

**Gender Equity and  
Enterprise Bargaining**



University of Sydney

**ACIRRT**

AUSTRALIAN CENTRE FOR INDUSTRIAL RELATIONS

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## **Gender Equity and Enterprise Bargaining**

The introduction of enterprise bargaining in the early 1990s was heralded by Labor Governments at both federal and state levels as guaranteeing better outcomes for both employers and employees. More than a decade after setting off down the track to a more decentralised bargaining system Labor may have some misgivings about enterprise bargaining however it is likely to remain a central policy preference, in one form or another, throughout the upcoming policy debates within the party. Certainly contemporary claims as to what enterprise bargaining can achieve are more modest today amongst Labor ranks than a decade ago.

However the current Commonwealth Government continues to laud enterprise bargaining and the further deregulation of the labour market and decentralisation of industrial relations as a panacea for all manner of economic and industrial ills.

Governments of each persuasion have quite consistently argued that enterprise bargaining is good for women because it allows them to strike the workplace level bargains that suit their own personal circumstances. In his response to the Review of the Affirmative Action (Equal Employment Opportunity for Women) Act conducted by Deanne Bevan, Director of Employment Relations for McDonald's, Workplace Relations Minister Peter Reith argued that the reforms introduced under the Workplace Relations Act were the key to ensuring gender equity at work:

Above all the Workplace Relations Act provides the framework for employers and employees to work together cooperatively to develop and implement innovative work practices that will suit the requirements of particular workplaces and that benefit both employers and employees. Coalition policies have created scope for the development of genuinely innovative and flexible workplace-based agreements on working patterns and leave entitlements. This enables women to enter into agreements tailored to their personal or family circumstances (Coalition Government 1998: 1).

This paper attempts to assess the effect of enterprise bargaining on women in Australia with particular reference to its effect on the gender pay gap. In the course of reviewing currently available evidence reference is also made to the types of provisions concerning working conditions and arrangements that appear to be typical in enterprise bargaining. That evidence suggests that women may not in fact be securing agreements with advantageous provisions that might serve to offset the disadvantage of continuing lower pay.

### **What are the Likely Implications of Enterprise Bargaining for Women?**

The present form of enterprise bargaining did not emerge spontaneously or suddenly. Australia moved relatively gradually from a system dominated by centralised wage negotiations diffused through a system of awards. Together the Restructuring and Efficiency Principle (1987), the Structural Efficiency Principle (1988) and the Enterprise Bargaining Principle (1991) opened up the possibility of workplace specific collective agreements. While overaward agreements and site agreements had been commonplace under the traditional system the application of these principles compelled unions and employees to agree to microeconomic reforms and changes

designed to guarantee improvements to workplace productivity as the price of wage increases.

The 1993 Industrial Relations Reform Act did, however, signal two profound changes to the system. First, the Act ensured the transformation of the award system from acting as the embodiment of a common rule setting the standard across industries and occupations to a minimum standards 'safety net'. Restrictions on the Australian Industrial Relations Commission's discretion to reject enterprise bargains on the basis that they failed to pass the 'no disadvantage' test further signalled the marginalisation of the Commission. Second, for the first time the Act introduced the possibility of non-union agreements. While the resultant enterprise flexibility agreements (EFAs) proved far from popular, they were revolutionary in the sense that they broke the nexus between 'registered organisations' and agreement or award making (or variation) under the legislation. For the first time employee representatives seeking to register agreements did not have to be unions that were registered under the Act.

This line of decentralisation was taken much further with the Coalition's Workplace Relations Act 1996. Awards were fully recast as safety nets that established bare minimum conditions restricted to just 20 allowable matters. Certified agreements were defined as the preferred form of union collective bargaining with non-union certified agreements also encouraged. A new form of non-union individual agreements, Australian Workplace Agreements, was created with jurisdiction over AWAs passing to the newly created Office of the Employment Advocate (OEA). The role of the Commission was further curtailed with the other limitations placed on its discretion in applying the 'no disadvantage test'.

The likely implications of enterprise bargaining for women can be drawn from this brief summary of the major features of the reforms.

First, the marginalisation of the role of the Commission is likely to have affected women if only because most of the gains that were achieved in the 1970s can be associated with Commission decisions. However, the marginalisation of the Commission should not simply be seen simply in terms of the 'sidelining of the independent umpire'. Rather we have been witnessing a dramatic transformation in wage determination principles. Some of the leading principles are described in Table 1.

**Table 1: Wage Determination Principles**

<b>Traditional System</b>	<b>Enterprise Bargaining</b>
Value of Work	Productivity gains
Economic Conditions	Changes in Skill
Comparative wage justice	Performance Targets (individual and collective)

Source: Derived from ACIRRT 1999 Chapter 3.

Under the traditional system wage rises would customarily be justified and determined according to a mix of principles including the value of the work being

undertaken (and changes to the value of work), general economic conditions (including the assessment of a fair living wage in the context of the consumer price index and the capacity of employers in the relevant industry to pay) and comparative wage justice, which was pivotal to ensuring that wage rises granted for pacesetters flowed-on throughout the economy to other unions and other occupational groups. Under enterprise bargaining wage rises had to be justified on the basis of employees' contribution to the 'bottom line' of the enterprise – actual or anticipated productivity improvements, improvements in skills and the meeting of individual or collective performance targets became more important than traditional principles.

Second, the shift to enterprise bargaining has been associated with a disarticulation or fragmentation of the system of wage determination. The fragmentation of wage bargaining can be seen in the development of a number of different bargaining "streams" – the award safety net stream, the union-negotiated certified agreement stream, the non-union certified agreement stream, and the individual contracts stream (whether AWAs or other individual contracts). However enterprise bargaining is also likely to lead to increasing dispersion in wages *within* non-award streams and within industries and occupations more generally.

Third, the introduction of enterprise bargaining has occurred at the same time that unions have become increasingly marginalised. Union membership continues to fall, coverage is now very low in some sectors. Enterprise bargaining negotiations have stretched union resources and exposed workplace level organisational weaknesses. The legislative regime introduced by the Coalition Government has also created new challenges for union organisation and mobilisation.

These three trends associated with the move to enterprise bargaining might be expected to lead to adverse outcomes for women. Given that advances in women's pay have generally been the result of centralised decisions and principles developed and applied by Government and the Commission (Kidd and Meng 1997), decentralisation is likely to limit the possibility of furthering those advances. Moreover, the fragmentation of the wages system and the greater wages dispersion that results will leave previous gains vulnerable. Fragmentation and dispersion of wages is also likely to see those who are relatively powerful in the labour market do increasingly well while those are in a weaker position will fare increasingly poorly. To generalise, women have traditionally been more likely to occupy weaker labour market positions than men.

### **Some Evidence**

While there is little disagreement as to the existence of a gender pay gap in Australia there continues to be an ongoing debate as to the magnitude of the gap and the character of recent trends (Whitfield and Ross 1996: 157). One of the most commonly used measures is the ratio of female to male average weekly ordinary time earnings (AWOTE). The female to male AWOTE increased from around 81% in 1984 to a little under 85% by the middle of 1991. Since then the ratio has fluctuated around 83-84% although in the most recent quarters it has been trending upwards to a peak of 84.6% reached in the first quarter of 1999 (ABS Cat. No. 6302.0). This evidence alone would suggest that while enterprise bargaining has not improved the gender pay gap, it has not made it much worse either.

What of evidence concerning wages trends for men and women under enterprise bargaining? Two sources of data are relevant here.

First, the Department of Employment, Workplace Relations and Small Business (DEWRSB) and its predecessors have maintained data on average annual wage increases (AAWIs) in certified agreements where the wage increase is 'quantifiable'. The Department also has data for many agreements on the number of men and women covered by the agreement. In its past four annual reports on enterprise bargaining trends the Department has published data on average increases in male and female dominated agreements (more than 60% of covered employees either male or female) and AAWIs for males and females. The results are shown in Table 2.

**Table 2: AAWI (%) per employee for male dominated and female dominated agreements 1994, 1995, 1997, and 1998 and for males and females 1997 and 1998**

	1994	1995	1997	1998 (Q1-2)
Male Dominated (>60%)	4.3	4.7	5.0	3.8
Female Dominated (>60%)	4.0	4.6	3.6	3.5
Males	4.1	4.4	4.7	3.9
Females	4.1	4.3	4.1	3.7

Source: WAD as reported in DIR 1995: 234, DIR 1996: 141, DWRSB 1998: 70 and DEWRSB 1998: 8.

In all four time periods reported AAWIs in male dominated agreements have been higher than in female dominated agreements. In the past three time periods reported AAWIs have been higher for males than females. In their most recent report (DEWRSB 1998: 9) the Department presents a Chart plotting average annualised wage increases for male and female employees for agreements certified in each of the last 21 quarters (second quarter of 1993 to second quarter 1998 inclusive). In 14 of the 19 quarters in which there is a difference, male AAWIs were higher than female AAWIs.

Despite the fact that it is unique in that the DEWRSB data codes for male and female employees covered, there are limitations with the DEWRSB data. First, only readily quantifiable AAWIs are recorded. Second, not all agreements are able to be coded for numbers of male and female employees. As a result, looking at 1998 agreements coded by DEWRSB less than 70% had data on gender breakdown and less than half (45.4%) had data on both gender and a quantifiable wage increases<sup>1</sup>.

ACIRRT maintains a comprehensive database of certified agreements known as ADAM (Agreements Database and Monitor) that collects and codes information on wages and employment conditions in state and federal certified agreements (both union and non-union). The ADAM database was launched in 1993 and includes information on enterprise agreements since 1991. It currently holds information on 6183 enterprise agreements registered in the Federal, New South Wales, Queensland,

<sup>1</sup> This analysis is based on unpublished data provided by DEWRSB in July 1999.

Western Australian and South Australian jurisdictions. In 1999, the database was expanded to include federal Australian Workplace Agreements (AWAs) and currently holds information on 212 AWAs covering different employers.

Unfortunately the ADAM database does not code for gender. However a far higher proportion of ADAM agreements are coded for average annual wage increases than DEWRSB agreements because where a quantifiable wage increase is not explicitly stated ACIRRT coders contact the enterprise concerned and establish what (if any) wage increase is applicable over the life of the agreement. Given the absence of gender data the best available proxy for gender is industry feminisation. While this is a fairly rough proxy it nevertheless gives us some idea of the trends for employees in male dominated and female dominated industries. Both the incidence of enterprise bargaining and the magnitude of AAWIs differ across industry.

**Table 3: Industry Distribution of All Certified Agreements and Industry Feminisation Rate**

Industry	Feminisation Rate	% of all Cert. Agreements	AAWI
Agriculture	31.2	1.4	3.4
Mining & Construction	12.8	14.6	5.8
Food, Beverage, Tobacco	32.4	7.4	4.0
Metal Manufacturing	12.6	8.5	4.2
TCF Manufacturing	58.0	1.4	3.4
Other Manufacturing	22.7	10.1	4.4
Electricity, Gas and Water	17.6	2.8	4.0
Wholesale Trade	31.0	3.8	4.3
Retail Trade	51.4	3.3	3.6
Transport and Storage	23.0	8.9	4.2
Communications	34.8	0.5	3.8
Banking	60.4	1.6	3.9
Insurance	44.9	5.1	4.5
Public Administration	45.1	8.8	3.7
Health Services	77.0	4.1	3.7
Education	68.0	5.9	4.2
Community Services	78.2	4.6	4.5
Recreational Services.	51.4	7.0	2.9
	43.4	100.0	4.3

Source: ADAM, Unpublished Data, June 1999 and ABS Cat. No. 6203.0.

As Table 3 shows many of the more highly feminised industries tend to have relatively few enterprise agreements. Conversely the bulk of certified agreements have been struck in some of the least feminised industries – mining and construction, metals manufacturing, food, beverage and tobacco manufacturing, other manufacturing and transport and storage between them account for almost half of all enterprise bargains in Australia. It is also apparent that highly feminised industries tend to have below average annual wage increases (with community services the singular exception).

While far from conclusive the ACIRRT ADAM data confirms the trends apparent in the DEWRSB data – there is an enterprise bargaining gender pay gap. It should also be noted that the enterprise bargaining gender pay gap (the difference in male and female AAWIs achieved under enterprise bargaining) will tend to have a cumulative effect. Given that what is measured here are *annual wage increases* (rather than earnings as in AWOTE) we would expect even quite small differences each year to tend to increasingly magnify existing differences between male and female earnings.

One recent study has used data drawn from the Australian Workplace Industrial Relations Survey to estimate the gender pay gap for employees whose workplaces have an enterprise bargain in place compared to employees whose workplaces do not. Using hourly earnings data Reiman (1999) finds a gender pay gap for enterprise bargaining employees of 9.3% compared with a gap for non-enterprise bargainers of 7.4%. Again, while the data and the analysis have their limitations, this would seem to support the proposition that there is an enterprise bargaining gender pay gap in Australia.

Despite this rather compelling circumstantial evidence simply examining differences in wage increases achieved under enterprise bargaining for males and females tells us nothing about the overall outcomes of bargaining. For example, in attempting to explain the gender pay gap that appears to characterise enterprise bargaining, the most recent DEWRSB Report noted that “an issue for further consideration is whether women may be more prepared than men to trade-off higher wage increases for enhanced employment conditions” (1998: 9).

The Department’s own published data fails to provide much clear guidance as to whether this is the case. Of the main provisions coded in the Department’s Workplace Agreements Database only two seem to be obviously related to enhanced employment conditions for women. First, provisions concerning “family/carer’s leave” are somewhat more common for females (71.0%) than for males (64.7%). On the other hand, “EEO” provisions are more common for males (33.5%) than for females (28.3%).

ACIRRT’s data provides rather more detail as to the content of provisions, although, as noted above, we are unable to provide data on gender. Nevertheless the data on the incidence of provisions that might be taken to amount to enhanced employment conditions for women are instructive. In Tables 4 and 5 the incidence of various provisions is broken down by union certified agreements, non-union certified agreements and AWAs.

**Table 4: Hours Provisions in Agreements (percentage of agreements)**

Provision	Union	Non-union	AWAs
Hours more than 38 p/wk	13	21	20
Flexible hours	79	86	88
Shift work	35	28	29
Span of hrs >12	25	36	33
Ordinary days Mon-Sun	16	35	30

Hours averaged	21	37	26
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Source: ADAM, ACIRRT, Unpublished Data, May 1999

**Table 5: Other provisions in agreements (percentage of agreements)**

Provision	Union	Non-union	AWAs
Consultation	61	36	16
EEO/AA	18	21	88
Family friendly	18	11	17
OHS	46	34	34
Other flexibility options	24	14	14
Redundancy	46	28	50
Teamwork	13	11	8
staff appraisals	12	13	33

Source: ADAM, ACIRRT, Unpublished Data, May 1999

Looking at agreements generally it is apparent that enterprise bargaining and AWAs tend to overwhelmingly be about the introduction of flexible hours – provisions that allow employers a greater capacity to ask employees to work variable periods or new rosters according to changes in demand or activity. Similarly, provisions averaging hours over 4 weeks or even 52 weeks, introducing spans of work hours over more than 12 hours and defining Mondays through Sundays as ordinary days are not uncommon. Although we do not have data on gender breakdowns here, none of these arrangements appear to suggest ‘enhanced employment conditions’ for women (or men).

Table 5 shows the incidence of a selection of more innovative clauses. Again, the two key provisions that might reasonably be thought to be of particular interest to women – Equal Employment Opportunity or Affirmative Action provisions and specific family friendly provisions are quite rare. EEO/AA clauses are very common in AWAs reflecting the legislative requirement that should an AWA fail to include an EEO provision then a statutory provision is implied under s.170VG (1).

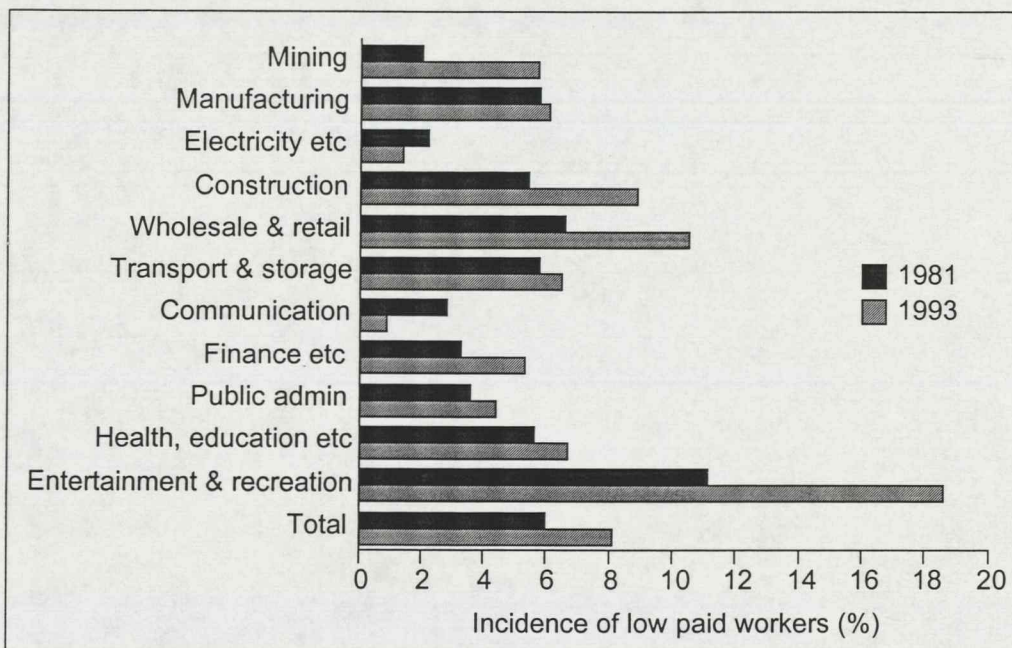
### **Conclusion: Enterprise Bargaining and the Gender Pay Gap**

The evidence available as to the effects of enterprise bargaining on women seem to strongly indicate that there is an enterprise bargaining gender pay gap and that, all things being equal, that gap should be exacerbating the overall gender pay gap. However, as noted earlier, the gender pay gap has not been increasing, at least not in a steady fashion. Why?

It is likely that the adverse effects of enterprise bargaining on the pay gap are being offset by other trends. A closer examination of recent trends in earnings and dispersions in earnings at different ends of the earnings distribution helps deepen the picture. According to research undertaken by Borland (1996) men and women in the lower part of the earnings distribution have been faring differently. While real

earnings for men below the 40<sup>th</sup> percentile (the bottom 40 per cent) have been decreasing real earnings for women have been increasing across all deciles. Since the mid 1990s the *dispersion* of earnings for men below the 40<sup>th</sup> percentile has also been increasing while for women it has been decreasing. (There has been greater inequality amongst men than women in this lower part of the earnings distribution since the late 1980s) (ACIRRT 1999: 74). The major trend here seems to be the strong growth in the incidence of low paid men. In other words more men are moving into the low paid jobs that were previously more highly feminised. The growth in the number of low paid male workers across various industries is shown in Figure 1 (Watson and Buchanan 1999: 10).

**Figure 1: Incidence of low-paid male workers within industries, 1981 and 1993**



*Source:* 1981 Census Household sample file; 1993 ABS Survey of Training and Education.

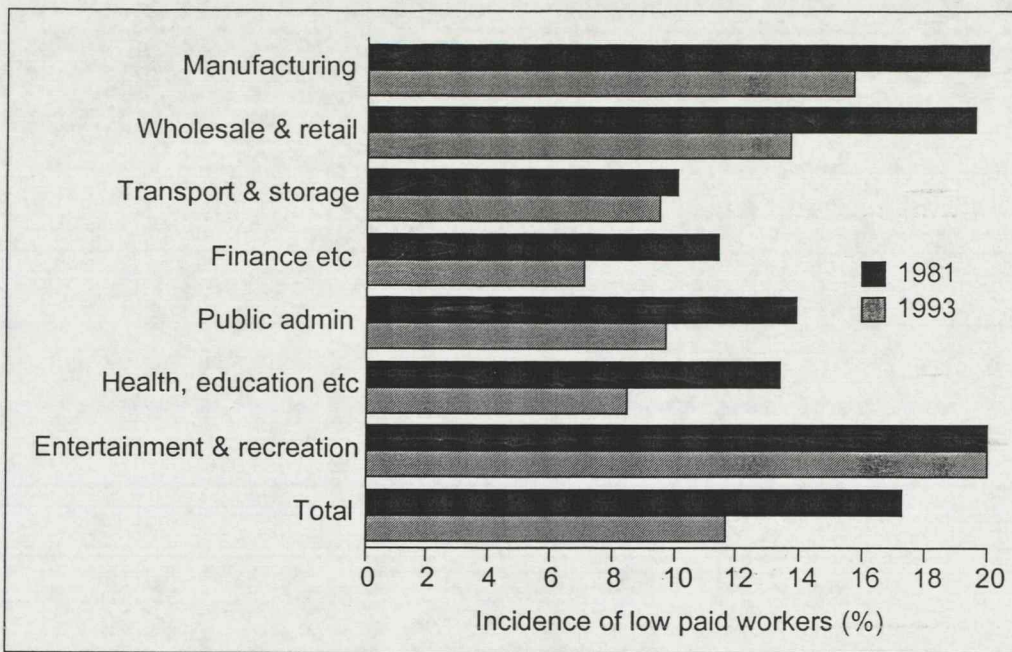
*Note:* Low paid defined as 2/3 median earnings. All calculations are done with hourly rates of pay. In 1993, the data item used is usual weekly earnings. In 1981, the data item is annual income. There is reasonable comparability between the two years because amongst low paid workers, almost all of their income comes from wages (and in 1981, government transfer payments for the working poor were negligible).

*Populations:* All adult employees earning above \$1 per hour (1981) and \$2 per hour (1993).

As the data also indicate, the growth in low paid work for men is strongest in services – especially in entertainment and recreation and wholesale and retail trade.

There is an opposite trend for women. Figure 2 shows that the incidence of low paid work for women is decreasing (Watson and Buchanan 1999: 11).

Figure 2: Industry location of low-paid female workers, 1981 and 1993



Same source, population and notes as for Figure 1.

In a sense then, these trends are showing that men are becoming more like women in the bottom part of the earnings distribution. This degree of convergence has obvious ameliorative implications for the gender pay gap. It is likely that these trends occurring across the bottom 40% of the earnings distribution are reflecting trends in the award safety net stream rather than in the enterprise bargaining stream.

Therefore the trend to an increasing gender pay gap that we might expect to be associated with enterprise bargaining is being offset by the relatively better performance of women vis a vis men in the bottom part of the labour market. Any enthusiasm for this trend should be tempered by the realisation that there are still more women than men in low paid jobs, and that reductions in the gender pay gap have partly been achieved by bringing many male earnings down to female levels rather than by necessarily bringing female earnings up to male levels.

This finding also suggests the limitations of looking only at a single aggregate level measure of the gender pay gap. Systems of wage determination are becoming increasingly varied. Trends in women's pay increasingly need to be interpreted in the context of different bargaining streams, different industry settings and different trends at different ends of the earnings distribution.

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