, 2018; Ministry of Business Innovation and Employment, 2019; New Zealand Council of Trade Unions, 2019). The Australian system of awards does not provide much in the way of guidance as to how a system of FPAs should be administered, but it does show that multi-employer wage minimums can be established, operate quite smoothly, co-exist with enterprise-level bargaining, and indeed allow for skill-based relativities.

More generally, the low median wage in New Zealand (typically around a quarter lower than in Australia) has been a source of concern. A seemingly generous minimum wage (presently around 65 per cent of median wages, making it higher than in most OECD countries) has not pushed up the median wage. Here, the skill-based relativities in Australian awards are relevant, in that they set minimums for a range of workers, not just those at the bottom. Even though awards set actual rates for declining proportions of workers as hourly wages rise, they still set a floor for many middle and low income workers who are not adjacent to the minimum wage.

While, from 2008 onwards, conservative New Zealand governments amended legislation to, among other things, constrain collective bargaining (Rasmussen et al., 2016), probably the most important changes concerned gender inequity in pay for some female-dominated occupations. These occurred in response to the Court of Appeal's *Terranova* decision, concerning equal pay for a group of aged care workers in 2014. The government legislated, in 2017, to raise minimum wages for such workers. This was linked to its provision of major financial support to employers in the industry, without which most would have been unable to afford the higher rates of pay. It was reminiscent of cases in Australia in which tribunals' ability to raise the award rates for some female-dominated occupations has depended on government willingness to fund them. Many ostensibly private sector activities are ultimately financed by, and dependent upon, the state, and governments have saved money by being able to pay female workers low rates based on undervalued work. Remedying the undervaluation of female-dominated work has required coordinated action in both the budgetary and industrial arenas – the latter occurring, in Australia, through awards and, in New Zealand, though legislation.

## Concluding remarks

Overall, it appears that there are equity benefits from the system of multiple minimum wage rates in Australia. They, in effect, protect workers of varying skill levels who lack individual or collective bargaining power, but usually give no special reprieve to inefficient employers and so enable a more efficient allocation of capital than if wages had no floors underpinning them. The system has also allowed some progress on pay equity, though it allowed much more in the past when awards were more important. To the extent that parties experience costs through state interference in their activities, in recent times, these appear more associated with the processes surrounding collective bargaining than the award system itself, especially now that the award 'modernisation' process seems complete and to have, at some cost to the representatives of the parties, exhausted itself.

In New Zealand, awards are now a distant memory and often the term itself is used negatively. Having been abolished, there is little prospect of the tribunal-based award system being reintroduced in New Zealand; it would be too institutionally disruptive. However, the idea of a series of skill-based minimum wages (or minimum wages based on the qualifications required for a job) is not so far-fetched for any country with a minimum wage and a system of collective bargaining. Since a consistent skill-based relativities structure on awards was mostly established in the late 1980s in Australia, it has been quite stable. As collective bargaining and unionism weakens in many countries,

and the question of protection of wages for lower- and middle-income earners (not just the lowest paid) becomes politically more salient, policy-makers could consider the potential relevance of skill-based relativities to national minimum wage systems. Moreover, the introduction of a system of skill-based relativities could assist productivity in two ways. First, tying wage progression to skill acquisition could enhance the skill base of the workforce and hence its capacity for working more productively. Second, skill-based relativities could prevent low-productivity employers from paying low wages to skilled workers and force them to improve productivity to remain competitive. While other factors are heavily influential, we still would expect skill-based minimum wages to have a positive impact on productivity.

Skill-based, industry-level regulation would be unlikely to provide a new means of extending the benefits of collective bargaining to workers elsewhere in an industry. This is because of the likely gap between 'award' wages and CA wages in any system in which CAs coexisted with, but were considered superior to minimum protections established through skill-based, industry-level regulation. That said, the effects of skill-based, industry-level regulation on other objectives, such as improving equity, might make such mechanisms attractive.

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