



### 3 The institutional context

The industrial relations system has been particularly important in workers' access to work–family provisions in Australia. Federal law is currently the major formal source of workplace relations arrangements, with Australia's system of industrial relations a hybrid of conciliation and arbitration, collective bargaining and employer power. Since the 1980s, the influence of conciliation and arbitration has diminished. There remains, however, a significant residual system of conciliation and arbitration. The main role of this residual system is the prescription of safety-net terms that afford a degree of protection to vulnerable employees (see Hancock 1999).

As Hawke and Wooden (1998:74) write: “The tribunal-based systems of conciliation and arbitration that have shaped labour-management relationships since the turn of the century now play a less pivotal role, and the systems of awards that continue to be administered by the various tribunals are less central to the determination of wages and conditions.”

Bargaining and, more specifically, *enterprise bargaining*, has taken on increasing importance. The character of bargaining changed in the early 1990s with the expansion of enterprise bargaining and diminished role of trade unions in workplace agreements. Within the federal system, the Industrial Relations Reform Act 1993 provided for non-union agreements in the form of what were then known as Enterprise Flexibility Agreements. The Workplace Relations Act 1996 strengthened the non-union bargaining stream, leading to a marked increase in the incidence of certified non-union collective agreements. By 30 June 1998, 576 non-union bargaining stream agreements had been made covering just over 75,000 employees (DEWRSB 1998).

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In addition to promoting enterprise-based bargaining, legislative changes have been introduced in some jurisdictions that provide greater scope for employers to use individually negotiated employment agreements to supplement and/or replace awards. The most prominent of these are Australian Workplace Agreements (AWA) that were introduced as part of the Workplace Relations Act 1996.

Despite these changes, the Australian labour market still has a substantial degree of regulation. The current system is probably best characterised as a system in which the pay and employment conditions of most Australian workers continue to depend heavily on a combination of statutory regulation and collective bargaining. Individual agreements continue to be implemented for a minority of workers, many of whom are well-paid managerial and professional employees (though considerable over-award and over-agreement bargaining occurs on an individual basis) (Wooden 1999). For the most part, individual agreements

remain subject to the provision that they must provide conditions that at least equate with conditions specified in relevant awards. Finally, only rarely does the making of these agreements involve the substantive differentiation of terms and conditions between different workers.

The effect on the family friendliness of Australian workplaces of the shift in focus of the industrial relations system away from a centralised system to bargaining and agreement making at the workplace and individual levels is unclear. On the one hand, the emphasis upon flexibility may promote the introduction of work conditions that are better tailored towards the needs of individual employees. On the other hand, the employees who are most likely to be able to negotiate successfully with employers over work conditions are those with skills in short supply and hence the greatest bargaining power.

The net effect of these changes on the extent to which family-friendly work practices have widespread coverage within workplaces is ultimately an empirical question. However, the lack of survey data on the experience of employees after 1995 makes it impossible to determine the impact of changes introduced by the Workplace Relations Act 1996.