Family Provisions and Equality Bargaining in Australia: Symbolic or Emerging?

‘The concept of equality bargaining creates, or rather reflects, a different culture, namely that of women – a culture formulated at national level by the claims they put forward at the bargaining table, by the analyses they present to equal opportunities committees and the research they do at universities and in government departments...’

(Kravaritou, 1997, 46, emphasis in original)

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A thesis submitted in partial fulfilment of the requirements for the degree of Doctor of Philosophy

October, 2010
For my parents, Doug and Jean Williamson
Statement of Originality

This is to certify that to the best of my knowledge, the content of this thesis is my own work. This thesis has not been submitted for any degree or other purposes.

I certify that the intellectual content of this thesis is the product of my work and that all assistance received in preparing this thesis and sources have been acknowledged.
Submission of Thesis Containing Published Work

We, the undersigned, would like to provide the Academic Board with details of published articles of which we are co-authors. The material contained in these articles represent only a small proportion of the total of this thesis.

Ms Williamson conducted all of the research for this article and also wrote the article. Professor Baird assisted in the conceptual development of the arguments, and provided a high level of editorial assistance throughout the various iterations of the article.

Ms Williamson was mainly responsible for writing the sections on ‘equality bargaining’ in this article, which include pages 674-75 and undertaking the research and compiling the table on pages 677. These sections are based on work undertaken for this thesis, and were further developed with Professor Baird for inclusion in their current form in this article.

The third author, Ms Betty Frino, is currently on leave, and so the Academic Board is requested to waive the requirement that Ms Frino also be a signatory to this statement.

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Family Provisions and Equality Bargaining in Australia: Symbolic or Emerging?

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List of Abbreviations

ACTU  Australian Council of Trade Unions
ABS   Australian Bureau of Statistics
AIRC  Australian Industrial Relations Commission
AIHW  Australian Institute of Health and Welfare
ANF   Australian Nursing Federation
AWA   Australian Workplace Agreement
CPSU  Community and Public Sector Union
DEWR  Department of Employment and Workplace Relations
EEO   Equal employment opportunities
EFILWC European Foundation for the Improvement of Living and Working Conditions
EOWA  Equal Opportunity for Women in the Workplace Agency
EU    European Union
HR    Human resources
HREOC Human Rights and Equal Opportunity Commission
ILO   International Labour Organisation
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<tr>
<td>LHMU</td>
<td>Liquor, Hospitality and Miscellaneous Union</td>
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<tr>
<td>NAPSA</td>
<td>Notional Agreement Preserving a State Award</td>
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<td>NDT</td>
<td>No-disadvantage test</td>
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<td>NES</td>
<td>National Employment Standards</td>
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<td>NSW</td>
<td>New South Wales</td>
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<td>SDA</td>
<td>Shop, Distributive and Allied Employees Association</td>
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Abstract

Family Provisions and Equality Bargaining in Australia: Symbolic or Emerging?

Industrial relations in Australia has undergone tumultuous changes since 2005, commencing with the Family Provisions test case decision which granted federal award-covered employees a range of important new family-friendly provisions, centring on unpaid parental leave. This was followed by Work Choices which largely prevented access to the new entitlements and then the Fair Work Act 2009, which improved family friendly entitlements by legislative change. Both these statutes impacted on how unions could engage in collective bargaining for family provisions.

This thesis answers several research questions arising from these developments which are of critical importance to industrial relations practitioners, policy makers and researchers: Would selected Australian unions negotiate for family provisions in a changing industrial relations and social policy environment? If so, does this constitute ‘equality bargaining’? What are the facilitative or inhibitive factors which impact on the equality bargaining processes and outcomes?

The theory and concept of equality bargaining, applied and developed in the EU, UK and Canada by key authors such as Dickens (1998), Heery (2006b) and Briskin (2006) can explain how bargaining for family provisions and other equality items is undertaken. Based on five rich case studies of bargaining undertaken by four key Australian unions, collective negotiations for new or increased family provisions are followed in diverse sectors using equality bargaining theories.

This thesis makes two important contributions to existing research on equality bargaining. First, the case studies show that there are different types of equality bargaining, which form a continuum ranging from ‘narrow’, where only one or a few gender equality items are negotiated, to ‘transformational’ equality bargaining, which seeks to achieve substantive equality for a range of equal opportunity target groups. Second, the research reveals a range of facilitative and inhibitive factors which
impacted on the equality bargaining, some of which are new, others which reinforce previous findings.

Four significant findings arise from the Australian case studies. First, the union negotiators mostly engaged in narrow equality bargaining which was symbolic of a commitment to gender equality, with the most common symbol being a paid maternity leave clause of some form. The negotiations, however, did not progress towards making real changes within the workplace to achieve substantive gender equality. Nevertheless, the negotiations undertaken indicate that equality bargaining is occurring in Australia.

Second, the external environment has a profound impact on equality bargaining. The wider economic, industrial relations and related social policy environment all had a significant impact on the equality bargaining undertaken. The main external factor which impacted on all the case study negotiations was the Productivity Commission’s paid parental leave inquiry and the associated campaign conducted by unions and community groups.

Third, industry and organisational level factors are critical for equality bargaining. The use of a common or ‘core’ claim for an industry, developed by union leaders and members and used throughout all negotiations, has been shown to be an effective way to progress equality bargaining. While union leadership is essential in the development of a core claim, strong union leadership is also necessary to progress gender equality issues throughout the negotiations and overcome any dissent from union members as well as employers.

Fourth, two main inhibitive factors for equality bargaining are identified. The first is the government’s new paid parental leave scheme, as both employer and union negotiators reasoned that possible government action on this front made it unnecessary to introduce or increase this entitlement through collective bargaining. The second inhibitive factor was ‘majoritarianism’ (Blackett and Shepperd, 2003), where items of benefit to women are traded off for items to benefit the whole workforce. Majoritarianism emanated from both union delegates and union leadership within separate unions.
This thesis shows that equality bargaining is a useful concept to improve understanding of collective bargaining in 21st century Australia, where women make up almost 50 per cent of the workforce and where family responsibilities have a significant bearing on employment capabilities. In an applied sense, the thesis shows the need – and potential – for equality bargaining in Australia is significant. Equality bargaining is a vital area not only to ensure that unions fully represent the needs of their members and secure relevant provisions, but also to ease the strains of working life for both male and female employees. The unions featured in this thesis have started to move in this direction, demonstrating that even while equality bargaining is currently narrow and symbolic, it is also emerging as a highly relevant framework for collective bargaining.
Part One

Chapter One

Introduction

1.1 Introduction
The concept of equality bargaining is used in this thesis to answer several research questions which are of critical importance at this point in Australia’s industrial relations trajectory: do Australian unions negotiate for family provisions in a changing industrial relations and social policy environment? If so, does this constitute equality bargaining? What are the facilitative or inhibitive factors which impact on the equality bargaining processes and outcomes?

It is essential to understand how bargaining for family provisions occurs, as recent changes in the regulation of family provisions in Australia have highlighted the ongoing need to bargain for provisions to enable employees to balance work and family responsibilities. In August 2005, federal award-covered employees were granted a suite of new unpaid parental leave entitlements resulting from the Family Provisions test case. Six months later, the Workplace Relations (Work Choices) Amendment Act 2005 became effective and largely prevented access to the new provisions for many employees. This meant that unions would need to bargain if they wanted to gain these provisions for their members. In 2009, industrial relations legislation introduced by a new Labor government incorporated aspects of the test case entitlements. Unions, then, did not need to bargain for the minimum provisions in the new Fair Work Act, but collective bargaining for other family provisions remained a crucial means by which employees could access new or increased family provisions.

At its 2003 Congress, Australia’s peak union body, the Australian Council of Trade Unions (ACTU) had reaffirmed support for the Family Provisions test case, which was then underway, and also committed to assist unions to support the test case by bargaining for a range of issues, including paid maternity leave and improved access
to paid and unpaid carer’s leave. The commitment to bargaining for paid maternity leave was not reinforced at the next triennial Congress in 2006, as unions were focused on campaigning against *Work Choices* and developing an alternative industrial relations system. However, the need for increased family provisions and unions’ commitment to bargaining for such provisions suggested that unions would undertake such bargaining. But did they? This thesis begins to answer this question.

In seeking to explain how unions negotiate for family provisions, the majority of the traditional negotiations theory literature offered limited insights. Prominent researchers who have examined collective bargaining (such as Walton and McKersie, 1965; Fells, 1998; Kochan and Lipsky, 2003; Cutcher-Gershenfeld et al 1995), have not considered specifically how collective bargaining agendas and processes are not only gendered, but can also reinforce traditional gender roles at home and in the workplace.

Since the mid-1990s, however, UK and European researchers, including Kravaritou (1997), Dickens (1998) and Heery (2006b) had developed a theory of ‘equality bargaining’. Equality bargaining research places gender concerns at the heart of bargaining theories and research, identifying how bargaining agendas have not only excluded equal opportunity items which benefit female employees, but also how they perpetuate the male breadwinner norm. Equality bargaining theories are used in this thesis to examine whether, and how, unions have bargained for gender equality items throughout these changing industrial relations and social policy environments and to identify the facilitative or inhibitive factors.

1.2 Why is this study important to industrial relations scholarship?
Most attention in the industrial relations area has studied bargaining without a gender lens and without particular interest in family provisions. The early ground-breaking research conducted by Walton and McKersie (1965) examining bargaining processes and strategies has been useful to many researchers and practitioners in the field of industrial relations to explain collective labour/employment negotiations, however it was largely a product of its time and gender blind. Successors, such as Cutcher-Gershenfeld (1995; 1998; 2001; 2003; 2004) and Kochan et al (1998) and Eaton et al
(2003), while building on the work of Walton and McKersie, have also not specifically considered issues relating to women or the work and family interface. Furthermore, the ‘black box’ of collective bargaining, or what actually goes on at the table and between bargaining rounds has remained largely hidden. In this thesis, the theory of equality bargaining is tested in five case studies of bargaining – in real time and from beginning to end, which illustrated how union and employer negotiators considered their strategies as the negotiations developed. This thesis begins to open up the processes of bargaining to scrutiny. How family provisions were included in the union and management negotiators’ claims, when they were traded off, altered or won are all tracked in this research.

Collective bargaining for wages and conditions is a cornerstone of research on industrial relations in Australia and abroad and it is essential to the practice and regulation of industrial relations. Yet little research in Australia has examined bargaining processes or how these are inherently gendered. This thesis focuses on the process of making claims and negotiating, thereby adding a gender dimension to the studies of collective bargaining in Australia, a much needed area and one for which feminist academics have called (Baird, 2003; Pocock, 1997).

This research is also important for practitioners, emphasising the ongoing need for industrial relations practitioners – particularly unions – to not only incorporate gender issues into the practice of collective bargaining, but also to engage in transformative bargaining practices to achieve substantive equality for women. Many Australian unions have traditionally considered work and family policies to be ‘women’s issues’ and outside traditional bargaining agendas. They have consequently been recalcitrant in bargaining for provisions to benefit female employees. This thesis can assist unions to commence, or increase engagement with equality bargaining to achieve equality for women in the workplace.

Finally, this research is important to policy makers. The regulation and practice of collective bargaining and the progression of equality initiatives has been subject recently to tumultuous change within not only the field of industrial relations policy and labour law, but also within social policy. A deeper understanding of how collective bargaining is undertaken for the inclusion of important entitlements for
female employees and others with caring responsibilities can assist policy makers to implement appropriate legislation and policies to further enable women and parents, to combine work and family responsibilities.

1.3 Overview of the Thesis

1.3.1 The Thesis: Part One

This thesis is divided into three parts. The first part, including this chapter, introduces the industrial relations and social policy environment at an important moment in Australia’s regulatory history, framing this around the research questions and concept of equality bargaining. Chapter Two reviews the literature, commencing with Walton and McKersie (1965) and then moving on to the literature on bargaining for equal opportunities. Equality bargaining research coalesced in the late 1990s in the European Union, when researchers from fifteen countries, including Kravaritou (1997), Dickens (1998) and Colling and Dickens (1998) analysed collective workplace negotiations and identified the factors which led to equal opportunities being successfully included in the final workplace agreement, as well as actions which prevented such inclusion (European Foundation for the Improvement of Living and Working Conditions, 1998). This research was groundbreaking, being in-depth and broad in scope, and built on a solid interdisciplinary foundation of women’s studies and industrial relations. Subsequent researchers (Heery, 2006a; 2006b; 2006c; Briskin, 2006) further developed the research on equality (or ‘equity’) bargaining.

Chapter Three details the methodology used in the research. Once University ethics clearance was approved, unions were approached to participate. Approaches were made at conferences, meetings with ACTU employees, and on referrals from colleagues and acquaintances. Four unions undertaking five rounds of collective bargaining in both public and private sectors agreed to participate. Two employers also provided interviews. The research thus has a focus on how unions negotiate, which is consistent with other research. This focus on unions is also recognised as a potential limitation of the research and is further discussed in Chapter Three.

Chapter Four provides the context and background to the case study negotiations. The chapter outlines the various mechanisms by which family provisions have been provided in Australia, including through test cases, legislation, bargaining and social
policy. The chapter focuses on the transition since the early 1990s to a deregulated and decentralised bargaining system and focuses on the recent waves of legislation and their impact on bargaining for family provisions. This chapter shows the maelstrom of industrial and policy developments swirling around as the case studies were being undertaken, and which influenced the negotiations.

1.3.2 The Thesis: Part Two

Part Two of this thesis presents the empirical data and contains the five case studies. Each provides a unique aspect on equality bargaining across a wide range of industries and occupations, but the similarities in the process and flow are discussed in the analysis contained in Chapter Nine.

The first case study is presented in Chapter Five. This chapter follows collective bargaining between the Community and Public Sector Union (CPSU), the union covering employees in the Australian Public Service (APS), and a large, female-dominated public sector agency, known here as ‘Publicorg’. It is the only case where employees engaged in collective action and provides a compelling story of employee involvement to retain an important family provision. The chapter also details innovations to secure gender equality through collective bargaining.

Chapter Six presents an examination of two sites of bargaining in the private health sector. The NSW Nurses’ Association conducted two quite separate negotiations with two private hospital companies, referred to here as ‘HealthCo’ and ‘HospitalOrg’. These case studies are significant as they demonstrate how a union engaged in bargaining for family provisions within a transitional industrial relations system with two employers within the same industry, but achieved very different outcomes.

Chapter Seven presents the fourth case study of negotiations, between the Liquor, Hospitality and Miscellaneous Union, representing immigration detention centre officers, and an international security company with facilities in Australia, referred to as ‘SecurityInc’. This was the only case study where an employer instigated bargaining for improved paid parental leave. It is the only one where there was a high level of resistance to the introduction of paid maternity leave from the union’s
workplace delegates and demonstrates the criticality of union leadership in bargaining.

The final case study in Chapter Eight examines negotiations between a large national retailer, referred to as ‘RetailCo,’ and the Shop, Distributive and Allied Employees’ Association. As the last case study conducted, it occurred while the economy was experiencing a downturn (the ‘Global Financial Crisis’). This compounded RetailOrg’s troubled financial situation and had significant ramifications on the negotiations and bargaining for paid maternity leave. These negotiations were also characterised by the participation of a strong union Secretary, who drove the negotiations and had a profound impact on the paid maternity leave claim.

1.3.3 The Thesis: Part Three
The third part of the thesis contains the analysis of the findings and the conclusions, drawing the findings of the case studies together and considering whether or not equality bargaining for family provisions had occurred, and if so, the factors which facilitated or impeded such bargaining, framing these within the concepts of equality bargaining. Chapter Nine evaluates all the cases, synthesising the main findings. Chapter Ten concludes the thesis, notes the limitations of the study, and shows the essential need for further research to be conducted in this area.

1.4 Conclusion
This chapter has introduced the thesis by noting the shifting industrial relations landscape since 2005. It highlighted the milestones which have affected the availability of family provisions, namely, the Family Provisions test case, Work Choices (2006), the Fair Work Act 2009 and the forthcoming national paid parental leave scheme (commencing in 2011). The role that unions play in equality bargaining, how they engage in such bargaining, the tactics and strategies used, and the factors which facilitated or inhibited equality bargaining are essential areas to examine to aid understanding of how unions can achieve equality for women through collective bargaining.
Chapter Two

A Review of the Literature on Bargaining for Equality

2.1 Introduction
Collective bargaining has been a key area of research in the discipline of industrial relations for over a hundred years, however many researchers throughout this period have implicitly assumed that the processes and outcomes of collective bargaining are the same for male and female employees. Prominent researchers who have examined collective bargaining (such as Walton and McKersie, 1965; Fells, 1998; Kochar and Lipsky, 2003; Cutchher-Gershenfeld et al 1995) have not considered specifically how collective bargaining agendas and processes are not only gendered, but can also reinforce traditional gender roles at home and in the workplace.

In the last two decades, however, and particularly since the mid-1990s, research by Kravaritou (1997), Dickens (1998), Heery (2006a) and Briskin (2006)\(^1\) has led to the development of a theory of ‘equality bargaining’. Equality bargaining research places gender concerns at the heart of bargaining theories and research, identifying how bargaining agendas have traditionally excluded equal opportunity items which benefit female employees, and how the very bargaining processes themselves reproduce gendered outcomes. Equality bargaining research theorises and identifies the barriers to achieving gender equality through collective bargaining, as well as the strategies needed to ensure equality for women through bargaining.

This chapter provides a brief overview of traditional bargaining theories and highlights their deficiencies in explaining the relationship between collective bargaining and gender equality. The chapter then reviews the literature on equality bargaining and concludes by expounding the research questions for this thesis.

2.2 Collective bargaining: the starting point
The role of unions is central to research on collective bargaining. This was recognised very early by Sidney and Beatrice Webb who detailed the centrality of collective

\(^1\) Note that Briskin refers to ‘equity bargaining’, as discussed later in this chapter.
bargaining to the practice of industrial relations, arguing that collective bargaining superseded the traditional master/servant employment relationship (1897, 177). The Webbs argued that a ‘fundamental inequality’ of bargaining power existed between employees and employers, which served to disadvantage employees when they negotiated their terms and conditions of employment – hence the need for unions in the collective bargaining process (Cooper, 2010). The Webbs developed theories around collective bargaining and the union movement, as they forged the young discipline of industrial relations.

By the middle of the twentieth century, theories of collective bargaining had become more developed. Dunlop developed his influential ‘systems theory’, viewing the industrial relations system as comprising three main actors – employees, employers and the state, which included the collective institutions (Kelly, 2004, 8). These actors operated within a ‘web of rules’, which is the outcome of negotiation and bargaining (Kelly, 2004, 8). For Dunlop, the role of employees, unions and collective bargaining were central to the industrial relations system.

Following Dunlop, Clegg defined collective bargaining as ‘the method used to resolve conflicts of interest between unions and employers, standing in contrast to methods of joint consultation, which are used where the interests coincide’ (Clegg, 1960). Clegg distinguished between collective bargaining and joint consultation, viewing joint consultation as a forerunner to human resources (Ackers, 2007). Ackers highlights Clegg’s theory that unions are the protectors of employee rights, through maintaining collective agreements containing the terms and conditions of employment (2007, 82). Collective bargaining is seen to be an essential mechanism to improve employee entitlements. Clegg emphasised that unions have a dual role – of advocating for members, as well as ‘policing’ collective agreements (Ackers, 2007). This early research then, firmly established unions’ role in collective bargaining.

Research on the process and strategies of collective bargaining – including on the role of unions – leapt forward with Walton and McKersie’s 1965 publication A Behavioral Theory of Labor Negotiations. In their pioneering research on labour negotiations in North America, Walton and McKersie identified four processes of bargaining, two of which relate to the interactions between employees/unions and management. The first
is distributive bargaining, which is based on a conflict of interests and assumes there is a fixed share of resources, and ‘one person’s gain is a loss to the other’ (Walton and McKersie, 1965, 4). The second relevant process is integrative bargaining, which includes parties working together to solve problems (Walton and McKersie, 1965, 5). These are relevant to this study as it is essential to understand the processes and dynamics of collective bargaining before a gender analysis of bargaining can occur.

Most researchers writing about collective bargaining have ignored the effects of gender when analysing the processes and effects of collective bargaining. An exception is Cutcher-Gershenfeld, a successor to Walton and McKersie, who found that distributive bargaining is not able to easily address many issues, including work and family (2003, 143). Cutcher-Gershenfeld argues that the bargaining parties need a common language to discuss such issues, which may not be forthcoming in a distributive bargaining situation where one party attempts to impose its ‘language’ and its demands as part of the negotiations (2003, 143-44). Cutcher-Gershenfeld adds, almost as an afterthought, that integrative bargaining may therefore be better suited to discuss work and family issues but at that stage no further research had been undertaken to test this possibility.

While not explicitly considering the relationship between integrative bargaining and equality, Dickens found that a partnership approach between employers and unions – an element of integrative bargaining – can assist in bargaining for equal opportunities (2000b, 202). Researchers subsequent to Dickens have considered the relationship between traditional forms of bargaining and bargaining for equal opportunities more fully. For instance, Gregory and Milner (2009) recently considered the related issue of using a ‘mutual gains strategy’ in their examination of UK unions’ involvement in progressing work/life balance initiatives. A ‘mutual gains strategy’ is not defined by Gregory and Milner, but it can be inferred that this is similar to integrative bargaining, which adopts a ‘win/win’ approach to collective bargaining. Gregory and Milner’s cross-country comparative study showed that mutual gains bargaining has been successfully used by UK unions to negotiate increased family provisions, although these researchers do not detail the bargaining processes which lead to this outcome (2009, 142).
Similarly, Rigby and O’Brien-Smith (2010), also writing in the UK, considered elements of traditional bargaining theories to explain union involvement in progressing work/life balance issues. They state that ‘(m)uch of the literature on work-life issues and the associated government discourse suggest that the area facilitates the integration of employee and management interests’, leading to mutual gains for both sides (2010, 206). Work/life issues are seen ‘as a suitable area for partnership’ (Morris and Pillinger quoted in Rigby and O’Brien-Smith, 2010, 206).

However, after interviewing forty-six union officials to examine campaigning and collective bargaining in the media and retail industries, Rigby and O’Brien-Smith reached different conclusions to Gregory and Milner. They found successful mutual gains bargaining was dependent on the industry and occupation (2010, 216). Labour market characteristics and ‘structural variables’ (Rigby and O’Brien-Smith, 2014, 206) impacted on the effectiveness of union campaigning and bargaining in both sectors. For example, the difficulties of organising the retail sector meant the retail union focused on political lobbying for work-life issues, as well as through bargaining. The journalists’ union did not need to undertake such a high level of engagement with national lobbying. There were differences in the ability of various occupational groups within the media industry to access flexible working arrangements, which also meant that the union needed to use different strategies for different groups. In conclusion, these researchers urged a more nuanced approach when combining research on traditional bargaining theories with research examining union interventions in work and family issues. They suggested that researchers should take into account industrial and occupational differences (Rigby and O’Brien-Smith, 2010, 206).

These findings on integrative/mutual gains bargaining and bargaining for equal opportunities appear to represent the only area of overlap between traditional bargaining and research on bargaining for equal opportunities. The following section explains why there is this gap in traditional bargaining theories.

2.2.1 Constructing bargaining: Gender at work
The lack of gender analysis in traditional collective bargaining research and theories reflects a historical gender blindness in industrial relations. Industrial relations and
unionism developed as a discipline around notions of the male breadwinner, based on the historical reality that men needed to earn enough to support a family. The theoretical underpinnings of the discipline, however, were slow to change to accommodate women’s increased entry into the labour market. The ideology that wages and working conditions needed to meet the requirements of a male breadwinner supporting a family continues to be pervasive. In Australia (as elsewhere), this dichotomy tended to be perpetuated by industrial and legal institutions, in the operation of workplaces, and in the way that industrial relations is conceived and researched (Baird, 2003; Pocock, 1997). Traditional bargaining theories which are implicitly based on the male breadwinner ideology therefore have a limited capacity to aid understanding of negotiating gender or equality issues.

Blackett and Shepperd, researching within a human rights framework in the UK, argued that despite the influx of women into the workforce over the past thirty years, ‘collective bargaining priorities have not always been adjusted accordingly, resulting in conflicts between traditional trade union demands and the needs of workers who do not correspond to the traditional worker profile’ (2003, 433). Dickens and Wever, both writing in the UK, also note that collective bargaining practices have been slow to change to reflect female employees’ needs and issues relevant to male employees have dominated, including in the formulation of bargaining agendas (Dickens, 2000b, 199; Wever, 2003, 245).

Following research in Canada, Briskin argued, however, that bargaining agendas have changed over the past thirty years, due to feminist activism. Including an equity item on the agenda is the first step to gaining equality through bargaining, and increased workplace entitlements are gained incrementally, after many rounds (Bue, cited in Briskin, 2006, 43). Briskin states that ‘with each victory, the boundaries of what constitutes a legitimate union issue have shifted, the understanding of what is seen to be relevant to the workplace has altered, and the support for social unionism has increased’ (2006, 25). As a result of these incremental advances, bargaining agendas have expanded to include child care, sexual harassment and pay equity, amongst other issues.
Nevertheless, progress using collective bargaining to achieve gender equity has been slow, due in part to the conflict between the needs of different constituencies. Competing needs can result in bargaining items which benefit women being excluded from bargaining agendas, or if they are included, being traded off for wages or conditions which benefit both male and female employees. Swinton, writing in a Canadian legal journal from a human rights perspective, examined how unions have represented the interests of the majority, ‘allowing them sometimes to lose sight of, or sacrifice, the interests of the minority’ (Swinton, 1996, 730). Blackett and Shepperd reach a similar conclusion, and have termed this phenomena ‘majoritarianism’ (2003, 433).

Blackett and Shepperd argued that collective bargaining is regarded as being concerned with economic issues, while equality issues (stemming from a human rights framework) are ‘social’ issues which should be addressed by the state (2003, 432). Blackett and Shepperd state, however, that ‘the conceptual divide between the economic and the social is narrowing and the connections between the two emphasized’ (2003, 432). These researchers argue that human rights and workplace equality frameworks do include economic issues, such as wages, atypical work, working conditions, and work and family issues, and conversely, issues such as family leave and non-discrimination also have economic implications.

Examining how individuals in France, Spain and Poland make choices about reconciling work and family responsibilities, Hantrais and Ackers (2005) considered institutional support for enabling employees to combine work and caring responsibilities. They considered joint regulation and concluded that work and family issues needed to be included in bargaining agendas. They suggest that there is a ‘semi-permeable’ membrane between work and family, and that ‘only at certain moments and with certain policies (for example, on equal opportunities and family friendliness) will the membrane open to family choices and policies’ (Hantrais and Ackers, 2005, 211). They believe that work and family issues need to be a mainstream part of bargaining to reduce the separation between industrial relations policies centring on ‘work’ and those focusing on ‘family’ issues.
While researchers have examined how collective bargaining is a product of, and tends to perpetuate the male breadwinner/female homemaker ideology, a body of research has developed which examines how female employees could benefit through collective bargaining. Bargaining for items which would benefit female employees and ensuring issues relevant to women are incorporated at each stage of negotiations is known as ‘equality bargaining’. This concept is discussed next.

2.3 The development of definitions and research on equality bargaining
Before discussing the development of the research on equality bargaining, it is firstly necessary to clarify terminology. Arrangements which enable employees to meet work and family responsibilities are largely referred to in the literature as ‘family friendly working arrangements’. These arrangements usually include leave and working time arrangements (Strachan and Burgess, 1998, 251). In this thesis however, the term used is ‘family provisions’, taken from the Family Provisions test case. Since the test case is the starting point for this thesis, the terminology used in the case is used throughout the thesis. This thesis examines whether, and how, unions have engaged in equality bargaining for family provisions.

Researchers who have examined equality bargaining, such as Colling and Dickens, (1998), Dickens, (1998) and Kravaritou (1997) have tended to use the term ‘equality bargaining’ and ‘bargaining for equal opportunities’ somewhat interchangeably.

Briskin distinguishes between the terms ‘equity bargaining’ and ‘bargaining equity’ (2006). ‘Equity bargaining’ refers to incorporating equity into the bargaining process; ‘bargaining equity’ refers to increasing equity issues on the bargaining agenda (2006, 12). Briskin prefers the term ‘equity bargaining’ over ‘equality bargaining’, as she equates equity with substantive equality, whereas ‘equality’ only refers to formal equality (2006, 13).

Others, such as Kirton and Greene (2004), Bercusson and Dickens (1996), Alemany (1997) have mostly used the term ‘bargaining for equal opportunities’; Blackett and Shepherd (2003) and Colling (1997) use ‘bargaining for equality’; Heery (2006b) uses ‘bargaining for sex equality’. Yet still others frame the arguments more traditionally. Werever (2003) refers to bargaining for ‘women’s issues’. While there are differences
between the terms used, ‘bargaining for equal opportunities’ and ‘equality bargaining’ are the most common and used throughout this thesis.

Colling and Dickens researched and published on equality bargaining in the late 1980s (referred to in Dickens, 1998). However, the largest body of research emerged in Europe in the mid to late 1990s, with findings synthesised in a report by Dickens (1998). This report was the culmination of a research project undertaken by the European Foundation for the Improvement of Living and Working Conditions (EFILWC), which oversaw a major project on collective bargaining and equal opportunities. Different researchers in fifteen European countries conducted one case study per country and reported on their findings. Four reports were produced throughout this research project.

The first report broadly defined the research areas and scope, and key concepts on equality and collective bargaining (Bercusson and Dickens, 1996). The second report in the series, written by Kravaritou (1997) is an insightful document which explores the relationship between collective bargaining and equal opportunities in the European Union (EU), summarising, contextualising and theorising the regulatory situation. Kravaritou identified a spectrum of equality bargaining. At one end were countries which had combined equal opportunities and collective bargaining and thus had implemented an advanced system of equality bargaining. At the other end were countries where there was no link between equality and collective bargaining. This research effectively ranked countries and also identified the scope of equality bargaining and the wider regulatory environment which contributed to the types of equality bargaining undertaken.

The third report analysed ‘innovative’ agreements and contained best practice clauses (Bercusson and Weiler, 1998). The final report, written by Dickens (1998), analysed and summarised the case study findings. It is an extremely comprehensive report on equality bargaining, and the findings are dispersed throughout this chapter. Dickens’ report not only examined issues around equality and collective bargaining, and the processes of collective bargaining, but also identified the regulatory levels (supranational, national, industry and organisational) which impacted on bargaining. This framework also organises the findings of this thesis.
Dickens’ other articles are also essential to this thesis, both on the EFILWC project and more broadly on unions and equal opportunities. In particular, the paper by Dickens and Colling provides a principal concept for this thesis – a definition of equality bargaining which incorporates three important elements. They state that ‘equality bargaining’:

‘...encompasses the collective negotiation of provisions that are of particular interest or benefit to women and/or are likely to facilitate gender equality (‘special measures’); equality awareness on the part of negotiators in handling commonplace bargaining agenda items such as pay and pay opportunities (‘gender-proofing’), and the injection of an equality dimension (specifically, addressing gender disadvantage) to the negotiation of change, for example reforming a grading structure’ (1998, 390).

This is a complex definition. The notion of ‘special measures’ is derived from sex discrimination legislation, and includes negotiating a provision or provisions to benefit female employees, who are seen to have different needs from male employees. The second part, ‘gender-proofing’, reveals a deeper level of understanding of the causes of gender inequality. This refers to equality bargaining requiring an equality awareness on the part of negotiators in handling commonplace bargaining agenda items such as wages. Equality awareness can assist in ‘mainstreaming’ equal opportunities so that all bargaining has an equality dimension and any differential impacts in the bargaining processes or outcomes on both women and men are identified and can be addressed (EIROnline, 2000). Dickens stressed that equality bargaining is more than ‘adding women in’ to bargaining agendas, as this limited action can lead to women’s issues being ‘compartmentalised’ within the negotiating process and resulting agreement, so that effectively, the negotiations are still gender-blind (2000b, 200). The third part of the definition – addressing gender disadvantage to result in change – is also significant. This element targets indirect and systemic discrimination perpetuated by collective bargaining, impacting on actual structures and systems of work, going well beyond the negotiations (Bercusson and Dickens, 1996, 30).

Dickens explained that collective agreements can range from ‘bad’ agreements which ‘underpin, codify and perpetuate existing inequalities’, to agreements which are gender-neutral, to a ‘good’ agreement, which ‘positively addresses inequalities’ and
promotes gender equality (Dickens, 1998, 39). Action to progress women’s equality in the agreements moves from no action being taken, thereby perpetuating inequalities, to those which impose positive equality duties on the bargaining parties.

Researchers subsequent to the 1990’s EFILWC research also considered the relationship between collective bargaining and equal opportunities. Much of this research examined union involvement in progressing equal opportunities for female employees but did not specifically explore concepts and practices around equality bargaining (Gerstel and Clawson, 20012; Hart, 2002; Briskin, 2002; Kumar and Murray, 2002; Colgan and Ledwith, 2002; Budd and Mumford, 2004).

The next milestone on equality bargaining research occurred in 2000, when a European peak trade union organisation published a journal devoted almost entirely to women and collective bargaining. Much of this research reiterated and progressed the arguments used in the EFILWC reports. One of Dickens’ articles in this compendium is also important to this thesis, as Dickens sounded a note of caution. She stated that even when collective bargaining does incorporate equality items, this can serve to entrench discrimination by focusing only on ‘women’s issues’ rather than gender considerations being incorporated into all bargaining issues (2000a, 38). Further, ‘women’s issues’ can be restricted to work and family issues, which can further limit progress on achieving gender equality by reinforcing gendered roles. Therefore, the aim of bargaining for equal opportunities is to produce a ‘good’ collective agreement which will contribute to eliminating structural inequalities which impede female employees’ full participation in the workplace and labour market, rather than merely enabling women to balance work and family commitments.

The next major development in equality bargaining ideas occurred through the research undertaken by Edmund Heery, also in the UK. Heery conducted research in 2002 and published in 2006, into whether, and how, union negotiators engaged in equality bargaining. This research built on Dickens’, and Colling and Dickens’ earlier work, however, differed as Heery used survey data, rather than case studies, to examine the extent and constitution of equality bargaining in the UK (2006, 523). Heery’s research also contains less consideration of the nature of gender equality and
how this is played out in collective bargaining, instead considers the role of union negotiators in bargaining for equality items.

Heery defined equality bargaining as ‘bending the bargaining agenda to serve the needs of women workers’ (2006b, 522). Heery used this definition of equality bargaining in research examining fifteen aspects of pay equity in the UK, based on survey data of nineteen unions. His definition is narrower than Colling and Dickens, restricting equality bargaining to items on the bargaining agenda which benefit female employees. Heery’s research is empirically focused, and does not include a discussion of the scope or theoretical underpinnings of equality bargaining, and this may also have contributed to his definition being utilitarian rather than theoretically developed and informed.

In 2006, Briskin published a comprehensive report on ‘equity bargaining’, focusing on Canadian developments and issues. This report contains two parts. The first is a thematic discussion of a range of issues relevant to equity/equality bargaining, including an examination of the relationship between equity bargaining and equal opportunity and human rights legislation, challenges to the male breadwinner norm, challenges for increasing women’s participation in collective bargaining, and strategies to increase the incidence of equity bargaining, including through alliance building. The report uses sophisticated theories from industrial relations and women’s studies, reviewing a prodigious amount of published material, illustrated throughout with a plethora of case studies. The second part of the report includes a comprehensive list of resources, including an annotated bibliography and websites. Briskin’s report is a compendium of equity bargaining literature, theories, debates and resources.

Similar to Colling and Dickens, Briskin also advances a definition – or ‘strategy’ – of equity bargaining, incorporating a staged approach. She states that equity bargaining involves three initiatives:

‘...first, the introduction of increasingly complex ‘no-discrimination’ clauses in collective agreements; second, the identification of specific platforms of concerns which address the needs of each equity-seeking group; and third, the recognition of the equity implications in the entire
range of traditional collective agreement provisions, what could be
called equity mainstreaming’ (2006, 32).

The first element – non-discrimination clauses, requires that collective agreements
include anti-discrimination and equal opportunity clauses for a range of population
groups, not just female employees. The second element requires that a range of
actions be developed for each of the population groups, which include indigenous,
transgender, gay and lesbians, employees from culturally and linguistically diverse
backgrounds, and employees with disabilities. The equal opportunity actions can also
target different groups of women, ranging from those who need family provisions to
those requiring protection from disciplinary procedures for women who need leave as
a result of domestic violence (2006, 33). The third element of Briskin’s definition is
mainstreaming equity, which, like Colling and Dickens’ definition, requires that all
bargaining issues are subject to an equity analysis, but again, goes beyond gender, so
that issues would be examined for a differential impact on ‘race, ethnicity, age,
citizenship, sexuality and ability’ (2006, 35). Briskin’s definition/strategy for equity
bargaining is much broader than Colling and Dickens’, which focuses on gender
equality. Because the latter’s definition is more circumscribed, it is the one most used
in this thesis, which focuses on bargaining for gender equality.

2.4 Factors facilitating equality bargaining

Equality bargaining researchers (Dickens, 1998; Karemessini, 1997; Kravaritou,
1997) have identified four regulatory levels which interact with collective bargaining
for equal opportunities. The overarching regulatory level is the supranational level,
which includes, for example, multi-country organisations such as the EU issuing
directives on employment conditions. Supranational factors can also include the
actions of social partners at the EU level working together to establish equality
legislation and a framework which promotes equality bargaining. The national level is
influenced by the supranational level but also has its own distinctive features. Dickens
has identified national level factors which can impact on equality bargaining to be
‘the economic context; the labour market; the legislative framework and other
political/state intervention’ (1998, xi).
Under the national level is the industry or sectoral level, and factors impacting on equality bargaining at this level can include the actions of peak employer or union bodies lobbying and advocating for working conditions. Labour market conditions can also form part of the industry level, with, for example, labour shortages within an industry leading to employers offering family provisions to attract employees (Dickens, 1998, 19). This level then influences the organisational level, as managers seek to attract and retain staff. Dickens sees the supranational, national and sectoral/industry levels of regulation as being external or environmental factors which impact on equality bargaining – they ‘affect the ‘climate’ within which collective bargaining occurs’ (1998, 17-18). Dickens sees organisational factors as being internal to an organisation: ‘they are the factors which encourage the employer or union side to initiate or enter into collective bargaining...’ (1998, 25). The following section discusses the regulatory levels more fully.

2.4.1 Supranational and national regulation

Kravaritou states that in the UK, ‘the impact of [European] Community law on equal opportunities has been the decisive factor in the formulation of collective agreements which can be used as a legal basis for the promotion of equality bargaining between employers and employees’ (1997, 37). Heery, in his research on bargaining agendas within UK unions, found that the items which were most frequently negotiated corresponded to developments in public policy and labour law (2006a, 52). Karemessini, another researcher who conducted a case study in the EFILWC project, states that the EU ‘brought social policy issues to the fore in social dialogue’, and this was one of the factors which ‘engender(s) a good climate’ for equality bargaining (1997, 22).

Dickens also found that equality bargaining is easier when the state becomes involved. Dickens found that unions build on the legal minima, and use the law as a lever in bargaining (Dickens, 2000a, 34). She states that ‘where equality issues are pursued in collective bargaining the agenda setting role of both national and European equality law is often evident’ (2000b, 197). Dickens considers the emergence of parental leave in bargaining agendas in a number of countries, following state initiatives in this area, as an example of the influence that supranational and national policies can have on equality bargaining at the enterprise level (2000b, 197).
Legislation and public policy does not always assist in equality bargaining however. Researchers have noted this in two ways. Firstly, Rigby and O’Brien, in their research examining how two unions intervened to secure improved family provisions for employees, found that legislation acted as a lever for some provisions, but not others. The differing operational needs of the two industries resulted in different outcomes – parental leave improved in the retail industry but not the media industry. The researchers found that legislation did not result in improvements for improved working hours arrangements in either the retail or media industry. Using legislation as a lever to secure increased family provisions is dependent on occupational and industry characteristics (2010, 214). Secondly, Swinton argued that unions may be reluctant to pursue equality provisions where they are already part of labour law, as was the case with maternity leave, which was already regulated by statute (1996, 728).

As well as unions using legislation as a lever for bargaining, unions also influence the development of legislation. Earlier this decade, Gerstel and Clawson (2001) conducted research into how North American unions responded to members’ need for family provisions, and members’ perceptions of issues they believed they could negotiate. These researchers found that unions saw their main role in this area as one of lobbying and education, rather than bargaining. Gerstel and Clawson state that unions ‘serve as a key mechanism through which state policy is developed, disseminated and ensured’ (2001, 286). In this way, union involvement in regulating for family provisions can be seen to be ultimately reinforcing – unions lobby for equality regulation, as well as implement it through bargaining.

Research which built on and complemented the EFILWC research on collective bargaining and equal opportunities was also conducted by Olgiati and Shapiro (2002) shortly after the conclusion of the EFILWC research. Olgiati and Shapiro did not specifically examine collective bargaining, but examined various regulatory levels, including at the European, national and organisational levels and the relationship to achieving gender equality. They made an important finding – that a regulatory environment which encouraged social partnership could facilitate and provide impetus for continued ‘equality action’ (2002, 36). Similarly, Heery stated that the European Commission ‘provided opportunities for the social partners to influence regulatory
processes’ and unions then conducted test cases to extend and clarify the law (2006a, 47).

Recently, Gregory and Milner found that union initiatives were dependent on opportunities emanating from European and national policies, as well as on organisational initiatives (2009, 142). These researchers identified factors which encouraged or discouraged unions in Britain and France from campaigning and bargaining for work/life balance issues. They identified ‘opportunity structures’ which enabled unions to negotiate work/life balance initiatives. This occurred when several conditions were in place, including when gender equality was promoted by supranational and national bodies; where unions had internal gender equality; when unions were able to complement equality regulation, and also the nature of the employer and organisation (2009, 124-5). Similarly, Heery found that government policy promoting family provisions also created an ‘external opportunity structure’ for public sector unions to negotiate family provisions, which then flowed on to the private sector (2006a, 59).

i) State of the economy
Case studies show that equal opportunity policies are more likely to be adopted in times of prosperity and may not continue to be supported in times of recession (Dickens, 1998, 18). A negative economic climate can affect bargaining for equality items as well as their implementation. Measures therefore need to be embedded and monitored for positive results to ensure they can withstand a recession. However, a recession does not always mean that equality provisions will disappear, as even though employers may be reluctant to grant wage increases, they may be amenable to bargaining for improvements in low cost working conditions instead (Dickens, 1998, 18).

Closely linked to the economic environment, the state of the labour market also impacts on equality bargaining. Increased feminisation of the labour force may foster a recognition that equality measures are needed (Dickens, 1998, 19). In a competitive labour market, employers aim to retain employees and so may introduce or increase equality measures. Conversely, in a recession with rising unemployment, Colling
found that employer support for equality bargaining was weakened due to financial constraints (1997, 28-29).

ii) Deregulation/decentralisation

While supranational and national legislation and policy can positively impact on equality bargaining, another main legislative shift has been to deregulate industrial relations and decentralise collective bargaining, which some consider has not been favourable to bargaining for equal opportunities (Burgess and Baird, 2003; Burgess and Strachan, 1998; Pocock, 1998; Strachan and Burgess, 2000). Strachan and Burgess, writing about decentralisation in Australia, explain how enterprise bargaining was considered to benefit employees with family responsibilities:

‘(t)he argument is that a decentralized system more effectively promotes flexible employment conditions which in turn facilitates a better matching of employment and family care responsibilities’ (2000, 366).

Nevertheless, Strachan and Burgess found that some women had limited ability to organise and participate in enterprise bargaining, especially given low union densities (2003, 368). Not only could labour market positioning mitigate against women participating in enterprise bargaining, but this could also prevent gender equality issues being included in bargaining agendas in the first place. Baird and Burgess note that the structural disadvantages experienced by some women could result in difficulties for women in inserting female-friendly entitlements in the bargaining agenda (2003, 6). Similarly, Blackett and Shepperd found that unionisation was difficult in certain sectors, and some groups of workers had low bargaining power, which could result in ‘favourable working conditions’ not being included in bargaining agendas (2003, 427).

Similarly in the UK, Colling and Dickens conclude that ‘deregulation’ measures...weakened the underpinning for equal opportunities and had a disproportionately adverse impact on women’ (2001, 138). Weakening collective rights in the workplace can result in weakening structures and relationships at the organisational level, as workplaces are restructured and bargaining is devolved to line managers (Colling, 1997, 45). This can also increase managerial prerogative, as line managers may not have a holistic view of the benefits of equal opportunities, or even
view them with hostility, seeing them as increasing costs and providing special measures to women (Collings and Dickens, 1998, 400-01).

2.4.2 Organisational factors – motivations of employers and unions for equality bargaining

Olgiati and Shapiro have found that unions instigate equal opportunities through collective bargaining, while employers tend to progress equal opportunities through human resource practices, including through shaping the workplace culture and environment (2002, 110). These different mechanisms stem from different reasons for introducing equal opportunities. Employers rely on the business case, as well as other organisational reasons to support acting on equal opportunities; unions can also use the business case ‘as an open door’ to articulate ‘an issue likely to produce a favourable institutional response from employers’ (Rigby and O’Brien-Smith, 2010, 210). Additionally, unions can also take equality action for more pragmatic reasons, such as union revitalisation, as well as for social justice reasons. This is discussed in the next section, however, it is firstly necessary to consider the joint actions of employers and unions, before examining the motives and actions of the individual parties to introduce equal opportunities.

i) Bargaining relationships

The bargaining relationship between the parties can have a significant effect on equality bargaining. Based on the EU case studies, Dickens found that a ‘high trust, social partnership orientation within the organisation rather than an adversarial style of negotiations’ is more conducive to equality bargaining, and this occurred in a number of the case studies (2000b, 202). Secondly, the nature of the bargaining relationship between employers and unions influences equality bargaining. Colling found that ‘mature’ bargaining relationships, where negotiators had a wealth of professional negotiating experience, was an internal factor facilitating equality bargaining (1997, 16). Colling identified the elements of professionalism which assisted negotiations, including that the negotiators scanned ‘broad horizons’ when developing their claim, by looking beyond their industry to assess benchmarks in other sectors. Bargaining parties also had the authority to make decisions and were committed to successful negotiations, and engaged in mutual gains bargaining (or, ‘something for something bargaining’, to use Collings’ term) (1997, 16-19).
A convergence of interests between unions and employers can assist equality bargaining. Alemany, undertaking a case study in Spain, for the EFILWC project, identified that a convergence of interests between management and unions resulted in successfully negotiating a clause to prevent sexual harassment. Unions wanted the clause for equity reasons, and the employers accepted the necessity of the clause to avoid liability (Alemany, 1997, 19). Similarly in his British case study, Colling also found that shared goals between management and unions to proactively take measures to defray the impacts of an ageing workforce and to increase the organisations’ retention rate resulted in the introduction of equity measures (1997, 12).

While employer support and shared interests can assist equality bargaining, unions also need to have a strong power base to support their equality items. The balance of bargaining power between employers and unions influences equality bargaining, as does the degree of employer opposition or support for family provisions (Greene and Kirton, 2005, 32; Gerstel and Clawson, 2001, 291). Gerstel and Clawson found that there is a link between bargaining power and levels of family provisions, so that when weak unions negotiated, the level of family provisions was low, and conversely, where union bargaining strength was high, so were the level of family provisions (2001, 291).

ii) Characteristics of negotiators
The EFILWC research overwhelmingly demonstrated that women being involved in bargaining significantly contributed to equality bargaining, and that ‘(w)omen tend to have longer equality agendas than men and women place higher priority on equality issues than their male counterparts (Dickens, 2000, 203). Similarly, North American research found that the presence of women was ‘key to the ability to make family issues a part of the union’s agenda and contract negotiations’ (Gerstel and Carson, 2001, 289). The EFILWC case studies showed that equality initiatives would not have been included in agreements except for the involvement of women (Dickens, 1998, 34). Women need to be involved in the actual negotiations, however their input behind the scenes, doing research, formulating bargaining proposals and being involved in working parties also resulted in equality measures being included in agreements (Dickens, 1998, 33).
Briskin reviewed literature which called for a ‘desegregation’ of collective bargaining, to not only include women in negotiating teams, but also to include issues relevant to women in negotiations. Importantly, Briskin also warns against the dangers of essentialism – of assuming that because women are involved in negotiating, they will speak on behalf of all women (2006, 44-46). She notes that women can prioritise issues differently; and similarly, male negotiators can also pursue a range of bargaining priorities, including for equity bargaining.

Likewise, Heery found that the presence of female union officials in bargaining sessions did not necessarily lead to the inclusion of equality items in a collective agreement. In Heery’s survey of union officials, women did not report that they engaged in equality bargaining more than male union officials, and Heery suggests that this could reflect the diffusion of an equality agenda within unions (2006c, 463). Heery concluded that rather than gender, the age and the experience of union officers were better predictors of union officials’ behaviour. Younger officers and officers with more experience both as a delegate and with seniority within a union were more likely to be involved in equality bargaining than were other union officers (2006c, 464). Youth and age were found to be conducive to equality bargaining, according to Heery.

In another EFILWC case study, Karamessini found that suitably trained women in both the employer and union bargaining teams was a determinative factor for equality bargaining (1997, 22). Karamessini – and other EFILWC researchers – found that the inclusion of female managers in the negotiations ensured that equality issues were included in the collective agreement (Karamessini, 1997, 22; Alemany, 1997; Colling, 1997, 41). Colling also found that an organisation with a network of female managers brought pressure to bear on management operations for the negotiation and implementation of equality measures (Colling, 1997, 23). However, women’s involvement in bargaining does not automatically ensure that equality issues will be negotiated, and women also need to be trained in equality issues and be supported in the negotiations (Dickens, 2000, 203-04). Dickens notes that female negotiators can also pursue a bargaining agenda which conforms to the traditional male-centred agenda (2000, 203).
Similarly, men also need to be trained. Dickens states:

‘(o)vercoming ignorance of equality issues and women’s concerns helps secure male commitment, although this is not to suggest that male resistance is simply a problem of information and education’ (2000, 205).

Male resistance can also result from men seeing equality bargaining ‘as a threat to their own position and sense of their male selves’ (Dickens, 2000, 205). When men do engage in bargaining for equality, their motivations can be very different from female negotiators. Male negotiators are more likely to bargain for equal opportunities when ‘mandated’ by their union; women bargain for equality arising from their expertise and experience (Dickens, 2000, 203; 205). Dickens and Collings separately found, however, that the presence of sympathetic, well-trained male negotiators can assist in equality measures being included in collective agreements, regardless of their motivation, for example, whether they are negotiating equality provisions because it is union policy, because of pressure from union members, or because of personal commitment (Dickens, 1998, 35; Colling, 1997, 26).

iii) Motivations of negotiating parties: employers

It is more common for unions to initiate equality bargaining than employers (Dickens, 1998, ix). Therefore a greater amount of research exists on how unions undertake equality bargaining, and less is known about the motivations of employers to engage in equality bargaining or other regulation to progress equal opportunities for female employees. The research examined for this thesis focused on how unions undertake collective bargaining for equal opportunities, rather than on employers (see for example Greene and Kirton, 2005; Heery, 2006a).

Dickens, in her summary of the EFILWC research, and Charlesworth, examining employer motivations to introduce equality initiatives in Australia, found that there are a range of reasons why employers introduce equal opportunity and diversity initiatives, including through collective bargaining. These include social justice reasons (‘the right thing to do’); to enhance the reputation of the organisation or mitigate negative publicity accruing to an organisation, and to enhance employee commitment (Charlesworth, 2007, 166-67; Dickens, 1998, 25). Employers also provided family provisions to better deploy human resources by removing barriers to women’s employment (Dickens, 1998, 27).
However, the ‘business case’ has been seen by policy makers as the primary method to persuade employers to introduce or improve family provisions (Heery, 2006b). The business case for the implementation of equal opportunities rests on showing how equality and diversity initiatives can improve an organisation’s finances (Charlesworth et al, 2005, 65). Case studies have demonstrated that implementing equal opportunities using the business case argument can increase the participation of women returning to the workforce after a period of parental leave, thereby enhancing organisational finances (EFILWC 1999, 8). As well as impacting directly on the bottom line, the business case can decrease employer opposition as well as legitimise decisions taken (Gerstel and Clawson, 2001, 291; Charlesworth et al, 2005, 654).

Gregory and Milner found that the business case, in particular benchmarking, and staff retention and recruitment, were the main drivers for the adoption of work/life balance initiatives by employers (2009, 128). Similarly, Colling found that the desire to be a ‘good employer’ and offer competitive terms and conditions was an organisational factor for equality bargaining (1997, 14). Dickens also found that this can ‘lead to a knock-on effect on competitors via benchmarking (comparison of best practice)’ (Dickens, 1998, 26). There are limitations to the effectiveness of the business case however, as during times of recession unions may instead concentrate on retaining jobs and management may be focused on containing costs (Colling, 1997, 28; 35).

iv) Motivations of negotiating parties: unions

Dickens states that union actions to progress equality for women can complement employer actions. Union activity can also ensure that provisions become available universally to employees through collective agreements (Dickens, 2000a, 31). Unions can:

‘…enrich and sustain employers’ equality agendas and act as positive mediators of legal rights, building upon legal minima through collective bargaining and helping to translate formal rights into substantive outcomes’ (Dickens, 2000a, 41).

Union activity to secure equal opportunity is necessary, as if unions do not undertake equality bargaining, negotiations will continue to produce workplace agreements which are indirectly discriminatory. As Dickens so eloquently states: ‘…it is generally
the case that if trade unions are not part of the equality solution they are likely to be part of the problem’ (Dickens, 2000a, 27).

It is necessary to examine union involvement in collective bargaining because of the increased numbers of women entering the labour market and ‘the need for employment policies and trade union strategies to respond to such change’ (Bercusson and Dickens, 1996, 7). Unions are very much a product of the male breadwinner legacy, and as such, have considered work and family policies to be ‘women’s issues’, which have not aligned with their masculine culture (Gregory and Milner, 2009, 123). The male domination of unions has impacted on how unions represent and advocate for women. Pocock and Brown state,

‘...the masculinist nature of Australian unions – with their deep roots in men’s employment, Australian male identity, and the male breadwinner wage-earner model – created significant negative legacies for working women...which partly explain(s) Australia’s laggardly work and family regime’ (Pocock and Brown, 2009, 160).

Unions have realised they need female members, however, and attracting women has been part of a process of union modernisation. This is discussed next.

a) Modernising unions – increasing women’s participation and influence

Greene and Kirton believe that the decline in unionisation in the private sector has driven many unions to redress inequalities and improve their strategies to represent newer member constituencies of women and workers from ethnic minority groups (2005, 37). Pocock and Brown also state that some Australian unions see ‘action on industrial issues affecting women, as critical to their efforts to build union power’ (2009, 169).

In Australia, issues relating to ‘women and work’ and family provisions have ‘surfaced on the bargaining agendas of the labour movement and now receive significant acknowledgement, although real progress on these issues...is often slow’ (Bailey, 2005, 115). Pocock and Brown are also pessimistic. While Australian unions have undertaken action on work and family issues, including instigating the 2005 Family Provisions test case and heavy involvement in the recent paid parental leave campaign (see Chapter Four), they state that unions have not pursued paid maternity leave vigorously for a number of reasons. This includes the power of ‘social
conservatives within the union movement who remain resistant to maternal employment and paid maternity leave’ (Pocock and Brown, 2009, 173). This apathy also extends to bargaining for paid parental leave.

For unions to become relevant to women, they need to ensure they have internal equality before they can lobby or bargain for ‘external’ equality in other workplaces:

‘...before unions can champion the cause of gender equality in the workplace, they have to ensure that their own internal structures and policies are gender-sensitive and women-friendly. The links between internal equality...and external equality...have been emphasized in most action research’ (ILO, 2001).

Unions can achieve internal equality through various mechanisms, including by establishing a women’s committee and appointing equality officers. These supports can ‘desegregate’ collective bargaining (Briskin, 2006, 48) and encourage union officials to bargain for equal opportunities (Heery, 2006b, 534). A UK union survey conducted by the UK’s peak union body also found that two-thirds of unions reported that their equality priorities were set by recommendations from the union’s equality body (Trades Union Congress, 2005, 11).

Karamessini found that in her case study, the involvement of a union’s women’s committee was essential to ensure that women’s claims were included and prioritised in the bargaining agenda (1997, 22). The women’s committee were aware of gender issues and viewed progressing women’s equality as a priority and included gender equality items in the union’s log of claims. The awareness of gender issues was significant, as it shifted the negotiations from bargaining for ‘women’s issues’, to ‘equality issues’, countering a union faction which prioritised stereotypical gender items, such as those relating to motherhood (Karamessini, 1997, 25).

Having realised the need to change internal structures, unions have also begun to change external behaviour as part of the modernisation process. This has involved broadening the membership base and including equality demands within collective bargaining (Colling and Dickens, 2001, 140-142). Gregory and Milner also believe that there has been a shift in unions’ roles, from ‘traditional forms of wage and wage-related bargaining, towards information provision and facilitation, to assisting individuals in accessing and taking up [work/life balance] policies’ (2009, 127).
shift has also been accompanied by a more co-operative approach towards bargaining (Gregory and Milner, 2009, 138).

b) Unions’ bargaining agenda and priorities

Kumar and Murray conducted a survey of Canadian unions in 1997 to examine their bargaining priorities and which items were successfully negotiated. They found that in a climate of increased competition, with increased employer bargaining power and decreased union bargaining power, in the majority of cases employers sought wage concessions and unions maintained a rather defensive strategy and focused on maintaining current wages and benefits (Kumar and Murray, 2002, 6-8). Equality and family provisions, including family leave, were ranked the lowest in terms of union priorities (Kumar and Murray, 2002, 12). The authors argued that the low prioritisation of family provisions resulted from the view that these provisions were seen as social or public policy, and as such not part of the bargaining agenda.

Heery, researching some years after Kumar and Murray, in a different country and a different economic climate, produced different findings. In a 2002 survey of union officials which examined their bargaining priorities, Heery found that about a third of UK union officials did include pay equity and part-time work in their claim and attempted to negotiate these provisions, and half bargained for ‘improvements in work-life balance’ (2006c, 457-8). Heery found that when these issues were negotiated, there was a high success rate, with 85 per cent of those bargaining for work-life balance initiatives achieving a written policy and 80 per cent securing an entitlement to flexible hours (2006c, 458). These findings were reiterated in later research conducted by the UK Trades Union Congress (TUC), which surveyed affiliated unions about equality bargaining (2005). The TUC found that that two-thirds of respondent unions reported success in negotiating flexible working arrangements and work/life initiatives (2005, 7).

Even though Kumar and Murray found that equality initiatives were not a high bargaining priority, they also found that when equality items – including family provisions – were prioritised, there was a high success rate of these provisions being included in the final collective agreement. They found that ‘a high degree of priority meant that a union was 20.4 times more likely to achieve success on employment
equity (and) 11.1 times more likely to succeed in negotiating new family leave provisions’ (Kumar and Murray, 2002, 23).

Briskin states that the increased numbers of female union members has resulted in ‘gendering the collective bargaining agenda’ (2006, 25). Research conducted by Gerstel and Clawson found that the impact of high proportion of female members continued throughout the bargaining process, so that unions were also more likely to actually engage in equality bargaining (2001, 289). Budd and Mumford, using data from the British Workplace Employee Relations survey, also found a positive correlation between the existence of family provisions, union presence and female-dominated workplaces. They believe this was consistent with ‘the articulation of union members’ preferences at the bargaining table to achieve specific benefits’ (2004, 220).

Union members may not, however, prioritise bargaining for equality or family provisions. Gerstel and Clawson, in a broad examination of union activity in relation to work and family issues, found that union members did not ask for increased family provisions, namely child care and family leave. Union members saw these issues as being relevant only during certain periods of an employee’s life, therefore not relevant to all and not a bargaining priority (2001, 288). Union members also considered providing care to be an individual responsibility, not one which should be included in a claim on an employer (Gerstel and Clawson, 2001, 288). Union members also had low expectations, seeing an employer’s role as providing wages, leaving employees to manage their own caring arrangements. Union leaders believed that union members had greatly underestimated the potential of these issues for negotiations, and that the potential demand was there if workers could only break through the mindset that they should not expect family provisions to be provided by employers (Gerstel and Clawson, 2001, 289; 293).

c) Union leadership

Female union leaders make a significant, positive difference in shaping a bargaining agenda and advocating for family provisions. According to Dickens, ‘where the female negotiator is also a senior office-holder within the union this provides a resource and power base which otherwise may be lacking and prevents
marginalisation’ (2000b, 204). Gerstel and Clawson found that unions with low proportions of female leaders won only low levels of family provisions, whereas unions with high levels of female leaders had won either high or medium levels of family provisions (2001, 290). Karamessini found that a feminist in the union leadership and involvement in negotiations was a determinative factor for equality bargaining (1997, 22).

While the gender of union leaders appears to be a contributing factor for equality bargaining, the management capabilities of union leaders is also important. As well as overseeing advocacy, bargaining structures and agendas, union leaders can also oversee centralisation, which has been shown to assist equality bargaining. This takes two forms. Union leaders can set policies centrally, and UK research shows that two-thirds of unions did set equality policies nationally, usually developed through union conferences or executive bodies (TUC, 2005, 6). The other form of centralisation is through union bargaining structures, where union officials are responsible for multi-employer bargaining. Heery argued that ‘it is easier to secure a link between central union policy on equality and negotiations where bargaining is centralized’ within a union (2006c, 462).

2.5 Combining collective bargaining and equal opportunities
This chapter has reviewed research that has identified systemic problems with bargaining for equal opportunities, and identified the external and internal factors that lead to unions successfully undertaking equality bargaining. Many of the barriers for equality bargaining stem from the male breadwinner ideology evident within unions and underpinning collective bargaining. Kravaritou argued that the means to progress equality through collective bargaining requires nothing less than complete revitalisation. She states that:

‘...bargaining everywhere must serve the precise purpose of addressing and regulating questions that did not previously exist, like sexual equality, the needs of the…private domain in relation to the organisation of the work cycle and the creation of more flexible rules from which employees – male and female – can benefit’ (1997, 45).

A range of practical solutions to achieve these structural changes have been suggested and are now reviewed.
2.5.1 Modernising collective bargaining

Kravaritou states that the way to achieve equality bargaining is to bridge the two ‘rivers’ of collective bargaining and equal opportunities. This bridge would modernise collective bargaining and would consist of training both union and management women as negotiators, conducting anti-discrimination programs to examine the content of agreements, increasing knowledge and awareness of women’s productive and reproductive roles, and increasing the knowledge of the factors which impact on equality bargaining (1997, 43-44).

Similarly, while not framed in terms of modernisation, one of the peak European industrial relations organisations provides a similar range of recommendations to ensure that equality bargaining is given a higher priority and that gender issues are central to bargaining and not marginalised. An organisation providing online resources recommends that social partners establish equity officers within their organisations, develop equity manuals, provide training on equity issues for negotiators and ensure that agreements include mechanisms for monitoring their implementation (EIROline, 2000). Similar strategies are also contained in equity manuals which have been developed for negotiators, such as one produced by the International Labour Organisation. This manual goes through each phase of the negotiations and suggests how gender equality can be built in to the processes (2001). Bleijenbergh et al, as part of the EFILWC project, also made recommendations for governments, including that governments develop national expertise centres to disseminate information on equality bargaining, and that a database be developed on the outcomes of equality bargaining (1999).

2.5.2 Mainstreaming equality bargaining

These practical steps would not only modernise collective bargaining, but also mainstream equality throughout bargaining. Mainstreaming equality through bargaining relies on implementing a range of practical activities, to ensure that gender issues are considered at each stage of bargaining. Latta, in an article examining gender mainstreaming within European working regulations, contained in a journal issue devoted to collective bargaining and equality, detailed what mainstreaming gender equality involves. It includes ‘gender sensitising’ the data, ensuring those involved are aware of gender issues, building in targets, goals and time frames, and
evaluating progress (Latta, 2000, 301). Mainstreaming also requires that the implementation of the collective agreement be analysed for impacts on male and female employees.

2.5.3 Regulatory reform
Combining these practical initiatives with regulatory reform of both equality regulation and collective bargaining would strengthen support for equality bargaining at national as well as organisational levels. Blackett and Shepperd recommend firstly, enabling legislation to ensure barriers to bargaining are minimised, so that all population groups of employees can participate in collective bargaining, particularly those with limited bargaining power. Secondly, they recommend prohibitive legislation to ensure that agreements which would impede equality are not state sanctioned, as well as the introduction of legislation requiring bargaining parties to take reasonable proactive initiatives to achieve equality through bargaining (2003, 441).

2.5.4 Union strategies and new forms of representation
This chapter has suggested that the reluctance of some unions to include equality issues on bargaining agendas stems from a masculinist organisational culture. It has been argued that unions need to achieve internal equality before they can achieve external equality for women. This requires unions to increase women’s representation and power within unions, which would then result in female union officials influencing bargaining agendas and negotiating practices. Also writing about collective bargaining in the EU, after the EFILWC project, Wever states that while undertaking internal reform, unions also need to continue to revitalise, to be representative and attract female members and negotiate ‘new’ equality issues (2003, 251).

Kumar and Gregory believe that a greater representation of women in union decision-making structures and increased education of members to ensure that new policies are supported by members is essential for equality bargaining (2002, 24). Heery, found that younger officials and older, more experienced union officials engage more in equality bargaining than do their counterparts (2006b). Kravariou also suggests that male negotiators also need to be educated about equal opportunities (1997, 45).
Regardless of the characteristics of the union negotiators, unions need to lead by example with localised governance, assist with training and ensure that mechanisms respond to the concerns of unionised workers and preserve their legal rights and recourses (Blackett and Shepperd, 2003, 449).

2.5.5 Building alliances

Bergamaschi, who conducted a case study for the EFLWC project, argued that women’s voices in bargaining have been expressed through ‘a variety of agents and bodies depending on the situation’ (Bergamaschi, 1999, 143-44). These agents include unions, equal opportunity committees, and individuals from women’s movements and other social or even religious movements, who all influence best practice in collective bargaining. Advocates of equality bargaining do not necessarily come from unions, but are leaders in a range of fields. By increasing networks and strengthening alliances, unions can draw on this expertise and energy. Such networking and lobbying, combined with unions which have equality officers who undertake gender analysis, have been found to enable unions to control the direction of the negotiations and to successfully undertake equality bargaining (Hart, 2002, 617; 619).

Briskin also recommends building alliances between women’s organisations and unions, and others seeking equality for equity bargaining as well as to progress industrial relations campaigns. The interaction between feminist activists and feminist unionists can be mutually beneficial – those outside the labour movement can support strikes and collective action undertaken by trade union women, and the unionists bring a collective approach to feminist activities, ‘weakening the tendency towards individualistic solutions’ (2006, 51).

2.6 Australian research on bargaining for equal opportunities

This literature review has examined the slowly growing body of material on collective bargaining and equal opportunities and explicitly ‘equality bargaining’. The vast majority of the literature discussed so far has emanated from the EU, with contributions also made from a range of individual countries, including outside Europe. Australian research has not featured prominently. What research then, has been conducted in Australia on these areas?
Research on women and collective bargaining in Australia commenced with researchers expressing concerns about how collective bargaining could negatively impact on female employees, particularly after the formal introduction of enterprise bargaining (a particular variant of collective bargaining) in 1991 (see for example Bennett, 1994; Charlesworth, 1996; Burgess and Strachan, 1998; Baird and Burgess, 2003; Whitehouse, 2001). However, Australian research examining the underlying philosophy of collective bargaining and equality for women has been somewhat undertheorised. Empirically, there is also little research which has examined bargaining processes, outcomes and impacts on women.

Much of the Australian literature examining collective bargaining and equal opportunities for women examined the content of collective agreements (or in fewer cases, industrial awards) to ascertain the incidence of family provisions, mainly highlighting their uneven and patchy spread across industries (see for example Mortimer and O’Neill, 2007; Baird et al, 2009a; Baird and Burgess, 2003; McGrath-Champ, 2003; Baird, 2002; Whitehouse, 2001; Burgess and Strachan, 1998). While valuable, this literature explored only to a limited extent the gendered nature of bargaining and instead focused on bargaining outcomes without seeking to explain the processes of bargaining or how those outcomes were achieved.

Other research has examined the drivers for the introduction of equal opportunity initiatives in the workplace, and focused on employer initiatives and human resource policies (O’Neill and O’Neill, 2008; Charlesworth, 2007; Charlesworth et al, 2005). Charlesworth examined the drivers for organisations to introduce equal opportunities, and found that in particular, the debates around paid maternity leave provided an environment which prompted organisations to introduce or increase paid maternity leave, although this occurred through human resource polices, not collective bargaining (2007, 169; 2005, 20). Charlesworth et al also found that employers’ desire to ‘contain’ union influence, by effectively circumventing union action and introducing equal opportunity initiatives themselves, was a more powerful driver for the introduction of equal opportunity initiatives than was union action or collective bargaining (2005, 25-26).
There is also a body of research which has examined the link between equal opportunity legislation and equal opportunity workplace programs, some of which included consideration of family provisions (see for example, Burgess et al, 2007; Burgess et al, 2005; Strachan and Burgess, 2000; Strachan and Burgess, 1998). However, collective bargaining was not the central focus of much of this research, which focused on the links between equal opportunity initiatives and equal opportunity legislation, examining whether or not legislative reporting requirements resulted in reporting organisations increasing their equal opportunity programs.

One research project which did focus on bargaining for equal opportunities was conducted by Burgess et al (1996) four to five years after the introduction of enterprise bargaining in Australia. This report contains three case studies of workplace bargaining, undertaken by three different teams of researchers. ‘A process of successive interviews’ with employees, workplace delegates, management and union representatives was held in late 1995 and early 1996 (Burgess et al, 1996, 2). These researchers examined collective bargaining in three female dominated workplaces to identify whether female employees were participating in the bargaining process, and whether issues of relevance to women – including family provisions – were negotiated. Drawing conclusions from the three case studies, Burgess and Strachan found that there was minimal workplace consultation with female employees throughout the negotiations in two of the cases. In all three cases, minimal increases to equality initiatives and a reasonable pay rise were only achieved through trade-offs to working conditions, particularly around working time (1996, 11).

Considering their particular case study in this research, Strachan and Macdonald conclude that for some groups of female employees, enterprise bargaining had not delivered significant improvements in wages or working conditions that would specifically benefit women (1996, 29). They did find, however, that the main benefit of collective bargaining for women was not the substantive outcomes of bargaining, but the procedural developments, namely the increased involvement of female union members. The second and third case studies of the research also led the researchers to conclude that equality issues had not been addressed in their respective case study negotiations (Ryan and Burgess, 1996, 50; Morgan and Keogh, 74).
Another study of collective bargaining and impacts on female employees was also conducted at this time, focusing on the introduction of flexible working hours through enterprise bargaining (Charlesworth, 1996, 151). This research was based on six case studies covering a wide range of industries, and used interviews with union and management representatives, a survey and focus groups with female employees. This research examined women’s involvement in the bargaining processes and the outcomes, including for family provisions. Similar to Burgess, Charlesworth found that employers were seeking more flexibility around working time arrangements, and that wage increases were traded off for increased flexibility which would benefit employers. In regards to bargaining processes, Charlesworth found consultation with female employees needed to be more inclusive and timely and in particular that unions needed to increase consultation with female members, and then monitor the implementation of the collective agreement (1996, 132-133).

These two research projects are the closest in Australia to an examination of the process of bargaining and its implications for achieving gender equality for female employees. Only Burgess et al.’ research projects involved conducting interviews over the life of the negotiations, and the exact timing, and number of interviews is not stipulated in any of the resultant papers. Neither sets of research were theoretically advanced, and did not consider theories associated with collective bargaining or equality bargaining. The research is also now dated and there have been major policy and legislative changes in Australia as well as an increased sophistication in bargaining. It is therefore timely to build on this earlier research.

2.7 Conclusion
This chapter commenced with a brief review of traditional bargaining theories, arguing they are gender-blind and have not incorporated theories or practices to advance gender equality. After identifying these gaps, the chapter then provided a chronological overview of the main research examining equality bargaining and bargaining for equal opportunities. The chapter then discussed the factors which contributed to equality bargaining at the supranational, national, industry and organisational levels. The chapter highlighted the complexities of undertaking equality bargaining, with different levels of regulation influencing the motivations and actions of the industrial parties. The end results of collective bargaining for equal
opportunities are manifest at the organisational level, however, this is a result of a system of complex and interwoven supranational, national and industry factors, as well as those at the organisational level.

Overall, this chapter shows that while a rich body of work on equality bargaining has developed, particularly in the European Union, the same theoretical and empirical advances have not occurred in Australia. The paucity of Australian research on equality bargaining and the current policy imperatives, as will be discussed in Chapter Four, make such research essential.

This situation therefore gives rise to the research questions for this thesis namely, has a form of equality bargaining occurred in Australia, as evidenced by the case studies of collective bargaining? If so, what form does the equality bargaining take? If equality bargaining was found to have occurred, how did unions ensure family provisions were included on bargaining agendas and negotiated? What were the facilitative or inhibitive factors which impacted on the equality bargaining undertaken?
Chapter Three

Methodology

Following the questions raised in the literature review, this thesis examines by way of detailed case studies whether a form of equality bargaining occurred. To assess how unions conducted such bargaining, case studies of five bargaining rounds were undertaken from 2008 to 2010. This chapter considers the benefits and drawbacks of undertaking case studies, concluding that this is an appropriate methodology to use for the research in this thesis, then details the phases of the research. The timing, types and amount of empirical research undertaken are also explained.

3.1 Definitions and types of case studies

Definitions of case studies highlight their potential to explain the contextual aspects surrounding events. Yin states that a ‘case study is an empirical inquiry that investigates a contemporary phenomenon within its real life context, especially when the boundaries between phenomenon and context are not clearly evident’ (italics in original, 1994, 13). Kitay and Callus define the case study as ‘a research strategy or design that is used to study one or more selected social phenomena and to understand or explain the phenomena by placing them in their wider context (italics in original, Kitay and Callus, 1998, 103). Ruddin, quoting Brennan, states that a case study ‘is an indepth study of the particular, where the researcher wants to increase his or her understanding of the phenomena studied (2006, 798).

As others have argued and found, case studies are particularly useful when researching workplaces and organisations. They allow for an indepth examination of the events, processes and relationships within an organisation, including the interrelationships and the context in which these occur (Kelly, 1999; Hakim, 2000). They can lead to insights which would not be revealed using other research methodologies (Denscombe, 2003, 30-31). This is also the case in this research. As other researchers have shown, (for example Gregory and Milner, 2009; Dickens, 1998; Kravaritou, 1997), the context surrounding bargaining is an essential element which influences bargaining practices and outcomes. The context forms an essential part of the explanatory framework developed in the thesis. A wide array of contextual
factors surround workplace negotiations, including at the national, industry and organisational levels and this research seeks to explain how these discrete contextual factors impacted on negotiating for family provisions.

One main type of case study method identified by Yin, which is particularly relevant to this research, are multiple case studies, which ‘enables the researcher to explore differences within and between cases’ (Yin, cited in Baxter and Jack, 2008, 548). Other researchers have developed case study typologies which are based on the number of cases undertaken. Kelly finds that there are four types of case studies, based on single and multiple cases and complex versions of both of these (1999, 123). The complexity comes from analysing several foci in the cases, which may involve several data sources. Hakim also categorises case studies according to the breadth of material being researched, which ranges from individual case studies, studies of communities, social groups, organisations and countries (2000).

The research conducted for this thesis uses multiple case studies, in order to compare bargaining across industries, workplaces and within a changing regulatory context. This research is based on an examination of a large number of variables, which constitute the different internal and external factors for equality bargaining. There are also multiple foci as although interviews are the main source of data, a range of additional data sources were also examined, as explained later in this chapter.

Yin also identifies the chronological case study. Chronologies enable the researcher to identify causal events over time and can cover many different variables (Yin, 1994, 117). Yin states that the ‘analytic goal is to compare the chronology with that predicted by some explanatory theory’ (1994, 117). The underlying theory of this type of case study is dependent on a range of factors, namely, that some events must always occur before other events, some events must always be followed by other events ‘on a ‘contingency’ basis, some events can only follow others after a passage of time, and finally ‘certain time periods in a case study may be marked by classes of events that differ substantially from those of other time periods’ (1994, 117; emphasis in original). The case studies used in this research are also chronologies, as they fulfil Yin’s sequential time period. The workplace bargaining follows a series of processes which must be undertaken in order and over time. A log of claims must be developed
by at least one of the parties and then served on the other; this is then followed by negotiations and resolution of issues, and final agreement on the content and operation of the new collective agreement. The workplace agreement is then certified by the relevant authority.

3.2 Responding to criticism of the case study method

While the main advantages of conducting case studies are that they enable complex phenomena to be studied and analysed, the case study as a research strategy has been criticised. This section discusses two of the main criticisms, that case studies are open to bias and that generalisations are not able to be drawn. The section concludes with an explanation of how research for this thesis was conducted to overcome these impediments.

3.2.1 Bias

The case study as a research strategy has been criticised on the grounds of being able to be influenced by the researcher’s bias (Yin, 1994, 9; Hakim, 2000, 63). Researchers have also noted that research results can be tempered by the perspectives of the main participants in the study (Kitay and Callus, 1998, 108). Nevertheless, there are ways to limit the impact of bias in case studies. The main way is by using triangulation, where multiple sources of evidence are used to ensure that results are consistent. Where the results reported are the same, yet come from multiple data sources, findings are much more convincing than relying on one source alone (Yin, 1998, 92). As detailed below, a range of data sources have been used in this research, so that data gained from interviews is supported by corporate documents and communications between the bargaining parties and their constituents.

In regard to this research being influenced by the perceptions of the participants, it is acknowledged that the analysis relies mostly on union accounts of negotiations. However, this only partly limits the research. As discussed in the literature review, the previous research (for example, Dickens, 1998, 5) has indicated that it is unions who are most crucial to negotiating equal opportunities. Thus, an examination of the unions’ bargaining approach in these cases allows insight into this much neglected area of labour negotiations. Any bias of the researcher was limited as where possible,
the research participants were provided with the chapter on their case study negotiations, and any errors of fact or interpretation were corrected.

3.2.2 Generalisability

The second criticism of case studies is that the findings from one - or even multiple cases – are not generalisable to other cases. This criticism is based on two concerns – whether or not a case study is able to reveal the ‘truth’, and secondly, whether the findings of a case study can be practically applied to other situations (Ruddin, 2006, 798-800). At the heart of these criticisms is an underlying concern that the case study, as a research strategy, is not valid (Ruddin, 2006, 800).

There are two responses to this. The first position holds while case studies are an essential means of explaining particular phenomena and the findings of case studies can be used in the process of theory development, case study findings may not be replicable to similar cases. Ruddin states that case studies are not a method to deduce inferences but are a means to theorise. ‘We do not infer things ‘from’ a case study: we impose a construction, a pattern of meaning, ‘onto’ the case’ (Mitchell, quoted in Ruddin, 2006, 800). Yin also emphasises the relationship between case studies and theory, stating that case studies ‘are generalisable to theoretical propositions and not to populations or universes’ (1994, 10).

The other position is that the findings of case studies are transferable and generalisations can be made. Researchers have argued that case studies capture ‘reality’ and generate ‘concrete, practical and context-dependent knowledge (Ruddin, 2006, 801). Kitay and Callus state that ‘the findings of a well-conducted case study can be used to refine or test theory, which gives case studies a generalizability beyond the individual instance’ (1998, 107). Similarly, Denscombe also highlights that case studies can bring the broader context into a narrower focus: they ‘illuminate the general by looking at the particular’ (2003, 30).

Claims have also been made that is not valid to generalise from a single case (Ruddin, 2006, 802). Ruddin counters this by stating that ‘(i)t is correct that the case study is a comprehensive examination of a single example, but it is not true to say a case study cannot provide trustworthy information about the broader class’ (Ruddin, 2006, 799).
Yin concurs, highlighting that a single case study of a ‘critical case’ can confirm, challenge and extend the underlying theory to make a significant contribution to knowledge (1994, 38).

Generalisations can also be made on the basis that the case study is similar to other case studies (Denscombe, 2003, 36). When this is the basis of generalisations, the researcher needs to identify the significant features on which a comparison is being made, and to show how these compare with others in the broader class (Denscombe, 2003, 36-37). This is the ground on which generalisations can be made from the case studies in this research. Negotiating for a collective workplace agreement is a standard practice within a large range of Australian organisations, and a core activity of unions. This researcher did not expect the cases selected, while having distinguishing – and even unique features in comparison with each other – to be unusual within Australian workplace negotiations. It was therefore expected that the case studies could generate conclusions which could be applicable to not only other cases in the same industry, but also to the area of equality bargaining more widely.

To overcome the generalisability problem as much as possible, prior to the commencement of case studies, preparatory work was undertaken to identify the factors facilitating or inhibiting equality bargaining. This would not only enable a comparison with previous research, but also enable replication for each of the case studies undertaken for this thesis. These factors were derived from the literature (see Chapter Two) and formed the basis of questions asked of participants. Where possible, the same questions were asked of negotiators in all the case studies, although these were tailored to the specific circumstances of each negotiation.

Secondly, this thesis includes five case studies, thereby strengthening the generalisations able to be made. Hakim states that ‘…confidence in the generalisability of the results of a case study design increases with the number of cases covered, with the greatest proportional gains being achieved when the number of cases is increased from one to two, three or more’ (Hakim, 2000, 62). When two or more cases are shown to support the same theory, replication can be claimed. As discussed in Chapter Nine, the findings of these case studies reiterate (to some extent) the findings of others who have researched equality bargaining, which gives the case
studies some validity. However, the findings in this research may also be generalisable to negotiations more generally, as more than one of the cases have the same findings, thereby not only strengthening and extending the underlying theories, but also resulting in the findings being applicable to beyond these cases.

3.3 Significance of this research
Chronologies of workplace bargaining – especially equality bargaining – are not common. Instead, much of the research uses explanatory case studies based on interviews conducted after the conclusion of negotiations. Explanatory case studies explain ‘how’ bargaining was conducted, and in relation to equality bargaining, ‘why’ particular factors contributed to, or inhibited equality bargaining. Most of the existing research does not track the emergence and influence of different factors and the dynamics of bargaining as the negotiations occurred. While some researchers have focused on the development of bargaining agendas and how the proceeding collective bargaining negotiations have resulted in, and reinforced, gendered outcomes (Briskin, 2006; Heery, 2006a; Dickens, 2000b, 199; Kumar and Murray, 2002; Weyer, 2003, 245), researchers have not tracked the negotiations as they occurred. The interplay of different factors as negotiations progressed has not been fully researched.

The research for this thesis then, is based on a lesser used methodology to uncover a rich source of detail about equality bargaining in Australia. The research conducted for this thesis is significant as interviewees provided a contemporary account of the negotiations which was developmental and chronological, showing the changing foci of bargaining and the waxing and waning of the various factors which impacted on equality bargaining in the Australian context.

This research is also significant as accessing and engaging participants in studies examining workplace bargaining is difficult, and engaging unions and employers to focus on and discuss only equality issues even more so (Dickens, 1998, 5). In summary then, the research undertaken for this thesis uses a multiple case study methodology drawing on sequential indepth interviews as well as other methods (including observation and document analysis) which has been little used in research on equality bargaining, to capture information on a subject which it has previously
been difficult to research, in a country where this research has not been adequately undertaken.

3.4 Undertaking the research
This research was conducted in three main phases. The first was the preparatory phase to review the literature and existing theories, develop interview questions and find case study participants. The second involved conducting the case studies. In the third phase, the data was analysed and conclusions made. This section details activities conducted in each of these phases.

3.4.1 Phase One: Review of the literature and selection of case study participants
An examination of the literature examining collective workplace negotiations – including those focusing on equality bargaining – reveals the methodologies used, as well as the outcomes of the research. A variety of data collection techniques have been used to research workplace negotiations. These include interviews (Gregory and Milner, 2009; Findlay, 2009; Cooper and Briggs, 2009; Albiston, 2005; Eaton et al, 2003; Campling, 1996; Charlesworth, 1996; Karamessini, 1997); observations (Findlay, 2009; Hoffer Gittell et al, 2004; Eaton et al, 2003; Fells, 1998a); examination of documents (Kochan and von Noddenflycht, 2003; Eaton et al, 2003; Cutcher-Gershenfeld et al, 1998; Hart, 2002; Colling, 1997; Karamessini, 1997), including examination of negotiation transcripts (Goering, 1997); focus groups (Campling, 1996; Charlesworth, 1996) and surveys (Gregory and Milner, 2009; Trades Union Congress, 2005; Kumar and Murray, 2002; Heery, 2006b; Charlesworth, 1996).

Some of the researchers interviewed union and management negotiators (including Cooper and Briggs, 2009; Hoffer Gittell et al; Eaton et al, 2003; Fells, 2001; Colling, 1997; Campling, 1996), others only interviewed union officials, particularly those who focused on how unions negotiated equal opportunities (Kirton and Greene, 2004; Heery, 2006b; Gerstel and Clawson, 2001). Dickens states that unions are the usual source of data for such research (1998, 5). Other researchers who used interviews conducted them after the negotiations had concluded (Cutcher-Gershenfeld et al, 1998; Fells, 1998a; Dickens, 1998) or did not specify when the interviews were conducted, although interviews were not ongoing throughout the negotiations.
(Campling, 1998; Cutcher-Gershenfeld et al, 1998; Albiston, 2005; Gregory and Milner, 2009). Some researchers, however, (Findlay et al, 2009; Roper, 2007) did conduct interviews throughout the negotiating process, including Burgess et al (1996), who essentially conducted an early examination of equality bargaining in Australia.

The major research on equality bargaining was based on interviews with negotiators, which relied on the recall of negotiators once the negotiations were concluded (Dickens, 1998, 5). It appears that there has only been one study on equality bargaining – even though the researchers did not use this term – which has examined the processes and outcomes of equality bargaining using ongoing interviews throughout the negotiations (Burgess et al, 1996). The Burgess et al research is now dated, and was conducted before a body of work had developed on equality bargaining, and so is also somewhat limited in its theoretical framework.

i) Developing the questions

The research in this thesis used ‘traditional’ bargaining theories, as developed by Walton and McKersie (1965) as a starting point to determine the parameters of the field, then narrowed to an examination of equality bargaining. Similarly, the negotiators were asked questions based on these two broad areas.

The first stream of questions focused on traditional bargaining, concentrating on distributive and integrative bargaining techniques. While it is acknowledged that most bargaining is mixed (Fells, 1998b) and that there are also other forms of bargaining, such as interest based bargaining (Cutcher-Gershenfeld et al, 2001), these two categories were chosen as they represent the different extremes of negotiations. These questions elicited information about the processes of the negotiations, tactics used, and the bargaining climate. While this thesis is about equality bargaining, these questions were essential to capture the minutiae of the negotiations and to determine which strategies and techniques facilitated or inhibited bargaining for equal opportunities. The second stream of questions on gender and equality issues explored the history of the union’s activity in progressing gender equality issues, current equality initiatives, as well as questions relating to the progress of specific family provisions being negotiated. The two streams of questions flowed between each other
and were not asked in isolation in the interviews. The questions used for the interviews are included at Appendix 3.1.

The questions were also grouped according to the phase of the negotiations. The initial group of questions aimed to examine the period before the formal negotiations commenced, covering the background information to the negotiations, such as the profile of the workplace, the prior relationship between the bargaining parties, the level of union member involvement in negotiations, the level of involvement from female members, the existing available family provisions and the current industrial instruments. The next group of questions aimed to elicit information about pre-bargaining activities, such as how the claim was developed, the level of involvement of female employees, how the bargaining teams were chosen, and the parties’ aims for the negotiations.

Questions then focused on the specific processes of bargaining, such as who spoke the most, women’s involvement in the negotiations, the tone of the meetings and whether any bargaining tactics were used. Negotiators were also asked to explain when and why trade-offs were made, if this occurred. Questions also referred to other activities which were likely to occur during the negotiations, such as side table negotiations and union campaigning, and women’s involvement in these activities. Sets of questions relating to integrative and distributive bargaining were also developed, in the eventuality that the negotiations were of this nature or behaviour associated with these types of negotiating was displayed. A final group of questions were developed for the conclusion of the negotiations. Negotiators were asked to identify the successful and unsuccessful strategies for gaining increased family provisions, and lessons learned from the negotiations, particularly in relation to negotiating family provisions.
### Table 3.1: Research Fieldwork Timeline

<table>
<thead>
<tr>
<th>Date</th>
<th>Research Activity</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Contacting unions; scoping interviews</td>
</tr>
<tr>
<td></td>
<td>CPSU bargaining interviews</td>
</tr>
<tr>
<td></td>
<td>LHMU/SecurityInc bargaining interviews and observations</td>
</tr>
<tr>
<td></td>
<td>Nurses’ Ass./HealthCo</td>
</tr>
<tr>
<td></td>
<td>NSW Nurses’ Ass./HospitalOrg</td>
</tr>
<tr>
<td></td>
<td>bargaining interviews</td>
</tr>
<tr>
<td></td>
<td>SDA bargaining interviews</td>
</tr>
<tr>
<td></td>
<td>Follow up</td>
</tr>
</tbody>
</table>
ii) Selecting case study participants

Case study participants were sought in the early part of the research while the literature was being reviewed and questions developed. This process involved contacting unions, attending meetings with union officials, a considerable amount of following up with unions and also approaching employers. The timeline above in Table 3.1 details the timing of data collection.

A meeting with ACTU staff in March 2007 elicited information on which unions were likely to be engaged in bargaining for family provisions during 2007. Initial phone calls to the suggested unions and follow-up contact resulted in scoping interviews being held with officials from three unions at the end of 2007 and in early 2008. These meetings provided information on the unions’ upcoming negotiations and whether they would be suitable for this research and whether or not the employer was likely to be amenable to participation. Only those negotiations which were likely to include bargaining for family provisions were deemed suitable and consequently one union willing to participate in the research was not selected. Of the three unions which were first contacted, the Community and Public Sector Union (CPSU) and the federal branch of the Liquor, Hospitality and Miscellaneous Union (LHMU) had upcoming negotiations which fulfilled the criteria to be a case study and these unions agreed to participate.

The researcher attended a conference held by a peak State union body, Unions NSW, in March 2008 to solicit other participants. Another union expressed interest in participating, however, this union was also not selected due to possible difficulties arising from internal union operations. A further two unions were sourced through the researcher attending an ACTU Women’s Committee meeting in June 2008, where the research was outlined and unions were asked to consider participating. Several participants expressed an interest in becoming involved and further contact was made over the ensuing weeks. This resulted in the NSW Nurses’ Association and the Shop, Distributive and Allied Employees’ Association agreeing to participate. The NSW Nurses’ Association was entering into negotiations with two employers in the private hospital industry and agreed for both these negotiations to be used as case studies, thus enabling comparisons to be made. This provided the researcher with five case studies, across both the public and private sectors, representing a variety of
workplaces. The characteristics of the case study organisations are included in Table 3.2.

3.4.2 Phase Two: Case study research and initial data analysis
The timeline (Figure 3.1) shows that the first scoping interview occurred in September 2007, and the first substantive case study interview occurred in April 2008. The cases varied in length, however this figure also shows that case studies were being conducted simultaneously, with up to four cases being examined at once, for a short period. Most of the empirical research was therefore conducted over a fourteen month period, concluding by May 2009. Follow-up interviews were conducted in July 2009 and April and June 2010. In total, seventy-two interviews were conducted for the case studies, consisting of nine background interviews with union officials who were not directly involved in the case studies, such as with ACTU officials, and sixty-three case study interviews. An initial scoping interview with unions were undertaken, before the formal, semi-structured interviews subsequently commenced. The detailed schedule of interviews and other field work undertaken is at Appendix 3.2.

The union negotiators included both women and men, and all were very experienced. Table 3.2 profiles the negotiators who were interviewed. Management representatives were invited to participate in all cases, except one, where the union was concerned that this could negatively impact on the negotiations. This is also detailed in the table below. The employers negotiating with the CPSU and the NSW Nurses’ Association were invited to participate in two negotiations, however, did not respond to several requests for an interview. Another employer negotiating with the Nurses’ Association did provide an interview, as did the employer negotiating with the LHMU. The employers did not provide as many interviews as the union negotiators, because of time constraints due to their heavy workloads and a general reluctance to be involved in the research on an ongoing basis.

Interviews lasting approximately thirty minutes were held as soon as possible after negotiations, although not after every meeting as the heavy workload of participants precluded this. Interviews were conducted in person or over the telephone, and were recorded on a portable digital recorder. Interviews were semi-structured, drawing on the underpinning literature. Follow up questions were asked in every interview, to
monitor the progress of claims, the effectiveness of tactics and strategies used, and the changing perceptions and reflections of the participants. The interviews were developmental and iterative, with union officials revising bargaining tactics and strategies, and altering their perceptions of the negotiations as they progressed.

The interviews were transcribed by the author and an initial analysis of the notes, transcripts and supporting documentation was undertaken as the negotiations progressed. A coding framework was developed, based on the major family provisions being negotiated, such as paid parental leave and carer’s leave and bargaining tactics and behaviours displayed by negotiators. This also enabled comparison of the negotiations as they were occurring. The coding was undertaken and completed manually, and this allowed the researcher to track issues, and become familiar with all the data. Much of the data was only available in printed form (such as notes and corporate documents provided by the negotiators) and so compiling and then analysing all the material in printed form was the most efficient method of analysis, even if onerous and time-consuming.

As well as interviews with negotiators, four observations were also conducted. This researcher was an observer at an annual week-end conference of Publicorg, which provided valuable background information. The researcher also attended a ‘women’s breakfast’ at the conference, which provided information on current issues affecting female Australian Public Service employees. Three actual negotiations between the LHMU and SecurityInc were also observed. One main negotiating meeting was held by the parties at the beginning of the negotiations, which the researcher was able to observe. The researcher was also present at two delegates’ teleconferences. These three meetings comprised the bulk of the negotiations, as negotiations were truncated as the parties were not bargaining for a full collective agreement, but for an extension of the existing agreement (see Chapter Seven).

Even though there were only a few instances of observations (and more would have been ideal had access been possible), these are valuable as they provide first-hand evidence of workplace negotiations, thereby adding depth to this research. Field notes were made of the observations (Denscombe, 2003, 204), consisting of written notes taken as the parties negotiated, detailing their verbal exchanges.
Table 3.2: Profile of Case Study Organisations, Interviewees and Level of Participation

<table>
<thead>
<tr>
<th>Negotiating Parties</th>
<th>Profile of Case Study Organisation</th>
<th>Profile of Main Union Participants</th>
<th>Employer Representative Participation</th>
</tr>
</thead>
<tbody>
<tr>
<td>CPSU and Publicorg</td>
<td>Large federal public service agency engaged in direct service provision.</td>
<td>One negotiator specialised in bargaining, the other in campaigning. Both highly experienced. Had not negotiated with Publicorg before.</td>
<td>Employer repeatedly invited to participate but did not respond.</td>
</tr>
<tr>
<td></td>
<td>Large national office and 230 branch offices.</td>
<td>Two delegates who were head of workplace delegate structures of Publicorg. Long-term union involvement, long-term Publicorg employees.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Female dominated and comparatively low paid within the Australian public service.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>NSW Nurses’ Association, HealthCo and HospitalOrg</td>
<td>Private hospitals with multiple workplaces.</td>
<td>Two union negotiators who specialised in bargaining, one male, one female. Both experienced, and had negotiated with both organisations previously.</td>
<td>HealthCo Employer invited to participate but did not respond.</td>
</tr>
<tr>
<td></td>
<td>Female dominated, highly skilled.</td>
<td></td>
<td>HospitalOrg representative provided initial interview, did not respond to request for a follow up interview.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Both management negotiators had been involved in previous negotiations with Association.</td>
</tr>
<tr>
<td>LHMU and SecurityInc</td>
<td>Several worksites across Australia.</td>
<td>Senior male union official. Experienced in negotiations, had negotiated with SecurityInc previously.</td>
<td>Two management representatives interviewed during bargaining.</td>
</tr>
<tr>
<td></td>
<td>Privately owned, provided detention services to the Australian government.</td>
<td></td>
<td>Management negotiators had been involved in previous negotiations with LHMU.</td>
</tr>
<tr>
<td></td>
<td>Male dominated, mostly lower skilled occupations but with some responsibility.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>SDA and RetailCo</td>
<td>Large private sector retailer.</td>
<td>Male union Secretary. Experienced in negotiations, long history of negotiating with RetailCo.</td>
<td>Managers not interviewed as union Secretary concerned that a request to participate and consequent awareness of research could jeopardise negotiations.</td>
</tr>
<tr>
<td></td>
<td>Large female dominated workforce in 180 branches.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Low skill, low pay.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Data gathered from the case studies were augmented by additional data – two other important and crucial data sources. These were, firstly, the industrial instruments covering the case study organisations and which included awards, collective agreements and some human resource policies, and secondly, corporate documents about the organisation and the bargaining being undertaken, including emails and bulletins from management and unions.

3.4.3 Phase Three: Data analysis and synthesis of findings

The third phase of the research involved collating and synthesising the data. Using a coding framework based on the questions asked, case studies were analysed thematically to identify the factors which facilitated or inhibited equality bargaining. The findings of the case studies were examined and divided into categories to identify the factors for equality bargaining and for instances of behaviours consistent with traditional forms of bargaining. Again, the literature was referred to and the factors which facilitated or impeded equality bargaining were also used as a baseline to identify factors in this research. Throughout the analysis of each of the case studies, reference was continually made to the existing findings identified in the equality bargaining research. Once the case studies had been completed and the findings analysed, the new findings were incorporated into a diagram of factors which facilitated or inhibited equality bargaining, with the whole framed within the regulatory levels. This diagram is included in Chapter Nine. The model will assist workplace practitioners as they negotiate, as well as assisting theoretically by providing a pictorial representation of equality bargaining.

3.5 Conclusion

This chapter has discussed the research strategy, explaining the three stages of the design, and detailing why a case study approach, based on interviews, was the most suitable for this research. Limitations and criticisms of case studies were discussed, and perceived problems relating to the generalisability and validity of case studies were outlined, as were measures taken to address these problems. A case study approach is the most appropriate to undertake an examination of how equality bargaining occurs in negotiations, as it enables an in-depth analysis of the bargaining process to occur, and also enables a wide range of contextual factors to be considered.
The research undertaken in this thesis provides valuable insights into how equality bargaining occurs using a method which captures the dynamics of equality bargaining process by interviewing those involved. This approach provides a richness of detail which has been absent in much of the research, and which is essential now, in a changing industrial relations environment where unions still need to bargain for family provisions.
Chapter Four

The Context for Equality Bargaining in Australia

4.1 Introduction

This chapter provides an overview of the framework for industrial relations in Australia, examining the various forms of regulation to show how family provisions have been provided to employees. Until the 1990s, wages and employment conditions in Australia were set through a rich mix of ‘test cases’, legislation, industrial awards, collective agreements, individual contracts, human resource policies (Campbell and Charlesworth, 2004, 42-43) and informal agreement between managers and employees. Together, legislation and awards provided employees with minimum conditions. Employees and unions then bargained for over-award entitlements, which were contained in multi-employer collective enterprise agreements. This system provided employees with both minimum and above-minimum conditions and mechanisms for unions to secure further increases.

In 1991, enterprise bargaining was formally introduced into Australia through a decision of the Australian Industrial Relations Commission (AIRC), which lead to industrial parties engaging in bargaining with a single employer at the enterprise level. While the Workplace Relations Act 1996 introduced some changes, including the introduction of statutory individual contracts, the major changes to labour law occurred with the commencement of the highly controversial and unpopular ‘Work Choices’ legislation in 2006. Work Choices changed the industrial relations architecture, the bargaining environment, the minimum conditions available to employees, and, importantly for this research, the means by which family provisions were provided.

While a myriad of changes were occurring in the industrial relations sphere, unions, community and women’s organisations were also active in a related social policy sphere, heavily campaigning for the introduction of a national paid parental leave scheme. This chapter examines these changes, focusing on the regulation of family provisions through test cases, legislation, workplace collective bargaining and social policy. A timeline (at Table 4.1) provides further context and signposts the milestones
throughout 2005-2010, from the announcement of the *Family Provisions* test case decision, which is the starting point for this research, to the commencement of the *Fair Work Act* in 2010.

**Table 4.1: Timeline of Australian Industrial Relations and Regulating for Family Provisions, August 2005 – January 2010**

<table>
<thead>
<tr>
<th>General Industrial Relations Developments</th>
<th>Industrial Relations Developments – Family Provisions</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>December 2005</strong></td>
<td><strong>August 2005</strong></td>
</tr>
<tr>
<td><strong>November 2007</strong></td>
<td><strong>March 2006</strong></td>
</tr>
<tr>
<td>Australian Labor Party elected to government.</td>
<td><em>Work Choices</em> became operative - awards could no longer be varied to include test case provisions.</td>
</tr>
<tr>
<td><strong>2008</strong></td>
<td><strong>February 2008</strong></td>
</tr>
<tr>
<td>Australian government consulted on new labour legislation.</td>
<td>Australian government requested the Productivity Commission conduct an inquiry into paid parental leave.</td>
</tr>
<tr>
<td><strong>March 2008</strong></td>
<td><strong>September 2008</strong></td>
</tr>
<tr>
<td>Australian Industrial Relations Commission began process of award modernisation.</td>
<td>Productivity Commission released draft report recommending a national paid parental leave scheme be introduced.</td>
</tr>
<tr>
<td><strong>March 2009</strong></td>
<td><strong>February 2009</strong></td>
</tr>
<tr>
<td><strong>December 2009</strong></td>
<td><strong>May 2009</strong></td>
</tr>
<tr>
<td>Award modernisation process completed.</td>
<td>Australian Government announced introduction of national paid parental leave scheme.</td>
</tr>
<tr>
<td><strong>January 2010</strong></td>
<td><strong>January 2010</strong></td>
</tr>
<tr>
<td><em>Fair Work Act</em> became operative – increased minimum conditions for employees, included most of the <em>Family Provisions</em> test case entitlements.</td>
<td></td>
</tr>
</tbody>
</table>
4.2 Test cases

For much of the twentieth century in Australia, wages and working conditions were established through a process of arbitration, which ‘regulated relationships between organisations, between employers and employer associations on the one side and unions on the other’. Unions were central to arbitration, serving claims on employers and creating a dispute, which was then resolved through tribunals which made an industrial ‘award’ setting out wages and terms and conditions of employment (Cooper and Ellem, 2008, 535).

Prior to the Workplace Relations Act 1996, awards were ‘comprehensive documents covering a wide range of employment matters’ (Deery et al, 2001, 363) made and maintained by the AIRC. Awards applied to an industry, part of an industry, a region or State, or an enterprise (Creighton and Stewart, 2000, 122). Improvements to working conditions – including leave entitlements and other family provisions – were made through the Australian Council of Trade Unions (ACTU) applying for a ‘test case’ to be conducted. This was an important mechanism which increased working conditions for employees. The ACTU served a claim on multiple employers to vary a group of awards, the employers did not agree to the proposed variations, and a case was subsequently heard and determined by the AIRC. The awards were then varied to include the new entitlements, which then flowed on to all workers who were ‘employed by a company bound by a union claim’ (Cooper and Ellem, 2008, 535).

Other awards which were not included for variation in the original test case were subsequently varied by individual unions, which meant that nationally determined provisions flowed on to other industries. Test cases were important as:

‘...newly established benefits...can flow through to all awards and in this way underpin bargaining, both collective and individual. The role of such test cases in raising public awareness and providing valuable research in the issues should also not be underestimated; they can help to shift the public expectation of a safety net as well as the content of the legal right’ (Smith and Riley, 2004, 399).

Campbell and Charlesworth state that test cases were the main way of introducing minimum standards for family provisions for employees, ‘often build(ing) on successful collective bargaining initiatives in individual industries’ (2004, 42).
The first test case to secure increased family provisions was conducted in 1978 by the ACTU and affiliated unions to gain unpaid maternity leave for employees (9 March, 1979, 218 CAR 120). There were several drivers for this test case, including the increased entry of women into the labour market, a range of government inquiries into women’s employment which found that women did have a right to engage in paid employment, and changing community attitudes to the employment of ‘married women’ (Baird and Williamson, 2010a). The test case was also the culmination of feminist activity both inside and outside the ACTU. Campaigns and cases for equal pay had been conducted, and campaigning for community child care was also a key issue. In 1977, the ACTU endorsed a Working Women’s Charter. The charter included several recommendations, including that a claim for unpaid maternity leave be included by unions when negotiating with employers (Baird and Williamson, 2010a).

The ACTU subsequently conducted a test case for unpaid maternity leave (ACTU Special Conference, 1978). Interestingly, a test case for paid maternity leave was not recommended, as it was believed at the time that introducing employer funded paid maternity leave could result in employers not employing women, to avoid paying maternity leave (interview with former ACTU official, 27 May 2009). The ACTU lodged a dispute with the AIRC to claim a period of unpaid maternity leave of between 12 and 78 weeks, with a right to return to work. A test case was then heard. The AIRC awarded up to 52 weeks unpaid maternity leave and job protection with the right to return to work after leave to permanent, eligible female award-covered private sector employees, (218 CAR 120, 9 March, 1979). Pocock comments that ‘this was seen as an important achievement, despite [the maternity leave] being unpaid’ (1999, 58).

Following the unpaid maternity leave case, the ACTU conducted a series of other test cases to expand the scope of family provisions available to employees. The 1985 Adoption Leave case enabled permanent, eligible employees to take twelve months unpaid adoption leave (Print F9852, 16 August 1985). The Parental Leave case extended unpaid parental leave to male employees (Print J3596, 26 July 1990). The test case decision reflects an ideological shift emanating from welfare policy. Curtin, citing Bryson, stated that this was reflective of changes in welfare policy, where
‘pensions were redefined as parental or individual allowances, rather than in terms of being a wife or mother’ (1999, 58). The ‘redefinition’ of women in the welfare sphere was also reflected in the industrial sphere, specifically through the campaigns conducted by female unionists (Pocock, 1999, 58). Women were seen to be workers as well as mothers, and correspondingly, men were seen to be more than just breadwinners, and their caring responsibilities and desire to be more involved in parenting were also starting to be recognised.

In 1990, after lobbying from the ACTU and women’s organisations, the Australian Labor government ratified ILO Convention 156 (Pocock, 2009, 58). ILO Convention 156 ‘call(ed) for governments to implement policies that cater for the needs of workers with family responsibilities’, (Pocock, 2009, 58). To complement the ratification of the convention (Pocock, 2009, 58), the ACTU instigated a test case seeking five days’ family leave. The test case established that up to five days’ sick leave could be used for caring purposes and also provided employees with rights to access single days’ annual leave, rostered days’ off and make-up time (Print L6900, 29 November 1994). In 1995, this was followed by the Personal/Carers’ Leave case which combined sick and personal leave, so that employees could access a greater quantum of leave, however, this remained capped at five days (Print M6700, 28 November 1995). Again, these entitlements were only available to permanent employees, who had accrued this leave. Baird explains that the quantum of leave was not increased as the AIRC did not want to increase business costs, instead the AIRC enabled employees to use existing leave entitlements more flexibly (Baird, 2005, 52).

In 2000, the ACTU developed and implemented a comprehensive strategy to increase the level of family provisions, and released an ‘action plan for balancing work and family life’ (ACTU, 2000). The action plan encouraged unions to bargain for improved family provisions as well as outlined new test cases to be conducted (ACTU, 2000, 3). The ACTU believed it was becoming increasingly difficult for employees to combine work and family responsibilities, due to:

‘…greater job insecurity and work demands and federal government cuts to childcare and other family support services. Many workers are not aware of their family leave entitlements and others are discouraged from utilising them’ (Sharan Burrow, ACTU President, cited in ACTU, 2000, 4).
It was therefore necessary for the ACTU to take further action.

The ACTU decided to conduct three test cases. The first would seek to extend unpaid parental leave to casual employees, and this test case was conducted and determined in 2001. This test case was important as the rate of casualisation had increased rapidly in Australia in the decade prior to the case, from 19.4 per cent of employees in 1990, to 26.4 per cent in 1999, according to Australian Bureau of Statistics data used by the ACTU. At the end of the decade, almost a third of women in the labour force were employed casually. Furthermore, over two-thirds of casual employees worked regular hours, and over a half had been in their current employment for more than a year. In effect, many of these casual employees were working as permanent employees, but did not receive the entitlements associated with permanency, including unpaid parental leave (PR904631, 31 May 2001 at par 24-25). The Parental Leave for Casual Employees case (PR904631s, 13 May 2001) enabled casual employees employed on a regular and systematic basis to access up to twelve months unpaid parental leave – in other words, long-term casual employees were treated in the same way as permanent employees.

The second test case proposed was to improve existing unpaid parental leave by extending the quantum of unpaid parental leave and enabling parents to return to work part-time after the birth of a child. The third was to provide additional carer’s leave (ACTU, 2000, 5). The second and third test cases combined to become the Family Provisions case. It is also worth noting that in 2002, the ACTU released guidelines on how to bargain for paid maternity leave, which also fulfilled one of the action items in the ACTU’s three-year strategy (ACTU, 2000, 4). These guidelines included ‘arguments in support of paid maternity leave, international comparisons and examples of provisions already agreed by Australian employers’ (ACTU, 2002).

At its 2003 Congress, the ACTU reaffirmed support for the Family Provisions test case, which was then underway, and also committed to assist unions to ‘support the work and family test case(s) by bargaining’ for a range of issues, including paid maternity leave, improved access to paid and unpaid carer’s leave and assistance with child care (ACTU, 2003). The ACTU also reaffirmed its commitment to campaigning for a national paid maternity leave scheme and also indicated that future test cases
would be conducted on leave ‘in relation to pregnancy, birth, bonding and breastfeeding, and to improve and extend paid personal leave’ (ACTU, 2003). The commitment to bargaining for paid maternity leave was not reinforced at the next triennial Congress however, which focused on legislating for an alternative industrial relations system to Work Choices (ACTU, 2006, 4). Subsequent test cases for family provisions were not pursued, also possibly due to the effects of Work Choices, as explained later in this chapter. The Family Provisions case was conducted, however, and provided a range of significant new entitlements.

4.2.1 The Family Provisions case
In its submission identifying triggers for the case, the ACTU argued that over the last thirty years women’s employment had increased substantially, however workplaces had not adapted to accommodate the needs of workers with caring responsibilities, the majority of whom were women (ACTU, 2004a, 8). New factors also made the provision of new entitlements necessary. The increased employment of women, coupled with a declining fertility rate, an ageing society and concerns that the labour force would not be large enough to sustain the future population made women’s continued labour force participation essential (ACTU, 2004a). New family provisions were therefore needed to facilitate continued and higher female participation.

As a result of women’s increased labour force participation, community debate around work and family issues had escalated. Since 1999, two Sex Discrimination Commissioners in the Human Rights and Equal Opportunity Commission (HREOC) had researched and published in this area, on pregnancy discrimination (HREOC, 1999) and the need for Australia to have a universal scheme of paid maternity leave comparable with overseas schemes (HREOC, 2002). Researchers had also examined the issue of paid maternity leave and called for the introduction of such a scheme (see for example, Baird et al, 2002).

The Australian government was also implementing work and family initiatives at this time. In 2003, the conservative Prime Minister declared work and family issues to be a ‘barbecue stopper’ (Howard, 2003) – an issue so important that conversations around a social barbecue would stop, so that work and family issues could be discussed. At this time, and partly in response to a growing demand for paid maternity
leave, a federal government Work and Family Taskforce was established to inquire into measures to assist parents to balance work and family responsibilities (Howard, 2004). This culminated not in the adoption of a paid maternity leave scheme, but in the introduction of monetary payment known as the ‘Baby Bonus’ (Brennan, 2008).

Other government and parliamentary action followed. In February 2005, a parliamentary committee resolved to conduct an inquiry into ‘how the Australian Government can better help families balance their work and family responsibilities’ (House of Representatives Standing Committee on Family and Human Services, 2006). An inquiry was conducted and the Committee made a series of recommendations (House of Representatives Standing Committee on Family and Human Services, 2006), to which there has never been a response, due to a change of government in November 2007.

Legal developments, both internationally and domestically, were also a driver for the Family Provisions test case. The existence of innovative family provisions in international jurisdictions, particularly the UK’s Employment Rights Act 1996 (Murray, 2005, 328), which provided employees with the right to request flexible working arrangements, was a major impetus for the ACTU’s claim. A substantial body of Australian anti-discrimination case law had also been steadily developing, and the decisions in these cases not only raised legal questions on the extent to which employers were required to seriously consider an employee’s request for a change in their working arrangements, but also public policy questions about an employer’s responsibility in assisting employees to balance work and family commitments (Adams, 2005).

These industrial, policy and legal initiatives occurred simultaneously and reinforced each other, building a groundswell of community support for increased rights in the workplace, especially for female employees. It was against this background that in June 2003, unions lodged award variation applications in a work and family test case (ACTU, 2005a).
i) The test case claims

The ACTU claims in the *Family Provisions* test case were structured around the major transitional points of a life cycle of caring responsibilities. Accordingly, there were a range of claims around child birth. The parental leave claim included extending the amount of unpaid parental leave available to employees from twelve to twenty-four months, extending the amount of unpaid simultaneous parental leave (where both parents could take leave at the same time) from one to eight weeks and requiring an employer consult with an employee on parental leave about significant changes to their workplace (C2003/4198, 23 June 2003). The claim did not include paid parental leave, as the ACTU was waiting on the government’s response to the HREOC report on this issue (Cooper, 2004, 221).

The next phase in the life cycle revolves around child care, and accordingly, the ACTU claim included measures to extend flexibilities in working arrangements so that caring responsibilities could be accommodated. The claim included the right to work part-time on return from parental leave until the child was school aged and for employees to be able to request a variation in working arrangements and hours. Like the UK legislation, the ACTU claims contained mechanisms whereby an employer could refuse an employee’s request, however, the ACTU requirements were more onerous for businesses to meet than in the UK legislation, which enabled an employer to refuse on ‘reasonable business grounds’ (Murray, 2005). The claim also included a right to unpaid emergency leave and purchased leave. These forms of leave would not only assist employees with school aged children but would also assist employees caring for older family members (ACTU, 2003).

In response to the lodgement of these claims, employer groups lodged counter-claims. In contrast to the ACTU claims, the employer claims were not to establish any new rights for employees, but to change existing family provisions for employees by increasing the flexibility around hours, leave, working arrangements and removing rigidities around part-time and casual employment (Australian Chamber of Commerce and Industry and National Farmers’ Federation, 2004). These changes had the potential to disadvantage employees. For example, the employers’ claim provided that ‘an employee may elect, with the consent of the employer, to take time off in lieu of payment for overtime... overtime taken off as time off during ordinary time hours
shall be taken at the ordinary time rate’ (PR082005, at par 277, 8 August, 2005). The ACTU submitted that most awards allowed for time in lieu of overtime to be taken at overtime rates, and that such a provision would disadvantage employees with family responsibilities (PR082005, at par 279, 8 August, 2005). The ACTU argued that the employer claims would allow employers to opt out of award entitlements, to which the AIRC ultimately agreed.

ii) Arguments used in the Family Provisions test case

A great deal of evidence and many experts, individual employees and employers were presented by the respective parties in support of their claims. The ACTU submissions included material on a wide range of social issues, including declining fertility levels, the relationship between caring responsibilities and an ageing population and the effects of time pressure on family well-being (ACTU, 2004b, 44-54). The aim of these arguments was to show that ‘(c)hanges in the organisation of work have not been met by new arrangements for the care of dependents’ and that ‘(w)orkers bear the impact of these changes, and work has a negative effect on their family life’ (ACTU, 2004a, 2). The employer groups also acknowledged these social and demographic changes, and recognised that that there was a challenge to ‘empower’ employers to provide them with greater capacity to assist employees in balancing work and family (ACTU, 2004a, 1-7). Employer groups advocated that ‘bargaining is the only effective mechanism to match the plethora of diverse employee requests in relation to work and family with business viability and workplace operating requirements’ (ACTU, 2004a, 2-3).

The (conservative) Australian government also supported bargaining for family provisions, and cited its database of a census of certified agreements to show that 87 per cent of employees on certified agreements were covered by an agreement containing at least one family provision (which included various types of leave, part-time work, and flexible working hours) (PR082005, at par 107, 8 August 2005). An ACTU expert witness disputed this claim, stating that in essence these figures were flawed due to including flexible hours, which only delivered flexibility to employers (Professor William Mitchell, cited in PR082005, at par 111, 8 August 2005). Similarly, the ACTU cited research showing that once existing test case provisions were taken out, the incidence of family provisions in agreements fell sharply, to 13.5
per cent in the sample studied (Whitehouse cited in PR082005, at par 113, 8 August 2005). The AIRC agreed and found that the Australian government had overstated the extent of family provisions in enterprise agreements (PR082005, at par 119-21, 8 August 2005).

The different arguments used by the various parties encapsulated the crux of the matter – whether or not bargaining, the favoured mechanism in Australian industrial relations – was delivering family provisions. As noted by the AIRC, this was one of the main areas of contention (PR082005, at par 105, 8 August 2005). While the parties disagreed on the effectiveness of bargaining, there was consensus that additional measures could be considered to assist employees with caring responsibilities. The AIRC stated in its decision:

‘(t)here seems little room for doubt that all parties accept that there should be greater flexibility in the regulation of working arrangements to assist employees to reconcile their work and family responsibilities. Where the parties differ is in the kind of flexibility which should be provided’ (PR082005, at 388, 8 August 2005).

The AIRC accordingly developed a suite of measures to achieve this flexibility.

iii) The Family Provisions test case decision

The AIRC released its decision on the Family Provisions case on 8 August 2005, almost two years after the case had commenced (PR082005). Arguably, the most significant aspect of the decision was that the AIRC granted a clause extending unpaid parental leave entitlements, representing the first major extension of parental leave rights since the 1979 unpaid maternity Leave case. The new clause gave employees a right to request several provisions, namely: extending the period of unpaid parental leave to twenty-four months; extending unpaid simultaneous parental leave up to eight weeks, and to return to work part-time after a period of parental leave until the child reached school age (PR082005, at par 396, 8 August 2005). The AIRC also granted a right requiring an employer communicate with an employee on parental leave about any major change in the workplace (PR082005, Appendix, 8 August 2005).

The case also extended a range of other leave entitlements. Carer’s leave was increased to ten days a year, as per agreement between the employer and union parties
in conciliation. This was a doubling of the quantum contained in the Workplace Relations Act. Additionally, employees (including casual employees) who had used all their paid personal leave entitlements could access an additional two days’ unpaid leave (PR082005, Attachment A, 8 August 2005). Some of the employer groups’ claims were also granted. Annual leave could be carried forward for two years (PR082005, at par 296, 8 August 2005), and employees could take up to ten days annual leave in single days (PR082005, Attachment at 302), both by agreement with the employer.

In its decision, the AIRC recognised that it should ‘take a positive step by way of award provision to assist employees to reconcile their work and family responsibilities’, recognising that not all employers would offer family provisions (PR082005, at par 393, 8 August 2005). The AIRC noted that bargaining had not delivered family provisions uniformly, and concluded that ‘many employees lack sufficient bargaining power to insist upon agreements which enshrine family friendly policies’ (PR082005, at par 123, 8 August 2005). The AIRC also recognised that while creating new rights may have increased costs to employers, reduced efficiency and created disharmony, a further step was needed beyond just establishing new ‘facilitative’ clauses based on seeking an employers’ agreement to use existing provisions more flexibly. The AIRC therefore created a new ‘right to request’ a range of leave provisions, complete with a duty on employers not to refuse the request on unreasonable grounds (PR082005, at par 396, 8 August 2005).

The test case decision was very important as it established new clauses to assist employees to meet their work and family responsibilities, representing the most significant new entitlements since the Family/Carer’s Leave test case decision a decade earlier. The test case provided an opportunity to examine the effectiveness of bargaining in delivering family provisions, and as a result of this, it became clear that new rights were needed.

In May 2005 the Australian government, however, announced new legislation, and the Workplace Relations (Work Choices) Amendment Act 2005 became operative in March 2006. Unions had been lodging award variations with the AIRC to vary their awards to include the test case provisions, from the time the AIRC decision was
delivered to the commencement of *Work Choices*. However, the operation of new legislation stalled the ‘flowing on’ of the provisions as it was unlikely that further awards could be varied. This is discussed below, but firstly it is necessary to take a step back, and examine the legislative developments leading up to *Work Choices*, focusing on how the legislation regulated family provisions, complementing the minima won through test cases and contained in awards.

4.3 Legislation
This section covers developments in labour law from 1996 to 2009. This covers the period from the commencement of *Workplace Relations Act*, as this legislation instigated a markedly different bargaining environment than the previous labour law and reduced the legislated minimum conditions available to employees. The section concludes with the introduction of the *Fair Work Act* 2009, which restored the centrality of collective bargaining (Cooper, 2010, 267) and increased the legislated minima.

4.3.1 *The Workplace Relations Act and family provisions*
In 1996 the conservative Australian Coalition government introduced the *Workplace Relations Act*. While this legislation introduced a raft of changes, a brief overview will suffice to provide the necessary background. Major changes were made to collective bargaining, with academics stating that the *Workplace Relations Act* tilted the scales very heavily against union-based collective bargaining (Cooper and Ellem, 2008, 538). This was achieved through enabling employers to make collective agreements without unions (Campbell and Brosnan, 1999, 367) and promoting individual bargaining. The new legislation introduced individual statutory contracts (Australian Workplace Agreements, otherwise known as ‘AWAs’) which overrode conditions in collective agreements, and ‘stripped unions of their traditional armoury as bargaining agents’ (Cooper and Ellem, 2008, 538). The legislation also made it easier for employers to make non-union collective agreements with their employees (Cooper and Briggs, 2009, 100). The *Workplace Relations Act* also impeded collective bargaining by introducing new restrictions on unions, including around coverage and access to members and it was more also difficult to take industrial action (Campbell and Brosnan, 1999, 367). These measures enabled a ‘hardening in employer strategy’ against unions (Cooper and Ellem, 2008, 540).
The legislation also reduced the items which could be included in awards, to ‘twenty allowable award matters’. This occurred through ‘a process of award simplification’ (Cooper and Ellem, 2008, 539), which was a major exercise where awards were reviewed by the AIRC and content reduced to the twenty matters. Awards became a ‘safety net’ of minimum conditions which underpinned bargaining (Cooper and Ellem, 2008, 539), and collective agreements prevailed over awards (MacDermott, 1997, 60). The allowable award matters included personal/carer’s leave and parental leave, as well as other non-family provisions (Creighton and Stewart, 2000, 135). Concerns were expressed by unions and academics (see for example, Burgess and Baird, 2003; Burgess and Strachan, 1998; Pocock, 1998) that women would be adversely impacted by the downgrading of awards and increased focus on enterprise bargaining, and this is discussed later in this chapter.

Women’s workforce participation rate had been expanding continuously over the preceding three decades to 1996, and there was a corresponding increase in the number of employees with family responsibilities in the workplace (Burgess and Strachan, 1998, 23; interview with Cath Bowtell, ACTU union official, 17 July 2009). The Workplace Relations Act included a number of provisions to assist employees to balance their work and family responsibilities. As contained in the previous federal industrial relations legislation, the objects of the Act included ‘assisting employees to balance their work and family responsibilities effectively through the development of mutually beneficial work practices with employers’, highlighting the focus on bargaining (s. 3(i) and (j), Workplace Relations Act). The emphasis was on bargaining at the enterprise level to relieve work and family pressures, and this assumed a relatively even distribution of bargaining power between employers and employees. The Workplace Relations Act also contained the minimum provisions of twelve months unpaid parental leave, which had also been introduced in 1993 (Schs 1A and 14 Workplace Relations Act). This was available to all employees (not just those covered by the legislation), including casual employees. The Workplace Relations Act continued operating without major changes, until 2006, when the industrial relations system was dramatically altered.
4.3.2 Work Choices and family provisions

On 14 December 2005, the Workplace Relations (Work Choices) Amendment Bill 2005 received royal assent and became law. This was highly contentious legislation. While some elements became immediately operative (Workplace Express, 2005), the majority of the legislation became effective on 27 March 2006 (Stewart and Forsyth, 2009, 3). The Work Choices legislation was extraordinarily long and complex, with ‘(l)arge slabs…virtually unintelligible to all but the most persistent and expert reader’ (Stewart, 2006, 26). This section therefore provides an overview of only a few of the changes introduced by Work Choices before focusing on how the legislation impacted on bargaining for family provisions.

One of the most significant changes introduced by Work Choices was the expansion of the federal industrial relations system. The Australian government claimed that the new legislation would cover 85 per cent of Australian employees (Stewart and Priest, 2006, 4). This ‘unified’ system was then tailored to focus industrial relations at the level of the enterprise and the individual, with a concomitant focus on workplace bargaining. To increase the level of bargaining, employees needed to be ‘moved off’ awards and the award system downgraded so that it was no longer a viable option. Indeed, Work Choices severely restricted the circumstances in which awards could be created or amended (Stewart, 2006, 40), meaning that for the most part, employees and unions had no choice but to bargain for new or increased provisions. However, while awards were downgraded, so too were collective agreements, with academics stating that ‘the central mission of the government was in line with neoliberalism elsewhere: to reduce union power and drive the individualism of the employment relationship’, which required a shift away from collective bargaining (Cooper and Ellem, 2008, 533). This section examines how the government attempted to fulfil these aims.

i) Awards, agreements and minimum standards

Prior to Work Choices, awards formed the benchmark by which collective workplace agreements were measured. The no disadvantage test (NDT) was a statutory mechanism which operated to ensure that terms of the proposed workplace agreement did not undercut the relevant award (Creighton and Stewart, 2000, 167). Under Work Choices, the NDT was removed and instead, a set of five new, and lower, minimum
standards became the benchmark. These were ironically called the ‘Australian Fair Pay and Conditions Standard’ (AFPCS). Under Work Choices, workplace agreements could not offer terms and conditions less than the minima contained in the AFPCS (Stewart and Priest, 2006, 12).

The AFPCS included twelve months unpaid maternity leave, four week’s annual leave (with two of these able to be cashed out), ten days’ personal/carer’s leave per year as in the Family Provisions case, plus an additional two days unpaid emergency leave and two days paid compassionate leave, maximum thirty-eight ordinary hours of work a week (which could be averaged over twelve months) and a minimum wage (Stewart and Priest, 2006). It was predicted at the time that the AFPCS would render awards obsolete, as awards would no longer contain the minima for employees’ wages and conditions (Pocock, 2005) and would be replaced over time with the AFPCS or workplace agreements.

Not only did awards no longer form the safety net, but by removing the NDT, the nexus with bargained workplace agreements was lost. The hierarchy of industrial agreements was overturned, so that awards no longer underpinned agreements, with provisions in awards operating concurrently with an agreement, but instead, agreements displaced awards (CCH, 2006, 40). It therefore followed that where an award condition was contained in both an award and an agreement, the agreement conditions prevailed, even if that term was downgraded to be lesser than the original award condition, but at least equivalent to the AFPCS. Because agreements displaced awards, conditions which were only contained in awards did not apply to employees, who were only covered by the agreement (Stewart, 2006, 41). These were significant changes, which immediately reduced conditions and had the potential to further reduce conditions for employees over time as new collective agreements were made.

ii) Transitional provisions and the impacts on the Family Provisions test case entitlements

A key aim of the Australian government’s industrial relations legislation was to have a single industrial relations system, rather than the mix of State and federal industrial relations regulation which had developed since Federation in 1901. Work Choices introduced changes so that former State awards became part of the federal system and
were renamed ‘notional agreements preserving State awards’ (NAPSAs). NAPSAs and pre-reform collective agreements operated together, and so employees who were covered by an award varied to include the test case provisions retained access to the provisions. Access to the test case entitlements ceased when employees became covered by a new (federal) agreement, which operated to the exclusion of the award (Stewart, 2006, 41). Similarly, employees covered by both a federal award and a federal agreement lost access to award conditions, including the Family Provisions test case entitlements, as the federal agreement overrode the award (Stewart, 2006, 41). Unions therefore needed to bargain to regain these lost award provisions. However, relatively few employees had access to the test case provisions in their awards, as discussed below.

The interval between the test case decision (August 2005) and Work Choices becoming operative (March 2006) was the only time that federal awards could be varied to include the new family provisions, as Work Choices largely prevented awards from being varied (Williamson and Baird, 2007, 53). It was therefore likely that those who did not have access to the last test case provisions would be unable to secure them through an award variation. Preventing award variations, combined with future test cases being ‘curtailed, if not effectively abolished’ (Murray, 2006, 231) meant that it was unlikely that employees without access to the test case provisions would secure them in the new system. These changes constituted major negative impacts of Work Choices. They were somewhat overshadowed, however, by other broader, negative impacts of the legislation, such as the reduced minima and restrictions on union activities, which became the focus of the union movement’s campaign to remove Work Choices.

Just under 20 per cent of all federal awards were varied to include the test case provisions by the time Work Choices became operative (Williamson and Baird, 2007, 428). That is, the majority of federal awards were not varied. The award variations were uneven across industries, with a higher proportion of awards being varied in the ‘health and welfare’, ‘local government administration’, ‘technical services’, ‘clerical, and banking services’ sectors (Williamson and Baird, 2007, 59-60). In regards to the content of the award variations, just over one-third of varied awards included all of the Family Provisions test case clauses (Williamson and Baird, 2007, 61). Just over
three-quarters of the varied awards included the full suite of parental leave provisions
and almost all of the varied awards includes at least one element of the test case
parental leave entitlements (Williamson and Baird, 61).

The fact that it was unlikely that awards could be varied to include the *Family
Provisions* test case entitlements, and that employees who did have access could
subsequently lose them, inspired the research questions for this thesis. These are:
would unions negotiate for family provisions in a changing industrial relations
environment? As detailed in the literature review in Chapter Two, this question then
lead on to other questions, to determine whether or not a form of equality bargaining
occurred, and if it did, to identify the facilitative and inhibitive factors for equality
bargaining. The main research question developed to also require consideration of
whether unions would bargain for family provisions as the social policy environment
changed, as will be explained.

**iii) State government responses to Work Choices’ impact on test case entitlements**

While unions concentrated on campaigning against *Work Choices*, State governments
also introduced measures to ensure that groups of employees had access to the test
case entitlements. It is also worth noting that at this time the State and Territory
governments were all Labor governments and were opposing measures introduced by
the conservative Coalition government.

The Victorian government introduced the test case provisions for State government
employees to ensure that these formed part of the award minima and to redress the
Commonwealth’s ‘neglect’ in not including the provisions in the AFPCS (Hulls,
2006). The Victorian government only had jurisdiction over State government
employees and those in essential services, the Victorian government having ‘referred’
its industrial relations powers to the Commonwealth in 1996 (Creighton and Stewart,
2000, 191). Award-covered employees outside the Victorian public service may have
had access to the test case provisions if their award was varied to include the
provisions prior to *Work Choices* becoming operative.

The Queensland government also noted that the test case provisions did not form part
of the AFPCS (Barton, 2005) and amended the *Industrial Relations Act 1999* (Qld) to
enable employees to access the provisions. Similarly, the Western Australian government amended the *Minimum Conditions of Employment Act 1993* (WA) to include the *Family Provisions* case entitlements (Department of the Premier and Cabinet, 2006).

In regard to industrial mechanisms, the NSW, South Australian and Tasmanian Industrial Relations Commissions flowed on the test case provisions (with some variations) via a State general order. The NSW order excluded a range of sectors, including the public sector (NSW IRComm 478, 19 December 2005). Like NSW, the Tasmanian Industrial Relations Commission order was applicable to private sector awards only (T12444 of 2005, 8 March 2006). Public sector awards were excluded as existing provisions for these employees were equal to, or exceeded the test case entitlements (NSWIRComm 63, 28 April 2006). The South Australian general order was intended to be applicable to South Australian awards, however apart from the vehicle awards (the initial awards varied by the Order), other State awards were varied individually (SAIRComm 7, 9 March 2006). The range of employees who could access the Family Provisions case entitlements as at March 2007, when *Work Choices* became operative, is in Table 4.2.

To summarise, by the end of 2006, access to the *Family Provisions* entitlements was uneven, and unions were required to negotiate for these entitlements for those employees who were not covered, or for those who lost access as a result of *Work Choices*. However, new federal labour law soon negated the need to bargain for all of these provisions, as discussed below.
Table 4.2: Employees Eligible to Access Family Provision Test Case Entitlements Through Industrial Instruments: March 2007

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Employees with Access</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commonwealth (includes Northern Territory and Australian Capital Territory)</td>
<td>Employees covered by varied federal awards.</td>
</tr>
<tr>
<td></td>
<td>Public servants could access award provisions.</td>
</tr>
<tr>
<td>Victoria</td>
<td>Employees covered by varied federal awards.</td>
</tr>
<tr>
<td></td>
<td>Employees covered by Industrial Relations Act (Qld), included public servants.</td>
</tr>
<tr>
<td>Queensland</td>
<td>Employees covered by varied federal awards.</td>
</tr>
<tr>
<td></td>
<td>Employees covered by State general order, except NSW public servants, teachers, religious staff.</td>
</tr>
<tr>
<td>New South Wales</td>
<td>Employees covered by varied federal awards.</td>
</tr>
<tr>
<td></td>
<td>Employees covered by State general order – limited to private sector.</td>
</tr>
<tr>
<td>Tasmania</td>
<td>Employees covered by varied federal awards.</td>
</tr>
<tr>
<td></td>
<td>Employees covered by State general order (cafes and restaurants; retail; commercial travellers; dental technicians; laundry and quarry workers). Employees covered by other awards if individually varied.</td>
</tr>
<tr>
<td>South Australia</td>
<td>Employees covered by varied federal awards.</td>
</tr>
<tr>
<td></td>
<td>Employees covered by Minimum Conditions of Employment Act 1993 (ie outside Work Choices).</td>
</tr>
<tr>
<td>Western Australia</td>
<td>Employees covered by varied federal awards.</td>
</tr>
</tbody>
</table>

Source: Williamson and Baird, 2007, 71-72

4.3.3 The Fair Work Act and family provisions

A new Labor government was elected in Australia in November 2007. The Australian Labor Party had gone to the election with a new industrial relations policy entitled Forward with Fairness, and after consultations conducted throughout 2008, the resulting Fair Work Act was duly passed in March 2009. While the Fair Work Act 2007 retains many elements of Work Choices, the legislation was significantly different from its predecessor and promised a ‘new, simpler and fairer system
(Stewart and Forsyth, 2009, 3; 6). There are several key elements of the legislation which are relevant to this thesis.

i) Collective bargaining

The first aspect of the *Fair Work Act* deserving comparison with *Work Choices* is the strengthening of collective bargaining and the introduction of new forms of bargaining. One of the first actions of the new government was to pass transitional legislation to prevent new AWAs being made, although existing AWAs would remain alive (Stewart, 2009, 9). The new legislation also includes a ‘better off overall test’, which replaces the no-disadvantage test for collective agreements (Stewart, 2009, 31) and ensures that agreements will not be able to undercut awards. The award system has also been restored, as has the hierarchy between awards and agreements.

There are several new forms of bargaining, including good faith bargaining, which is based on bargaining parties making ‘a sincere effort’ (Cooper and Ellem, 2009, 288). Other forms of bargaining also became available under the *Fair Work Act*. Parties are able to engage in ‘pattern bargaining’, which is defined as seeking common claims in two or more agreements, with two or more employers. This enables unions to make common claims on employers, however they also need to be ‘genuinely trying to reach agreement with each employer’ (Cooper and Ellem, 2009, 298). This may assist bargaining in low paid, female dominated industries, where claims can be coordinated to improve wages and working conditions across a number of enterprises or even an industry. Another innovation which may assist low paid female employees is the introduction of a ‘low paid bargaining stream’, where unions can bargain with multiple employers for improved wages and conditions for low-paid employees (Cooper and Ellem, 2009, 302-303). The new legislation potentially provides some avenues to improve women’s wages and conditions.

ii) National Employment Standards

A second major element relevant to this thesis is that the minimum conditions of employment have been increased to ten new National Employment Standards (NES), effective from 1 January 2010. The NES now include maximum hours, a range of leave entitlements (parental, personal/carer’s, annual, community service, long service), a right to request for flexible working arrangements, public holidays, notice
of termination and redundancy pay, and a ‘Fair Work Information Statement’ (Murray and Owens, 2009, 44).

The *Fair Work Act* retained the emphasis on a floor of individual rights and increased the minima from the five contained in the AFPCS under *Work Choices*, to ten NES. The NES enshrined a ‘right to request’ flexible working arrangements, and increased the unpaid parental leave provisions. Both are derived from, but not exactly the same as, the *Family Provisions* case (Baird and Williamson, 2009, 338). Parents of a child under school age have the right to request a change in working arrangements to care for the child, such as changes in hours of work, patterns and location of work. Eligibility for the provision is limited to employees who have twelve months service with an employer, and long-term casual employees. An employer can refuse a request on ‘reasonable business grounds’ and the employee has no avenues of appeal (Baird and Williamson, 2009, 338).

The other new NES provides twelve months unpaid parental leave for each employed parent, and a right to request an additional twelve months unpaid leave by one parent (if the balance is not used by the other parent), potentially enabling an employee parent to access up to twenty-four months parental leave in total. The twelve month extension can also be refused by the employer on ‘reasonable business grounds’, as with the right to request flexible working arrangements NES (Baird and Williamson, 2009, 343). The right to request an additional twelve months unpaid parental leave replicates the *Family Provisions* case entitlement (Murray and Owens, 2009, 48). The NES do not include access to paid parental leave, an issue taken up below.

*iii) Award modernisation*

The third element of the *Fair Work Act* to be considered here is the award system. The minima for employment conditions are set through both the NES and awards, which have undergone a ‘modernisation’ process. At the request of the new government, in March 2008 the AIRC commenced a process of ‘award modernisation’, to ‘simplify’ and ‘rationalise’ Australia’s system of awards, to make new awards for employees in the federal system and for those who were previously covered by State awards (Stewart and Forsyth, 2008, 9). The Workplace Relations Minister stated that the aim of the process was ‘to reduce the regulatory burdens on
business, promote collective bargaining, and, in conjunction with the National Employment Standards, provide a minimum safety net of employment terms and conditions’ (Gillard, 2009a). The Australian government stated that the process was not intended to disadvantage employers or employees (Cooper, 2010, 264).

The award modernisation process was completed by December 2009, by which time the AIRC had reduced and simplified over 1,500 awards and instruments to 122 awards (Cooper, 2010, 264). Modern awards contain a range of minima to complement the NES, but do not contain any additional family provisions (Murray and Owens, 2009, 53). Women’s groups and unions were critical of the outcomes, particularly as it affected some groups of employees in female dominated industries. In some cases, wages and selected working conditions were combined and reduced to the lowest level (Baird and Williamson, 2010b). Baird and Williamson note that ‘(a)wards have also lost important provisions won through test cases, such as the right to request eight weeks simultaneous unpaid parental leave awarded in the Family Provisions test case’ (2010, 364)\(^1\). The reduced wages and conditions in awards means that unions may be required to bargain to restore lost conditions.

The award modernisation process did not impact on the negotiations in the case studies undertaken for this thesis to any significant extent, however, it is worth noting that this process was being undertaken at the same time as the NES were being developed, so there was a great deal of uncertainty about the level of minima, both for employers and unions in the period this research was being undertaken. This uncertainty was further compounded by a government inquiry examining a national paid parental leave scheme, one of a number of inquiries instigated by the new government, which complemented inquiries into the *Sex Discrimination Act* 1984, pay equity (Baird and Williamson, 2008, 333), and later, the *Equal Opportunity for Women in the Workplace Act* 1999 (Baird and Williamson, 2009, 362). The paid parental leave inquiry is discussed later.

To summarise, it is evident that a great deal of major legislative changes occurred to Australian labour law throughout 2005 to 2009. While these changes impacted on the

\(^1\) The NES enables parents to take three weeks simultaneously (s. 72(5)(a), *Fair Work Act*).
minimum level of family provisions as well as the bargaining environment, they also impacted on the specific bargaining environment of the cases studies, as will become evident in Part Two of this thesis. However, it is now necessary to further consider the development of collective bargaining in Australia, particularly bargaining for family provisions.

4.4 Collective bargaining
In the late 1980s and 1990s, employer organisations lobbied persuasively for labour market deregulation, which was a ‘removal of external, protective forms of labour regulation’ to redress ‘balance of payments difficulties, stagnant private sector investment and lagging productivity growth’ (Campbell and Brosnan, 1999, 353). Advocates of deregulation also argued that increased efficiency in organisations could only be achieved ‘if the shackles of regulation [were] abolished’ and replaced with increased management prerogative (Buchanan and Callus, 1993, 515). The main way these ‘shackles’ could be cast off was through dismantling Australia’s award system (Campbell and Brosnan, 1999, 353), which as discussed, was achieved through changing the labour legislation.

In an environment of lobbying from the business community for the deregulation of the award system, in 1991 the AIRC introduced an enterprise bargaining principle as part of its national wage case determination. This ‘opened up the possibility of workplace specific collective agreements (which) compelled unions and employees to agree to microeconomic reforms’ (Hall, 1999, 2), and pursue productivity bargaining (Campbell and Brosnan, 1999, 366). The emphasis on productivity also resulted in ‘concession bargaining, enabling conditions to be traded off for wage increases’, causing some female unionists to concentrate on maintaining equal opportunity initiatives gained through human resource policies (Pocock, 2009, 57). In 1992, the ACTU also released guidelines on how to bargain for family provisions, which included information about a range of provisions as well as model clauses from collective agreements (ACTU, 1992).

In 1993, the Industrial Relations Reform Act was introduced by a Labor government to ‘accelerate the process of labour market deregulation’, including by expanding the scope for enterprise agreements (Campbell and Brosnan, 1999, 364). Bargaining was
‘decentralised’ (described as ‘a shift in the primary locus of bargaining’: Campbell and Brosnan, 1999, 365). Awards became a ‘safety net’ containing minimum wages and conditions, and parties were required to bargain for additional wages or entitlements at the enterprise level and with a single employer.

By 1996, collective agreements contained equal opportunity items, including family provisions, only ‘to a very limited extent’ (Burgess and Strachan, 1998, 30). Researchers expressed a range of concerns about the possible effects of a decentralised industrial relations system on female employees, including that bargaining centred around the needs of a male, full-time unionised worker, not women’s work and caring needs (Burgess and Baird, 2003, 7). Additionally, some groups of female workers occupied marginal labour market status and were not in ‘standard employment’, which was the basis of collective bargaining (Burgess and Strachan, 1998, 24; 27). Women’s predomination in part-time and casual employment, contributed to female employees being less present in the workplace and less industrially organised, which resulted in lower bargaining power (Burgess and Strachan, 1998, 34; Pocock, 1998, 594).

Research conducted soon after the introduction of the enterprise bargaining principle in 1991 showed that family provisions or other equality items were not considered to be significant issues for negotiations, and further, that bargaining and agreement-making were less likely in female-dominated workplaces (Preston et al. 1993, 24; 60). Even when enterprise bargaining did occur, issues relevant to women were not being included in agreements to any great extent. Using data based on a census of federal collective agreements, carer’s leave, which was a 1994/95 test case entitlement, was included in 54 per cent of agreements in 2006, the last published data (DEWR, 2007, 56). The same data indicated that paid maternity leave had only increased from being included in 4 per cent of agreements in 1997, to 15 per cent in 2006 (DEWR, 2007, 56; Department of Employment, Workplace Relations and Small Business, and the Office of the Employment Advocate, 2000, 48).

A different data source, based on a survey of collective agreements, showed that in 2008, just under 22 per cent of agreements provided for paid maternity leave, the majority in the public sector (Baird et al, 2009, 681). These provisions may also have
been provided to employees through human resource policies, however their low incidence in collective agreements nevertheless shows that these provisions were either a low bargaining priority for unions and were not being negotiated, or were being negotiated and refused by employers. Without research into the bargaining process itself, it is not possible to determine what was happening.

4.4.1 The effects of Work Choices on bargaining for family provisions

The controversial Work Choices amendments were introduced in 2006 and the limited research available shows that some groups of women were adversely affected and that some women did not feel able to adequately engage in bargaining (Baird et al, 2009b; Elton et al, 2007). This research was released throughout the operation of Work Choices, in a tumultuous and contentious industrial relations environment.

As well as academic research, most Australian state Labor governments conducted inquiries into the effects of the legislation. Not all of these inquiries, however, specifically considered the impacts on women or work and family issues, but these inquiries did find that Work Choices had changed the bargaining climate. One inquiry found examples where employers had declined to bargain with unions, despite employees desiring union representation (Industrial Relations Commission of South Australia, 2007, 71). Unions were also prevented from accessing members and some employers had bypassed unions and sought to negotiate directly with employees, including for AWAs (Industrial Relations Commission of South Australia, 2007, 72; 65). The South Australian inquiry found that some considered that Work Choices had generated a ‘sense of empowerment among employers, demonstrated at times by the adoption of a dismissive and arbitrary attitude to employee rights and entitlements’ (Industrial Relations Commission of South Australia, 2007, 65).

The changed bargaining climate impacted on bargaining for family provisions. When Work Choices was being introduced, academics expressed concerns that the impending legislation would have a negative impact on employees seeking to balance work and family responsibilities. These concerns appear to have been realised for some groups of female employees. Researchers concluded that Work Choices had contributed to ‘the erosion of employment standards especially amongst women on minimum wages’ (Elton et al, 2007, 10). Women also reporting difficulties accessing
personal/carers’ leave and annual leave because of increased unilateral management action (Pocock et al, 2008, 483). Further, that ‘rather than promoting workplace negotiation and bargaining, the changes have had the opposite effect: they have diminished women’s capacity to bargain and removed their right to fair treatment by their employers’ (Elton et al, 2007, 10). This finding was reiterated by research examining the impact of Work Choices in the hospitality and retail sectors, which also found increased managerial prerogative and a decreasing level of employment conditions available to employees (Evesson et al, 2007, ii).

The perceived and actual difficulties that women may have been experiencing under Work Choices were used by the union movement in their campaign against Work Choices. Based on case studies found by unions, the media presented a series of stories about employees who had lost entitlements as a result of Work Choices ((Muir, 2008, 26; Davis, 2007; Australian Broadcasting Corporation, 2006; Fraser, 2006). The ACTU also released research which showed that ‘working families’ were worse off as a result of Work Choices, experiencing declining wages and reduced conditions (ACTU, 2007).

The ACTU research was part of a long-term campaign conducted by the ACTU against the new legislation. The campaign included unions and community groups targeting marginal electoral seats to win over swinging voters and a long running and expensive advertising campaign (Cooper and Ellem, 2008, 545-46; Muir, 2008). As well as the highly visible media campaign against the legislation, the ACTU also organised ‘on the ground’ community campaigns and engaged people through a sophisticated use of information technology (Muir, 2008, 49-50).

The furore that arose after Work Choices was introduced, and then started to have effect, cannot be underestimated. It was a major political, industrial and social issue. For three years, Work Choices was barely out of the spotlight. To counter the ACTU media campaign, the government launched an extensive advertising campaign, there was ‘a series of advertising wars, one of the biggest public rallies seen in Australia’, and a High Court challenge to the legislation (Stewart and Forsyth, 2009, 1-2). So strong was the sentiment against Work Choices, that ‘a federal election was fought and won over the issue of workplace reform…Public interest in the issue can scarcely
have been higher’ (Stewart and Forsyth, 2009, 1). In November 2007, a new Labor government, with a new industrial relations policy was elected, with the union movement credited as having played a crucial role in this outcome (Cooper and Ellem, 2008, 546).

As previously discussed, the Labor government introduced the Fair Work Act to replace Work Choices. As well as reforming labour law, the new government also committed to examining a major social policy issue, that of paid parental leave.

4.5 Social policy: The introduction of a national paid parental leave scheme
This final section of the chapter commences with a very brief overview of the campaign for paid maternity leave in Australia, before discussing the paid parental leave inquiry and subsequent outcomes. The modern campaign for paid maternity leave has a long genesis in Australia, going back to the 1970s. In 1973 a new Labor government introduced twelve weeks paid maternity leave for federal public servants (Brennan, 2008, 48). The Working Women’s Charter endorsed by the ACTU in 1977 recommended that a submission be made to the Australian government recommending a universal paid maternity leave scheme (Baird and Williamson, 2010b). This was lodged, however the government of the day did not appear to respond to this submission and the ACTU pursued the unpaid maternity leave test case discussed earlier. Women’s groups continued to advocate for a system of paid maternity leave throughout the 1980s and 1990s, more latterly against a background of conservatism with the election and subsequent re-elections of the Howard Liberal/Coalition government in 1996 through to 2007 (Brennan, 2008).

As was so often quoted, Australia was one of only two OECD countries which did not provide a paid maternity/parental leave scheme by the late 2000s. Instead, as mentioned, the Australian government provided maternity payments to mothers through the social welfare system, but not as an industrial entitlement (Baird, 2005; Brennan, 2008). In the absence of a national legislated scheme, paid parental leave was provided through public sector legislation (as the federal and State public services provided paid maternity leave, although not all doing so until the mid to late 2000s), employer action or bargaining (Baird and Williamson, 2009, 342). Employers were encouraged to provide paid maternity leave because of ‘business case reasons’ (Baird
et al, 2009, 671). However, relying on business case arguments had resulted in a low incidence in the provision of paid maternity leave, as shown earlier, particularly in the private sector\(^2\). The availability was also uneven. The public sector and large organisations were more likely to provide paid maternity leave than the private sector and small and medium organisations (Baird et al, 2009).

The push for the introduction of a paid maternity/parental leave scheme was propelled by industrial, social and legal factors. Bargaining for paid maternity leave was given impetus when the Tasmanian public service increased paid maternity leave to twelve weeks in the late 1990s (interview with Cath Bowtell, ACTU official, 17 July 2009; Baird et al, 2009a, 677). Further momentum was gained when, in 2001, the Australian Catholic University introduced twelve weeks paid maternity leave with a further forty weeks paid at 60 per cent of wages. This university’s paid maternity leave scheme triggered similar union claims in the rest of the tertiary sector, which ‘suddenly began to set new community expectations and standards’ (Baird, 2005, 57).

While bargaining was contributing to the impetus for paid maternity leave, other factors were also influential. In 2000, the ILO revised its Maternity Leave Convention to recommend fourteen weeks paid maternity leave (Baird, 2005, 57) and this generated renewed interest in a paid parental leave scheme. The 2002 report from the Sex Discrimination Commissioner outlining a proposal for a national paid parental leave scheme also stimulated much community debate about the issue (Human Rights and Equal Opportunity Commission, 2002). Legal developments also played a role, and in 2002 and 2007, the Australian Democrats introduced a bill for the introduction of paid maternity leave (Baird et al, 2009a, 672) but this was never debated or passed in Parliament. Finally in 2007, after lobbying from a national women’s organisation, the Australian Labor Party committed to introducing a paid parental leave scheme as an election promise, although no details of the scheme were provided (Brennan, 2008, 51).

\(^2\) See Chapter Two for a discussion about the business case.
4.5.1 The paid parental leave inquiry

Following its election victory, the Australian Labor government requested the Productivity Commission to conduct an extensive inquiry into a national paid parental leave scheme, with community hearings and public submissions made (Baird et al, 2009, 673). The Productivity Commission commenced a national consultation process, released a draft issues paper, and then a draft report in September 2008 (Baird and Williamson, 2009a, 340). The Commission recommended a national scheme be introduced, consisting of eighteen weeks paid parental leave to employees who had worked at least ten hours a week for twelve months before the birth. The Commission also recommended two weeks paid paternity leave, all to be government funded and paid at the level of the Federal Minimum Wage (Productivity Commission, 2008a, xxv).

There was much public commentary and media speculation throughout 2008 about whether the government would accept and implement the Commission’s recommendations. Unions and community organisations formed coalitions to lobby for the introduction of a scheme, including an unusual alliance between union and business leaders (Baird and Williamson, 2009, 341). Pressure continued throughout 2008 and into 2009, while economic conditions deteriorated with the onset of the Global Financial Crisis (Baird and Williamson, 2009, 341). Lobbying continued, and ‘in this tense and expectant climate, the final Productivity Commission report was presented to government in February [2009]’ (Baird and Williamson, 2010b, 357). The final report modified the recommendations of the draft report slightly, by expanding eligibility requirements so that parents were only required to work one day a week to be eligible and to have worked ten of the thirteen months before the expected birth (Productivity Commission, 2009, xxvii).

On Mothers’ Day in March 2009, the Australian Government announced the introduction of a universal paid parental leave scheme, to commence on 1 January 2011. The government scheme includes ‘most, but not all’ of the Productivity Commission’s recommendations (Baird and Williamson, 2010b, 357). The paid parental leave scheme was welcomed, although concerns were expressed about some elements of the scheme, including the absence of paid paternity leave and the lack of superannuation contributions from employers (Baird and Williamson, 2010b, 357).
The ACTU has committed to bargain for the excluded elements\textsuperscript{3}, as well as for employers to ‘top up’ the scheme so employees receive twenty-six weeks paid parental leave (2009).

The national paid parental leave scheme was the culmination of a thirty year campaign for paid parental leave, which had gathered momentum throughout the 2000s, with much community and union lobbying, and a great deal of public commentary and speculation.

4.6 Conclusion
Through examining the tumultuous changes which occurred in industrial relations and social policy 2005 to 2010, this chapter has provided the context to the case studies undertaken for this research, The chapter has explained the major regulatory mechanisms by which employees have been provided with family provisions – test cases, labour law, bargaining and social policy, and the complex interactions between these industrial instruments, which were dramatically disturbed and changed with the advent of Work Choices. The following chapters detail five cases of union bargaining conducted between March 2008 to May 2009. The cases trace the progress negotiating for family provisions in the context of the high profile paid maternity leave campaign, conducted while the NES and the Fair Work Act were being developed, and a range of public inquiries on workplace gender equality issues were being initiated.

\textsuperscript{3} Unions will no longer need to bargain for paid paternity leave however, as during the 2010 election campaign, the Australian government announced this leave would be included in the paid parental leave scheme from July 2011 (Australian Labor Party, undated).