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Reinvigorating Collective Bargaining: A Comparative Assessment of Australia's Fair Work Act and Denmark's Collective Bargaining System

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Abstract. Australia's enterprise-level collective bargaining system has experienced a sharp decline in coverage, falling from 27% of employees in 2012 to only 15% by late 2021. This reduction reflects a broader pattern across Anglosphere nations, where decentralised bargaining structures have struggled to sustain coverage. This decline has paralleled the rise of the "fissured workplace", a term coined by US economist David Weil to describe outsourcing and fragmentation strategies used by corporations to evade employer obligations and undermine collective bargaining. The article examines the institutional drivers of the decline of enterprise bargaining coverage in Australia and explores alternative regulatory models. It argues that the Fair Work Act structurally constrains broad-based bargaining through provisions that largely restrict bargaining to a single firm. By contrast, Denmark's system of sectoral bargaining, characterised by 'organised decentralisation', sustains high levels of coverage through coordinated multi-level bargaining structures. The paper has three parts: Part 1 explains the historical context behind the decline of collective bargaining coverage in Australia with attention to the shift away from the award system. Part 2 examines the particular ways the Fair Work Act hinders broad based collective bargaining. Part 3 presents the Danish sectoral bargaining model as an alternative to enterprise-level bargaining

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systems. The discussion concludes that sectoral bargaining models offer a viable pathway to revitalise collective bargaining in Australia by expanding bargaining coverage and enhancing employee voice in the workplace.

Keywords: *Collective bargaining; Organised decentralisation; Disorganised decentralisation; Enterprise bargaining; Sectoral bargaining; Vertical coordination, Horizontal coordination.*

1. Introduction: Broad-Based Bargaining Delivers Better Outcomes.

Analysis begins by clarifying the key concepts underpinning the paper, in particular the distinction between enterprise-level and multi-employer bargaining.[1] Enterprise level bargaining is a form of decentralised collective bargaining whereby negotiation takes place only for a particular group of workers at a particular firm and/or worksite.[2] Enterprise bargaining could sometimes involve a cohort of workers employed in various roles and branches within a single-enterprise - for example workers performing a range of roles within a national supermarket chain.[3] Alternatively, enterprise bargaining might only involve a narrow section of a worksite- such as butchers at a supermarket.
In contrast to the enterprise bargaining model, many countries have multi-tiered sectoral bargaining that occurs across broad national, sectoral, and multi-employer levels.[4] In these countries unions and employers (or employer representatives) bargain for collective agreements that provide coverage and compensation floors for most workers in a particular industry, occupation or region.

[1] For background to multi-employer bargaining see: S Forsyth, S McCrystal, *Collective Bargaining and Industrial Action Reform,* Melbourne Law School: Centre for Employment and Labour Relations Law, Melbourne, 2022; A Forsyth, T Hardy, S McCrystal, *Collective Bargaining in Fissured Work Contexts: An Analysis of Core Challenges and Novel Experiments, Federal Law Review,* 2023, vol. 51, n. 4, pp- 504- 531; M Anner, M Fisher-Daly, M Maffie, *Fissured Employment and Network Bargaining: Emerging Employment Relations Dynamics in a Contingent World of Work, Industrial and Labour Relations Review*, 2021, vol. 74, n. 3, pp 689-714.
[2] D Madland, *Re-Union: How Bold Labor Reforms Can Repair, Revitalize and Reunite the United States,* ILR Press, Ithaca, 2021, p. 11.
[3] See for example: *Woolworths Group Limited T/A Woolworths* [2019] FWCA 7 (7 January 2019).
[4] Madland, *op cit, 2,* p. 15.

It is also important to highlight the fact that the two models are not mutually exclusive and there is overlap in their use and functions.[5] For example, Australia's Fair Work Act is largely focused on single enterprise agreements, however, there are provisions in legislation to allow for multi-enterprise bargaining. In addition, Denmark has a sectoral bargaining system, however a considerable degree of local bargaining is permitted under the Danish model.[6]
The above-mentioned categories are not the only way to analyse and distinguish between collective bargaining systems. Some scholars have used the far broader conceptual framework of centralised and decentralised collective bargaining.[7] Within this framework there is the useful distinction between organised and disorganised decentralisation. Organised and disorganised decentralisation are terms that were initially developed by Franz Traxler.[8] Organised decentralisation involves encompassing collective bargaining at a sectoral or industry level and using these higher levels of bargaining as a framework or governance mechanism for bargaining at a lower level. In this sense, the system is articulated as each layer of bargaining supports the other and the rise of one bargaining level does not necessarily go hand in hand with a corresponding decline in other levels of bargaining.[9] Disorganised decentralisation, on the other hand, is characterised by fragmented bargaining at a local level. Disorganised decentralisation takes place outside the guiding framework of sectoral or industry level agreements. Under disorganised models, enterprise level bargaining takes a more market-oriented direction with a mixture of local union and non-union agreements that occur under weak or non-existent sectoral agreements.[10]

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[5] S Hayter, *International Comparative Trends in Collective Bargaining, Indian Journal of Industrial Relations,* 2010, vol 45, n. 4, pp. 596- 608.
[6] T P Larsen, A Ilsøe, *Varieties of Organised Decentralisation across Sectors in Denmark: A Company Perspective*, *Industrial Relations Journal*, 2022, vol 53, n. 4, pp. 368- 389.
[7] H Katz, *The Decentralisation of Collective Bargaining: A Literature Review and Comparative Analysis*, *ILR Review*, 1993, vol. 47, n. 1, pp. 3-22.
[8] F Traxler, *Farewell to Labour Market Associations? Organized Versus Disorganized Decentralization as a Map for Industrial Relations*, in C Crouch, F Traxler (eds), *Organized Industrial Relations in Europe: What Future,* Avebury, Aldershot, 1995 pp. 3-19.
[9] F Traxler, S Blaschke, B Kittle, *National Labour Relations in Internationalized Markets: A Comparative Study of Institutions, Change and Performance,* Oxford University Press, Oxford, 2001.
[10] F Traxler, *Collective Bargaining and Industrial Change: A Case of Disorganization? A Comparative Analysis of Eighteen OECD Countries, European Sociological Review,* 1996, vol 12, n3, pp. 271- 287; D Grimshaw, M Johnson, S Marino,, J Rubery, *Towards More*

This article also draws upon Traxler's theory of horizontal and vertical coordination.[11] Horizontal coordination refers to the ability for bargaining actors to align outcomes across sectors and firms, thereby preventing competitive undercutting. Vertical coordination refers to the capacity for institutions to ensure compliance with bargaining units, including both workers and firms. Taken together, coordination is important for sustainable collective bargaining in a modern globalised economy, where the pressure for competitive undercutting and fragmentation is pronounced. Recent scholarship by Andersen further emphasises that such coordination operates through interwoven processes across institutional actors and bargaining levels.[12]

The empirical data reveals a strong correlation between the level of bargaining and the national rate of coverage. Across the OECD, collective bargaining rates have remained high and stable only in nations where multi-employer bargaining (sectoral and national) is in place.[13] Collective bargaining coverage ranges from 49% (Switzerland) to 98% (Austria and France). The average coverage rate in countries with multi-employer/sectoral/national level of cover sits at 76.8%.[14] In comparison, collective bargaining coverage remains low in countries that have exclusively enterprise-level bargaining. Collective bargaining coverage rates have continued to decline under enterprise-level bargaining. This is even the case in countries that have legislative measures that are (relatively) more favourable to unions, such as parts of Canada and New Zealand under Labour's Employment Relations Act 2000. This shows that law reforms designed to facilitate collective bargaining and/or promote trade unionism remain largely ineffective unless laws are also passed that

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Disorganised Decentralisation? Collective Bargaining in the Public Sector Under Pay Restraint, Industrial Relations Journal , 2017, vol 48, n. 1, pp. 22-41.

[11] F Traxler, *Coordinated Bargaining: A Stocktaking of its Preconditions, Practices, and Performance,* in *Industrial Relations Journal*, 2003, vol. 34, n. 3, pp 194-209.

[12] S K Andersen, *Multi-Employer Bargianing In Denmark: Interwoven Processes of Coordination, International Labour Review* (2024) vol. 163, n. 4, pp.693- 710, p. 694.

[13] R Bispinck, H Dribbusch, T Schulten, *German collective bargaining in a European perspective: Continuous erosion or re-stabilisation of multi-employer agreements?',* WSI-Diskussionspapier, No. 171, 18; OECD, *Collective bargaining in a changing world of work*, in *OECD Employment Outlook 2017*, OECD Publishing, Paris, 2017, <https://doi.org/10.1787/empl_outlook-2017-8-en> .

[14] J Visser, S Hayter, R Gammarano, *Trends in Collective Bargaining Coverage: Stability, Erosion or Decline?*, Issue Brief No.1, International Labour Organisation, Geneva, 2015.

direct a move towards sectoral-level bargaining with articulated bargaining at a local level.

There are multiple reasons why sectoral level bargaining leads to higher collective bargaining coverage. Firstly, centralised bargaining provides the benefits of economies of scale and allows unions to bargain for large numbers of similar employees without exhausting their resources.[15] This wider scope of coverage provides unions with greater recruitment and representational opportunities. Secondly, it provides a degree of protection against hostile employers that use contracting out and fissured workplace arrangements to avoid collective bargaining altogether. Thirdly, it protects against a race to the bottom whereby enterprises that maintain collectively bargained wages and conditions are at a competitive disadvantage to those that do not. [16] Companies are therefore less likely to compete on reducing wages and conditions, this, in turn, can create a solid floor for further bargaining at a local level.[17] Sectoral bargaining reduces the incentive for employers to engage in aggressive union-busting campaigns to eliminate unions from their workplaces because unions interfere less in local wage setting.[18] Sectoral bargaining, therefore, allows unions to provide a voice for workers in small to medium-sized enterprises that would otherwise be impossible to organise on a one-by-one basis.[19]

This paper adopts a comparative case study approach, selecting Denmark and Australia as contrasting examples of decentralised collective bargaining. Denmark represents a system of "organised decentralisation" with coordinated multi-tiered bargaining and high coverage rates. Australia, on the other hand, represents a more fragmented model with

[15] J Visser, *Trade Unions in the Balance,* ILO ACTRAV Working Paper, International Labour Organisation, Geneva, 2018; C Schnabel, *Union Membership and Collective Bargaining,* (IZA Discussion Paper No 13465, IZA Institute for Labor Economics, Bonn, 2020; G J Bamber, P Sheldon, *Collective Bargaining: Towards Decentralization,* in R Blanpain (ed), *Comparative Labour Law and Industrial Relations in Industrialized Market Economies,* Kluwer Law International, The Hague, 2004, pp. 509 –548.

[16] J Stanford, F MacDonald, L Raynes, *Collective Bargaining and Wage Growth in Australia*, The Centre for Future Work at the Australia Institute, Sydney, 2022; T Schulten, *The Meaning of Extension for the Stability of Collective Bargaining in Europe*, Policy Brief No 4, ETUI European Economic, Employment and Social Policy, Brussels, 2016.

[17] C L Ibsen, M Keune, *Organised Decentralisation of Collective Bargaining: Case Studies of Germany, Netherlands and Denmark*, OECD Social, Employment and Working Papers No 170, OECD Publishing, Paris, 2018.

[18] Schnabel, op cit 15, p. 15.

[19] S Cazes, A Garnero, S Martin, C Touzet, *Collective Bargaining in a Changing World of Work*, in OECD (ed), *OECD Employment Outlook 2017,* OECD Publishing, Paris, 2017.

declining coverage and limited coordination. Both countries experienced similar pressure to decentralise their bargaining systems in response to global economic pressures in the 1980s and 1990s, making them suitable for comparison. However, they adopted markedly different institutional responses, highlighting how decentralisation can be structured in fundamentally different ways.

Part 1: The Move Toward Decentralised Bargaining in Australia.

2. Australia's Move Away from Sectoral Regulation Towards a North American Style Enterprise Bargaining System

Arbitration first became part of the Australian industrial relations system in the late 1890s via various colonial jurisdictions.[20]The Commonwealth Conciliation and Arbitration Act 1904 (Cth) established compulsory industrial arbitration at the federal level, providing a mechanism for unions and employers to resolve disputes over pay and conditions.[21] Unions were institutionally embedded into this system because the legislation guaranteed their participation in the arbitration process.[22] Arbitration led to the making of legally enforceable awards by the tribunal. Awards developed into a comprehensive system of centralised regulation that governed a wide range of working conditions, including minimum wages, working hours, job classifications, penalty rates, redundancy entitlements and termination of employment.[23] Between 1960 and 1985

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[20] A Stewart, A Forsyth, M Irving, R Johnstone, S McCrystal, *Creighton and Stewart's Labour Law,* 6th ed, The Federation Press, Sydney, 2016; D Peetz, *Awards and Collective Bargaining in Australia: What Do They Do and are They Relevant to New Zealand?*, in *New Zealand Journal of Employment Relations,* 2020, vol. 44, n. 3, pp. 58-75.

[21] A Hawke, M Wooden, *Industrial Relations Reform in Australia: Implications for the Agricultural and Mining Sectors, The Australian Journal of Agricultural and Resource Economics,* 1998, vol. 42, n. 3, pp. 303- 319.

[22] R Mitchell, R Naughton, *Australian Compulsory Arbitration: Will It Survive into the Twenty-First Century, Osgoode Hall Law Journal,* 1993, vol. 31, n.2, pp. 265- 295; M Bray, J Macneil, *Individualism, Collectivism, and the Case of Awards in Australia, Journal of Industrial Relations,* 2011, vol. 53, n. 2, pp. 149- 167.

[23] B Creighton, *One Hundred Years of Conciliation and Arbitration Power: A Province Lost?, Melbourne University Law Review,* 2000, vol. 24, n. 3, 839-865.

award coverage in Australia remained over at 80 per cent of the workforce.[24]

In the 1980s there was a drive by unions and employers for a more decentralised system of collective bargaining.[25] On the employer side, this was largely spurred on by the Business Council of Australia (BCA) and their 1989 report titled 'Enterprise Based Bargaining Units: A Better Way of Working'.[26] The BCA report argued that the award system was out of touch with the market requirements of individual firms. The report identified key aspects of the award system that were allegedly hurting economic productivity.[27] These included: Inflexible classification systems, restrictions on work hours, hindered skill development in the workforce, and strict demarcation/classification divisions reduced the incentive for employers to invest in upskilling/multiskilling staff.[28]

Some of these areas of reform were not necessarily controversial in themselves and in many aspects they reflected the concerns that the Australian Council of Trade Unions (ACTU) expressed in the late 80s.[29] From the ACTU's viewpoint, awards often contained structures that reflected outdated Taylorist management techniques that promoted specialisation and deskilling.[30] The ACTU, therefore, strongly advocated award classification reform (award restructuring) that would enable greater flexibility at a workplace level.[31]

The key point of divergence was in the form that decentralisation should take. The BCA advocated enterprise level bargaining operating to the exclusion of the award system.[32] The ACTU, on the other hand, supported a multi-tiered model in which enterprise bargaining would

[24] W Ochel, *Collective Bargaining Coverage in the OECD from the 1960s to the 1990s, ifo Institut für Wirtschaftsforschung an der Universität München,* 2001, vol. 2, n. 4, pp. 62- 65.

[25] D Peetz, *op cit 20*, 60.

[26] Business Council of Australia, *Enterprise Based Bargaining Units: A Better Way of Working*, Report to the Business Council of Australia by the Industrial Relations Study Commission, Vol. 1, Business Council of Australia, Melbourne, 1989.

[27] Business Council of Australia, *op cit 26,* p. 60.

[28] Business Council of Australia, *op cit 26,* pp. 60- 70.

[29] Business Council of Australia, *op cit 26,* pp. 74-75.

[30] H Thompson, *Structural Efficiency: Lewis Caroll Re-Visited*, *The Australian Quarterly*, 1990, vol. 62, n. 1, pp. 64- 79.

[31] See for example Australian Council of Trade Unions, *Award Restructuring- Implications for Skill Formation and Training,* Media Release, Australian Council of Trade Unions, Melbourne, 25 October 1989.

[32] Business Council of Australia *op cit 26,* p. 123.

occur within a coordinated framework of industry level regulation. [33] As late as 1992 the ACTU remained committed to a multi-tiered bargaining model similar to these that exists in central Europe and the Nordic states whereby unions negotiate industry frameworks and enterprise bargaining focuses on flexibility at the firm level.[34]

This conceptual distinction is critical. While decentralisation was widely viewed as necessary in response to changing economic conditions, it did not dictate a single institutional outcome. This paper will demonstrate through comparative experience that decentralisation can be structured in different ways. In Denmark decentralisation has been embedded into a coordinated multi-tiered bargaining system, whereas in Australia it developed into a more fragmented and disorganised form. This suggests that Australia's shift towards enterprise level bargaining reflects a particular institutional set of choices, rather than an inevitable response to globalisation.

3. The Move Towards Decentralisation: From Coordinated Reform to Institutional Rift (1985-1991)

The national wage cases from June 1986 to October 1991 were the venue where this drive towards decentralisation took place. National wage cases involved the commission using its powers of conciliation and arbitration to hand down a decision that alters the wages and conditions in the majority of awards.[35]

The 1986 National Wage Case was a re-evaluation of the centralised bargaining system in the context of an economic crisis.[36] By 1986 there was much talk about Australia's worsening economic position and these fears were crystalised in Treasurer Paul Keating's 14 May statement on talk-back radio that Australia was in danger of becoming a "banana republic", i.e. a nation relying solely on earnings from the export of raw minerals and primary industry products.[37] It was in the context of economic crisis that the Australian Industrial Relations Commission

[33] Australian Council of Trade Unions, *Enterprise Bargaining: An ACTU Perspective,* Media Release, Australian Council of Trade Unions, Melbourne, 26 October 1992.

[34] Australian Council of Trade Unions, *The ACTU, The Accord and Enterprise Bargaining,* Media Release, Australian Council of Trade Unions, Melbourne, 3 April 1992.

[35] B Dabscheck, *Not a Super Decision: The 1986 National Wage Case, Economic Analysis and Policy,* 1987, vol. 17, n.2, pp. 179-194.

[36] *National Wage Case June 1986* (1986) 14 IR 187, 188.

[37] B Dabscheck, *The Slow and Agonising Death of the Australian Experiment with Conciliation and Arbitration, The Journal of Industrial Relations,* 2001, vol. 43, n. 3, pp. 277- 293.

(AIRC) took its first steps to deliver flexibility within the existing centralised framework by introducing 'Principle 12'- a scheme whereby employers were able to seek to reduce or postpone the national wage increase under the grounds of economic adversity.[38] It essentially gave individual employers a degree of flexibility within the award system because it provided an avenue for the particular circumstances of an individual firm to be taken into account when applying national wage increases. Additionally, Principle 3 provided unions and employers an opportunity to bargain for overaward superannuation entitlements at an industry and enterprise level. The 1986 wage case was, therefore, an early attempt to provide a degree of flexibility and decentralisation within a framework of centralised bargaining and industry wage floors. In a sense, this was a step towards a form of organised decentralisation that Traxler described in his 1995 article.[39]

The first major sign of a breakdown of the award system occurred at the 1989 National Wage Case. The 1989 case went beyond the ACTU's calls for award reform by including wages, penalty rates, leave provisions, and working hours as areas to be reformed and restructured.[40] Although the AIRC insisted that these efficiency changes should only be implemented by agreement with a union, the unions viewed the award changes as a cave in to employer demands and an invitation for management to pressure for "negative cost cutting" workplace changes.[41]

The 1989 National Wage case proved to be highly unpopular with the union movement.[42] The AIRC's wage restraints were hardest hit in the male-dominated, skilled blue-collar sectors.[43] In turn, this created deep division within the union movement as leading blue-collar unions looked towards the implementation of a more decentralised bargaining system as a way to break free of the restraints imposed by the AIRC and the award system. It was at this point that the ACTU decided to start pushing for further decentralisation through enterprise level over-award bargaining.

The ACTU's aspirations for a 'managed decentralism' within the existing system essentially broke down in 1989 due to a rift between the unions

[38] *National Wage Case June 1986* (1986) 14 IR 187, 260.

[39] F Traxler, *op cit 8*.

[40] C Briggs, *Australian Exceptionalism: The Role of the Trade Unions in the Emergence of Enterprise Bargaining, The Journal of Industrial Relations,* 2001, vol. 43, n. 1, pp. 27- 43, p 33.

[41] K Norris, *Wages Policy and Wage Determination in 1989, Journal of Industrial Relations,* 1990, vol. 32, n. 1, pp. 128-134,; F Stilwell, *Wages Policy and the Accord*, *Journal of Australian Political Economy,* 1991, vol 28, pp 27- 53, p. 39.

[42] C Briggs, *op cit 40*, p. 32.

[43] C Briggs, *op cit 40*, p. 32.

and the AIRC as the AIRC pushed an agenda of 'efficiency' based around what the union movement believed to be excessive wage and benefit restraints.[44]

4. From Crisis to Enterprise Bargaining: The Complete Breakdown of Coordinated Reform (1991- 1993)

The breakdown of the award system intensified in April 1991 when the AIRC rejected the ACTU and ALP's Accord Mark VI proposals.[45] The union movement viewed the decision as a further erosion of award benefits, such as penalty rates and working hours, with little in return other than a mere 2.5 per cent pay increase.[46] As ACTU president Bill Kelty strongly protested: "It's a sickening decision but there is no reason for the trade union movement to eat the vomit".[47] More fundamentally, the AIRC's rejected the proposal on grounds that the parties were not "mature enough" for enterprise bargaining, highlighting the institutional constraints of the rigid centralised system.[48]

In response, the ACTU held a special conference in May 1991, where delegates endorsed a recommendation to reject the April decision and pursue direct negotiations with employers at an enterprise level.[49] These examples of union frustration and industrial unrest demonstrate that the 1991 national wage case caused a deep rift in the Australian industrial relations system. Union discontent boiled over into a drive to break free of the constraints imposed by the award system, signalling a breakdown in horizontal coordination within the institutional wage-setting framework.

In October 1991, the AIRC conceded to these pressures and introduced the first principles of enterprise bargaining.[50] Early enterprise agreements were subject to strict conditions, including the preservation of award standards and oversight of the commission, ensuring that bargaining outcomes remained aligned with broader coordinated outcomes.[51] In this

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[44] C Briggs, *op cit 40*, p. 33.
[45] Australian Council of Trade Unions, *The ACTU's View- Accord Mark VI and Enterprise Bargaining,* Media Release, Australian Council of Trade Unions, Melbourne, 27 November 1993; F Stilwell, op cit 40, p. 42.
[46] C Briggs, *op cit 40*, p. 36.
[47] Interview with Bill Kelty (Chris Briggs, Personal Interview, 8 March 1999).
[48] *National Wage Case April 1991* (1991) 36 IR 120, 156.
[49] E Davis, '*Throwing Down the Gauntlet*': *ACTU Special Unions Conference, May 1991, The Economic and Labour Relations Review,* 1991, vol. 2, n. 1, pp 31-41.
[50] *National Wage Case October 1991* (1991) 39 IR 127, 140-141; D Peetz, *op cit 20,* p. 60.
[51] *National Wage Case October 1991* (1991) 39 IR 127, 141.

respect, early enterprise bargaining retained elements of what Traxler described as "organised decentralisation", in which firm-level flexibility operates within a coordinated framework.

This coordinated model proved to be short lived. In 1992 legislative reforms were passed that prioritised enterprise level bargaining and reduced the award system to a safety net.[52] The newly enacted Division 3A created a new kind of statutory enterprise agreement, the 'certified agreement'.[53] Under the 1992 reforms, awards were to be subservient to enterprise level certified agreements.[54] Awards were to operate as a mere safety net through the No Disadvantage Test (NDT).[55]

The 1992 amendments were later superseded by the *Industrial Relations Reform Act 1993* (Cth), which further limited the ability for the AIRC to refuse to register enterprise level agreements on discretionary grounds, including the public interest.[56] The most controversial measure, however, was the introduction of non-union agreement-making in the form of Enterprise Flexibility Agreements (EFAs).[57] Taken together, these developments marked a decisive shift away from organised decentralisation towards a more fragmented form of enterprise-based bargaining, consistent with Traxler's conception of disorganised decentralisation.

5. Workplace Relations Act 1996: Consolidating Disorganised Decentralisation

The *Workplace Relations Act 1996* (Cth) marked a decisive shift away from the centralised award system and towards a more fragmented model of bargaining. The Act limited awards to a narrow set of 20 'allowable matters' hence reducing the ability for the AIRC the arbitrate on industrial

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52 *Industrial Relations Act 1988* (Cth) 134L(a); D Peetz, *op cit 20*, p. 61; M Bray, A Stewart, *From the Arbitration System to the Fair Work Act: The Changing Approach in Australia to Voice and Representation at Work*, *Adelaide Law Review*, 2013, vol. 34, n. 1, pp. 21- 40, p. 26.

53 *Industrial Relations Act 1988* (Cth) ss 134C, and 134E.

54 *Industrial Relations Act 1988* (Cth) s 134L (1)(a).

55 *Industrial Relations Act 1988* (Cth) s 134E(1)(a); M Wooden, *The Transformation of Australian Industrial Relations,* The Federation Press, Sydney, 2000, p. 30.

56 A Stewart, *The Industrial Relations Reform Act 1993: Counting the Costs*, *Australian Bulletin of Labour,* 1994, vol. 20, n. 2, pp. 140- 161, p. 158.

57 *Industrial Relations Act 1988* (Cth) Pt VIB Div 3; A Stewart, A Forsyth, M Irving, R Johnstone, S McCrystal, *op cit 20*, p. 196; N Way, *Employers, Union Warm to Flexibility*, *The Australian Financial Review,* 10 July 1995. <https://www.afr.com/companies/employers-unions-warm-to-flexibility-19950710-kax8t>.

disputes.[58] The 1996 legislation also made it easier for employers to make collective agreements without any union involvement.[59] The *Workplace Relations Act* also created a new kind of individual statutory agreement, the Australian Workplace Agreement (AWA).[60] AWAs enabled individualised wage-setting outside collective process, further weakening coordinated bargaining structures.

The move towards decentralisation was extended further in 2005 with the highly controversial *Workplace Relations Amendment (Work Choices) Act*[61] which removed the general power of the AIRC to arbitrate on industrial disputes.[62] The Award system was also rolled back in three ways. Firstly, AWAs and collective workplace agreements permanently displaced any award.[63] Secondly, the NDT test was removed and awards were no longer the reference points for new workplace agreements (both collective and individual).[64] Finally, there was a restriction on the scope for new awards or variations of existing awards by further reducing the number of allowable award matters from 20 to 14.

More fundamentally, collective bargaining was severely hindered by the fact that there was no legislative mechanism to compel reluctant employers to bargain with unions or employees.[65] Legislative provisions were added to restrict the ability of unions to organise workplaces and engage in industrial action.[66] A new form of agreement was also created-

[58] *Workplace Relations Act 1996* (Cth) s 89A(2); M Wooden, *op cit 55*, p. 30; B Dabscheck, *op cit 37*, p. 285.

[59] S McCrystal, M Bray, Non-Union Agreement-Making in Australia in Comparative Historical Context, *Comparative Labour Law and Policy Journal,* 2019, vol. 41, n. 3, pp. 753-788, p. 765; *Workplace Relations Act 1996* (Cth) s 170LK.

[60] *Workplace Relations Act 1996* (Cth) pt VID; R Cooper, B Ellem, *The Neoliberal State, Trade Unions and Collective Bargaining in Australia*, *British Journal of Industrial Relations,* 2008, vol. 46, n. 3, pp. 532- 554, p. 538.

[61] *2005* (Cth).

[62] A Stewart and A Forsyth, *The Journey from Work Choices to Fair Work*, in A Stewart, A Forsyth (eds), *Fair Work: The New Workplace Laws and the Work Choices Legacy,* The Federation Press, Sydney, 2009, pp. 1- 18, p 4.

[63] *Workplace Relations Act 1996* (Cth) s 349; A Forsyth, B Creighton, V Gostencnik, T Sharard, *Transition to Forward With Fairness,* Thomson, Sydney, 2008, pp. 64, 68.

[64] A Forsyth, V Gostencnik, J Parker, R Roach, *Navigating the Fair Work Laws,* Thomson Reuters, Sydney, 2010, p 2.

[65] A Forsyth, *'Exit Stage Left', Now 'Centre Stage': Collective Bargaining under Work Choices and Fair Work,* in A Forsyth and A Stewart (eds), *Fair Work: The New Workplace Laws and the Work Choices Legacy*, The Federation Press, Sydney, 2009.

[66] A Forsyth, V Gostencnik, J Parker, Rosemary Roach, *op cit 64*, p. 2; R Cooper, B Ellem, *op cit 60*, p. 540.

the 'employer greenfields agreement'.[67] This allowed employers to create a new business and simply draft up a collective agreement with no other party, essentially bargaining with themselves.[68]

Taken together, these developments entrenched a model of bargaining characterised by fragmentation, weak coordination and limited collective capacity- hallmarks of Traxler's concept of disorganised decentralisation.

6. Rudd ALP Election Victory and the Fair Work Act 2009

Following the 2007 election of the ALP, the *Fair Work Act 2009* (Cth) was passed with the explicit aim of "achieving productivity and fairness through an emphasis on enterprise-level collective bargaining underpinned by simple good faith bargaining obligations and clear rules governing industrial action".[69] The *Fair Work Act* took several steps to reverse some of the excessively deregulatory aspects of the *Workplace Relations Act,* most notably it imposes an obligation for employers to bargain in good faith. Despite the legislator's intentions, however, collective bargaining coverage has continued to decline under the seemingly more favourable climate provided by the Fair Work Act.[70]

The Fair Work Act structurally constrains broad-based collective bargaining by preferencing agreement making at the enterprise level.[71] Although reforms were initiated in 2022, the legislation continues to place restrictions on multi-enterprise bargaining and sectoral bargaining is non-existent altogether. The legislation also contains significant barriers to initiating bargaining. In the case of first agreements, employees must navigate lengthy processes of obtaining a Majority Support Determination (MSD) and bargaining orders. This structure undermines horizontal coordination across sectors and limits the development of coordinated bargaining outcomes.

In addition, the Act permits non-union agreement making, enabling employers to introduce agreements without genuine collective negotiation.[72] This weakens the role of unions and undermines

[67] *Workplace Relations Act 1996* (Cth) s 330.

[68] R Cooper, B Ellem, *op cit 60*, p. 543; *Workplace Relations Act 1996* (Cth) s 330.

[69] *Fair Work Act 2009* (Cth) s 3.

[70] A Pennington, *The 'Fair Work Act' and the Decline of Enterprise Bargaining in Australia's Private Sector, Australian Journal of Labour Law,* 2020, vol. 33, n. 1, pp. 68- 86.

[71] A Pennington, *op cit 70*, p. 70.

[72] U Chaudhuri, T Sarina, 'Employer-Controlled Agreement-Making: Thwarting Collective Bargaining Under the Fair Work Act' ' in S McCrystal, B Creighton, A Forsyth (eds) *Collective Bargaining under the Fair Work Act* (The Federation Press, 2018) pp. 138-

coordinated bargaining structures. The regulation of industrial action further constrains bargaining by imposing significant procedural requirements and enabling the ready termination of protected action.[73] This has limited the capacity of employees to exert coordinated pressure across employers, thereby undermining horizontal coordination across firms and weakening vertical coordination within workplaces, both of which are key conditions for sustainable collective bargaining systems.

Part 2: How the Fair Work Act Constrains Broad-Based Bargaining and Limits of the 2022 Reforms

7. Pre-2022 Multi-Employer Bargaining: Limited and Ineffective Pathways

Although the Fair Work Act formally permitted multi-employer bargaining prior to the 2022 reforms, the legislative pathways were either inaccessible or impractical in practice. There mechanisms existed: multi-enterprise bargaining under s 172(3); single Interest Employer Authorisations under Pt 2.4 Division 10, and the low-paid bargaining authorisation under Pt 2.4 Division 9. Of these, the first two were only available at the initiative of employers, leaving the low-paid bargaining stream as the sole avenue for unions and employees to pursue multi-employer bargaining.
The low paid bargaining stream was developed with the intent of providing an avenue for unions to bargain across multiple employers to lift wages in industries that have been traditionally low paid such as childcare, cleaning, security, and aged care services.[74] While the legislation recognised the fragmented nature of these sectors, it imposed significant constraints on access. In particular, the stringent public interest test and the Fair Work Commission's narrow definition of a low paid worker limited the capacity of workers access this stream. The low-paid

161; See also *Thiess Pty Ltd v Construction, Forestry, Mining and Energy Union* [2018] FWCFB 2405; *Communications, Electric, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia v Fredon Industries Pty Ltd* [2021] FWCFB 3190; *Construction, Forestry, Maritime, Mining and Energy Union v Mechanical Maintenance Solutions Pty Ltd* [2022] FCAFC 15.

[73] For background see: S McCrystal, *Why is it So Hard to Take Lawful Strike Action in Australia?, Journal of Industrial Relations,* 2019, vol. 61, n. 1, pp. 129-144.

[74] Explanatory Memorandum, Fair Work Bill 2008 (Cth) s 194; R Cooper, *Low-paid Care Work, Bargaining, and Employee Voice in Australia* in A Bogg, T Novitz (eds), *Voices at Work: Continuity and Change in the Common Law World* (Oxford, 2014) pp. 55- 66, p. 61.

bargaining stream was a complete failure. Since its implementation in 2009, it did not deliver a single bargained outcome.[75]

8. Fair Work Amendment Act 2022: New Pathways to Multi-Enterprise Bargaining

The *Fair Work Amendment (Secure Jobs, Better Pay) Act* 2022 was introduced in response to declining collective bargaining coverage, the limitations of the existing enterprise-based model, and the failure of existing multi-employer bargaining pathways. The reforms established two bargaining streams: Supported Bargaining and Single Interest Employer Agreements. While these reforms improve access relative to earlier arrangements, they remain subject to structural limitations that constrain their capacity to facilitate genuinely coordinated bargaining.

9. Supported Bargaining Stream

The Supported Bargaining Stream replaced the ill-fated Low-Paid Bargaining Stream. This new stream has implemented measures to streamline the authorisation process, as the criteria have been simplified and made more flexible. The Low-Paid Bargaining stream had an onerous list of over 10 requirements under s 243 that the FWC *must* take into account when deciding to issue an authorisation. By contrast, the Supported Bargaining stream is simpler because the requirements that need to be considered have been reduced to four.[76]
To commence multi-employer supported bargaining a union must first apply to the FWC for a supported bargaining authorisation.[77] The effect of a supported bargaining authorisation is that the employers specified are subject to certain rules in relation to the bargaining process that would not apply otherwise (such as being bound by bargaining orders).[78] It is important to highlight that the supported bargaining stream was not designed to be a widely used substitute for the existing single enterprise bargaining system, instead was designed to assist and encourage

[75] The Australia Institute: Centre for Future Work, Submission No 18 to Senate Education and Employment Legislation Committee, *Inquiry into the Fair Work Legislation Amendment (Secure Jobs Better Pay) Bill 2022*, November 2022, p. 9.
[76] *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (Cth) sch 1 item 611.
[77] *Fair Work Act 2009* (Cth) s 242.
[78] *Fair Work Act 2009* (Cth) s 242 (1).

employees who may find it difficult to bargain at a single-enterprise level.[79] This could either be because the precarious nature of the industry makes it difficult for them to use their industrial power to get an effective bargaining outcome, or because the ability for workers and employers to bargain effectively is reliant of external sector wide funding from a government entity.[80]

The supported bargaining stream has made it easier to obtain authorisation by simplifying and loosening access criteria. The previous low-paid bargaining stream set out a broad and exhaustive list of over 10 requirements under s 243 that the FWC had to consider when deciding to issue an authorisation. In contrast, the Supported Bargaining stream is simpler because the requirements have been reduced to four.[81] The four mandatory considerations FCW to take into consideration are:

- Pay and conditions- The FWC is required to consider the prevailing pay and conditions in an industry or sector to determine if low rates of pay exist.[82]
- Common interest test- The FWC is required to determine if the employers involved have a clearly identifiable common interest.[83]
- Bargaining efficiency– Whether the likely number of bargaining representatives would be consistent with a manageable collective bargaining process.[84]
- Any other appropriate matters. [85]

The concept of 'common interests' is perhaps the most contentious. In determining whether a group of employers have a common interest, the court must take into account: geographic location, the nature of the enterprise to which the agreement will relate and the employment terms in these enterprises, and finally whether these enterprises are funded by a State, Territory or Commonwealth government.[86]In addition to the four mandatory considerations, the commission must also be satisfied that at

[79] *Fair Work Act 2009* (Cth) s 241(c).
[80]'New Supported Bargaining Agreements', *Fair Work Commission* (Web Page) https://www.fwc.gov.au/about-us/secure-jobs-better-pay-act-whats-changing/bargaining-support-6-june-2023/new-supported
[81] *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (Cth) sch 1 item 611.
[82] *Fair Work Act 2009* (Cth) s 243 (1)(b)(i).
[83] *Fair Work Act 2009* (Cth) s 243 (1)(b)(ii).
[84] *Fair Work Act 2009* (Cth) s 243 (1)(b)(iii).
[85] *Fair Work Act 2009* (Cth) s 243 (1)(b)(iv).
[86] *Fair Work Act 2009* (Cth) s 243 (2).

least some of the employees covered by the proposed agreement are represented by relevant union (not necessarily members, but must fall within the union's coverage).[87] Once these obligations under s 243(1) are satisfied, the FWC is then compelled to issue a supported bargaining authorisation. It is important to highlight that there is no requirement for unions to obtain an MSD or any similar majority support threshold. Additionally, under s 242(1)(b) a union does not even need to have members to initiate a supported bargaining authorisation.[88] This lowers barrier to entry and enabling bargaining in structurally fragmented workplaces.

It is also important to highlight that s 243A sets out two restrictions on supportive bargaining authorisations. Firstly, the FWC is prohibited from making an authorisation if the agreement would cover employees in relation to general building and construction work.[89] This demonstrates from the outset that this bargaining stream is restricted in nature. Secondly, and perhaps more importantly, a supported bargaining authorisation can not specify an employee that is already covered by a single enterprise agreement that has not yet passed its nominal expiry date.[90] This restriction underscores the broader purpose of the Fair Work Act: the supported bargaining stream is designed as an alternative to enterprise bargaining for specific groups of workers who experience difficulties bargaining at the enterprise level, rather than as a tiered system of industry-wide minimums, as seen in Denmark.

Once a supported bargaining order is in place, the FWC obtains broad facilitative powers to direct the bargaining process under s 246. At its own initiative, the FWC may provide bargaining representatives with such assistance "that the FWC considers appropriate to facilitate bargaining for the agreement" and "that the FWC could provide it in were dealing with a dispute". Additionally, once a supported bargaining order is in place, bargaining parties have access to bargaining orders.[91] Any employer specified in a supported bargaining order that is in operation is prohibited from bargaining with their employees with any other kind of agreement other than an enterprise agreement and the only kind of agreement the employer may make with their employees is a supported bargaining

[87] *Fair Work Act 2009* (Cth) s 243 (1)(c).
[88] *Fair Work Act 2009* (Cth) s 242 (1)(b).
[89] *Fair Work Act 2009* (Cth) s 243A(4).
[90] *Fair Work Act 2009* (Cth) s 243A(1).
[91] *Fair Work Act 2009* (Cth) s 169.

agreement.[92] This provision is important because it prevents employers from pushing a non-union agreement onto their workplace as a way to sidestep the system. It had no equivalent under the previous low paid bargaining stream.

Perhaps the most revolutionary aspect of this bargaining stream is s 246(3) which gives the FWC the power to provide assistance to bargaining parties by directing a person who is not an employer, but specified in the authorisation, to attend a conference if the FWC is satisfied that this person exercises a degree of control over the terms and conditions of employment.[93] This provision has commonly been discussed in reference to government funders in industries such as childcare, community services and aged care. Despite this, there is also a broader potential to be applied in instances where a large private corporation has control over employment conditions within outsource models, supply chains and franchise arrangements. This provision therefore has the potential to directly challenge the issues created by the fissured workplace, as described by David Weil. So far this potential of the bargaining stream is yet to be tested.

The supported bargaining stream commenced on 6 June 2023, and on that very day, three unions, the United Workers Union (UWU), the Australian Education Union (AEU), and the Independent Education Union (IEU), lodged applications for a supported bargaining authorisation.[94] This demonstrated the union movement's determination to invoke the new provisions to their full effect, thereby avoiding the fate of the low-paid bargaining stream, which largely remained a dormant and ineffective mechanism. The authorisation request was approved by the FWC on 27 September 2023. The authorisation covered over 64 employers and 12,000 workers.[95]

In reaching their decision, the FWC adopted a notably flexible approach to the union representation requirement under s 243(1)(c), merely observing that it was satisfied that 'at least some of the employees who

[92] *Fair Work Act 2009* (Cth) s 172(7).
[93] *Fair Work Act 2009* (Cth) s 246 (3).
[94] United Workers' Union, Australian Education Union & Independent Education Union of Australia, *Application for a Supported Bargaining Authorisation – Early Childhood Education and Care Industry*, Matter No B2023/538 (Fair Work Commission).
[95] *Application by United Workers' Union, Australian Education Union and Independent Education Union of Australia* [2023] FWCFB 176, 1; United Workers Union, *Educators Win First Ever Right to Multi-Employer Bargaining*, *United Workers Union,* 27 September 2023, https://unitedworkers.org.au/archive/educators-win-first-ever-right-to-multi-employer-bargaining/

will be covered by the proposed agreement are represented by the UWU, the AEU or the IEU'.[96] This illustrates that, in practice, the legislation establishes a comparatively accessible threshold for the initiation of bargaining. In doing so, it avoids the protracted union recognition processes common in other jurisdictions, which often enable employers to engage in extensive litigation and delay tactics. In reaching their decision to grant an authorisation, the FWC worked their way through the main criteria in s 243 (1). The decision demonstrated just how simple the process was compared to under the previous low paid bargaining stream. The commission decided that s 243(1)(b)(i) was satisfied because the prevailing rates of pay in the sector were close to minimum award rates.[97] Additionally, they considered the 'appropriateness' test under s 243(1)(b)(iii) and held that despite the existence of 3 unions and 64 employers, the structure of the bargaining units meant that there was no evidence that bargaining would be unmanageable. Their decision was particularly weighted by the fact that the employer side was well organised with the ACA representing 41 employers and the Community Child Care Association (CCCA) or Community Early Learning Australia (CELA) representing the remainder. Of particular significance, the FWC contrasted the 'appropriateness' test in the current legislation with the 'public interest' test under the former low-paid bargaining stream, concluding that the appropriateness test now sets a lower threshold than the public interest test:

A standard which requires positive satisfaction as to the public interest is plainly more stringent than one which involves the exercise of a more general discretion.19 An appropriateness standard connotes that which is 'fair and just' or 'suitable' or 'fitting' and involves, we consider, an evaluative assessment of a broader and less prescriptive nature.[98]

This demonstrates that the FWC has taken a facilitative and pragmatic approach to the legislative requirements, rather than setting a high procedural bar that could frustrate access to multi-employer bargaining under the supported bargaining stream.

[96] *Application by United Workers' Union, Australian Education Union and Independent Education Union of Australia* [2023] FWCFB 176, 45.
[97] *Application by United Workers' Union, Australian Education Union and Independent Education Union of Australia* [2023] FWCFB 176, 50.
[98] *Application by United Workers' Union, Australian Education Union and Independent Education Union of Australia* [2023] FWCFB 176, 27.

Similarly, the FWC adopted a broad interpretation of the statutory 'common interest' requirement. The Commission held that shared industry characteristics, regulatory frameworks, and funding arrangements are sufficient to satisfy the legislative threshold. This marks a clear departure to the more restrictive position taken by the Commission under the previous low-paid bargaining stream.

Once bargaining is concluded, employers may request a vote of approval by the employees covered by the authorisation.[99] The employees at all the workplaces will vote on the proposed agreement in separate cohorts. The agreement will be made if a majority of employees of at least one workplace vote in its favour.[100]If any workplaces vote down the proposed agreement, bargaining representatives need to apply to the FWC under s 184 to have the agreement varied so that only those workplaces that voted in favour it will be covered by the agreement.[101]

Once an agreement is made, additional employers may be added through a variation request. Such a request can be lodged by an employer, an employer organisation, or a union.[102] The FWC may approve the variation if it is satisfied that the majority of employees want to be covered by the agreement, in addition to having regard to the matters listed in s 243(1)(b).[103] This coverage extension mechanism gives unions a powerful tool, as it allows them to bring extra employers under the scope of an existing agreement even after it has been created. To give an example of just how effective this mechanism can be, we must turn once more to the Early Childhood Education and Care Multi-Employer Enterprise Agreement 2024-2026 (ECEC Agreement) that was approved on 10 December 2024. Since January 2025 there have been eight successful applications by unions to join employers to the agreement, these successful applications have added 434 employers to the agreement in the short timespan span of under a year.[104]

The ECEC Agreement is an early example of how the supported bargaining stream can quickly expand agreement coverage to thousands of employees, effectively functioning as a form of sectoral bargaining. The positive results of the ECEC agreement speak for themselves, a 10% pay

[99] *Fair Work Act 2009* (Cth) s 181.
[100] *Fair Work Act 2009* (Cth) s 182 (2) (d).
[101] *Fair Work Act 2009* (Cth) s 184.
[102] *Fair Work Act 2009* (Cth) s 244 (3).
[103] *Fair Work Act 2009* (Cth) s 216BA.
[104] *Early Childhood Education and Care Multi-Employer Agreement 2024- 2026* [2024] FWCFB 461.

increase was locked in for the first year of operation with a 5% in the second year.[105] This pay increase was made possible through a commitment of financial support from the Commonwealth government, something that would have been very difficult to coordinate without the supported bargaining stream.[106]

This successful outcome was also enabled by strong employer backing and the involvement of the Australian Childcare Alliance (ACA). Employers themselves gave evidence showing that they shared similar characteristics and interests, support that proved significant in convincing the FWC to issue an authorisation. Most importantly, employer support demonstrates the effectiveness of the stream's design, particularly as employers in the childcare sector viewed multi-employer supported bargaining as beneficial, not least because it enabled a government funder to participate directly in negotiations.

Despite these positive developments, the early childhood education example has been an isolated success story because as of April 2026 it remains the first and only supported bargaining application to produce a completed agreement. Although supported bargaining authorisations have been issued and bargaining has begun across a range of sectors (from government-funded community services to McDonald's franchises), the early childhood agreement remains the only one finalised. The fact that just one agreement has emerged in more than two years underscores the narrow reach and slow progress of this bargaining stream and its inadequacy at delivering genuine sectoral bargaining.

10. Single Interest Bargaining Stream

The second major change relates to reforms of the existing single interest bargaining stream which commenced on 6 June 2023. The amendments to the single interest employer authorisations system attempts to broaden access to multi-enterprise bargaining in several ways. Firstly, an employee bargaining representative can now put forward an application for a single interest employer authorisation (unlike the previous system that only permitted employers to seek an authorisation). Secondly, a ministerial declaration is no longer required for non-franchisee applications. Thirdly, the "common interest" test is a lot more flexible than the previous test set

[105] *Early Childhood Education and Care Multi-Employer Agreement 2024- 2026* [2024] FWCFB 461 at 26.
[106] *Early Childhood Education and Care Multi-Employer Agreement 2024- 2026* [2024] FWCFB 461 at 26.

out in s 247 which requires the minister to consider a mandatory seven matters before issuing a declaration. Fourthly, a union can apply for a single interest employer agreement to be varied to allow for an extension of coverage to additional enterprises (provided that certain criteria are met, such as majority employee support, common interests, etc).[107] Another positive change in the 2022 amendments is the removal of the ban on industrial action for multi-enterprise bargaining. Industrial action can now be taken for a single interest agreement or a supported bargaining agreement provided that a minimum of 120 hours notice is given.[108]

Although broader access to multi-enterprise agreements is welcoming, there are some serious shortcomings of the single interest authorisation scheme. The 2022 amendment contains a rather onerous test for employees to initiate a single interest agreement. To commence bargaining, the union needs to prove that a majority of employees in each workplace included in the proposed single interest agreement are in favour of bargaining.[109] This requirement presents a significant challenge, as unions may be compelled to undertake lengthy campaigns to secure majority support across various workplaces, which could be both time-consuming and resource-intensive. Essentially the Fair Work Commission plays a gatekeeper role.[110] Consequently, this situation may undermine the intended benefits of the reforms due to the substantial demands it places on union resources.

A further problem with the 2022 reforms to the single interest agreement system is that there is still uncertainty as to the extent to which it would genuinely allow for access to multi-enterprise agreement making. The act provides access to single interest employer agreements in cases where the employees across the various enterprises share a "clearly identifiable common interest". At this early stage it is uncertain exactly how this will be interpreted and whether it will result in large industry wide bargaining cohorts or whether it will be narrowly interpreted to only apply to a small grouping of businesses. It is also uncertain how the "common interest"

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[107] *Fair Work Act 2009* (Cth) s 216DB.

[108] *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (Cth) Sch 1 item 579.

[109] *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (Cth) Sch 1 item 633A.

[110] A Forsyth, *What Difference Can the Law Really Make? 'Ascending' and 'Descending' from Enterprise-Based Bargaining in Australian Law,* in P Tomassetti, A Bugada, A Forsyth (eds.), *The Law and Collective Bargaining: Sources and Patterns of Regulation in the Modern World of Work,* Hart Publishing, Oxford, 2026, 189-207.

test will apply to outsourced workers and businesses in a large supply chain.
Another shortcoming of single interest employer authorisations is that they cannot be made for "small business" employers. Employers that hire fewer than 20 employees fall under this exemption.[111] This provision is a major shortcoming of the system for two reasons. Firstly, it potentially denies collective bargaining to large sections of the workforce that are unable to access single enterprise bargaining due to the size of their workplaces. Secondly, some employers/suppliers could use small contracting companies to exploit the small business loophole and escape bargaining obligations. In addition to the small business exemption, a single-interest bargaining application cannot include an employer already covered by an enterprise agreement that has not yet reached its nominal expiry date.[112] This exclusion automatically removes a significant number of employers from eligibility, underscoring the single-interest bargaining stream's inadequacy in facilitating genuine sectoral bargaining. Since the very purpose of the reforms was to provide greater access to collective bargaining in the 21st-century world of the fissured workforce, these exclusions appear to defeat the purpose of the reforms.
Finally, it should be highlighted that even though there are some positive changes in the 2022 amendments, this does not automatically guarantee a revitalisation of collective bargaining. Empirical findings reveal a persistent lack of revitalisation in collective bargaining despite the 2022 amendments. Since the legislative changes have taken effect, there have been few instances of bargaining under the single-interest bargaining stream. Using quantitative data collected by Emeritus Professor Mark Bray and Professor Alison Preston, since 21 February 2025 there had been 19 single-interest authorisations issued and only 3 agreements approved.[113] Not only is the number of finalised agreements considerably low, but of the 19 authorisations issued, the overwhelming majority have been confined to government, non-profit, and educational sectors. Only

[111] *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (Cth) Sch 1 item 633A.
[112] *Fair Work Act 2009* (Cth) ss ss 249(1)(1B)(e)) and 249(1D).
[113] Biomedical Engineers (Victorian Public Sector) (Single Interest Employers) Enterprise Agreement 2024-2028; Nurses and Midwives (Victorian Public Sector) Single Interest Employer Agreement 2024–2028; AMWU On-Site Construction HVAC Workers NSW Enterprise Agreement 2023–2027.

three authorisations have been made in the commercial private sector, underscoring the system's limited penetration in the broader workforce.[114] The question remains, therefore, as to the extent to which greater access to multi-enterprise bargaining under tightly controlled conditions would genuinely achieve the wider goal of revitalising collective bargaining overall. At face value, it appears that the ALP intends for multi-enterprise bargaining to play an auxiliary role as an alternative way to lift wages in low paid industries without a history of collective bargaining. Unless multi-enterprise bargaining takes a more central role in our IR system, there is always a danger that we will continue to see businesses competing to reduce wages and conditions to gain a competitive advantage.

Part 3: The Danish Experience of Sectoral Bargaining and Organised Decentralisation

11. Overview of the Danish Model

Collective bargaining in Denmark operates through a coordinated multi-level structure. Three tiers of collective bargaining operate in tandem and complement each other. Denmark's sectoral agreements provide broad frameworks that cover pay and conditions for an entire industry, however they also leave room for further negotiations at the company level. This section focuses primarily on collective bargaining in the private sector. This is primarily because wages in the public sector are directly regulated by wage increases at private sector bargaining rounds.[115] Since 1984, the government and public sector unions agreed on a regulatory scheme (*Reguleringsordningen*) whereby wage increases are capped at 80 per cent of the difference between observed wage increases in the public and private sectors.[116]

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[114] See *AMWU* [2024] FWC 395; *APESMA v Great Southern Energy Pty Ltd T/A Delta Coal, Whitehaven Coal Mining Ltd, Peabody Energy Australia Coal Pty Ltd, Ulan Coal Mines Ltd* [2024] FWCFB; *Hungry Jacks Pty Ltd T/A Hungry Jack's* [2024] FWC 2275.

[115] S K Andersen, C Ibsen, K Alsos, K Nergaard, P Sauramo, *Changes in Wage Policy and Collective Bargaining in the Nordic Countries – Comparison of Denmark, Finland, Norway and Sweden* in G Van Gyes, T Schulten, *Wage Bargaining Under the New European Economic Governance: Alternative Strategies for Inclusive Growth,* European Trade Union Institute, Brussels, 2015, pp. 139-168, p. 142.

[116] S K Andersen, J E Dølvik, C L Ibsen, *Nordic Labour Market Models in Open Markets,* European Trade Union Institute, Brussels, 2014, p. 29; *Medarbejder- og Kompetencestyrelsen,* Reguleringsordningen, 1 April 2023 https://pav.medst.dk/lon/reguleringsordningen ; A B Christensen, *Anders Bondo om OK-Forhandlingerne: Lønstigningerne er et Spil for Galleriet*,

The Danish model has historically been based upon voluntarism and self-regulation of the labour market by unions and employer organisations. Legislation plays a minimal role, and the vast majority of workplace rights are contained in collective agreements. Notably, Denmark does not have a legislated minimum wage, and pay is typically governed by provisions contained within collective agreements.[117]

Given that the Danish model is largely based on self-regulation, the role of peak-level organisations is critical. On the employer side, the DA (*Dansk Arbejdsgiverforening*, Confederation of Danish Employers) is Denmark's peak employer confederation comprising of 11 private sector employer organisations. The DA represents approx. 25,000 companies that employ over 50 per cent of the private sector workforce.[118] The most powerful member of DA is DI (*Dansk Industri*, Confederation of Danish Industry) which represents approximately 11,700 companies.[119] In addition to the DA, the only other private sector employers confederation is the *Finans Danmark Arbejdsgiver*.[120] This confederation services employers in the finance and banking sector.

On the employee side, the largest trade union confederation has historically been the LO (*Landsorganisationen i Danmark*). Founded in 1898, its membership largely consisted of skilled and unskilled blue-collar workers in the private sector. As of January 2019, the LO merged with Confederation of Professionals in Denmark (*Funktionærernes og Tjenestemændenes Fælles råd*, FTF) to form a new trade union confederation, the Confederation of Trade Unions (*Fagbevægelsens Hovedorganisation*, FH). The FTF were a predominantly white-collar union confederation that represented salaried employees in the public sector. The FH is currently the largest trade union confederation and has 1.4 million members, organised in 79 affiliated unions. In addition to the FH there is one other confederation that represents staff at universities and education centres, the Danish Confederation of Academics (*Akademikernes Centralorganisation*,

Altinget, 27 February 2024, https://www.altinget.dk/artikel/anders-bondo-om-ok-forhandlingerne-loenstigningerne-er-spil-for-galleriet.

[117] S K Andersen, S Kaine, R D. Lansbury, *Decentralised Bargaining in Denmark and Australia: Voluntarism versus Legal Regulation*, (2017) 43(1) *National Institute of Labour Studies Incorporated* 45, 60-61.
[118] Confederation of Danish Employers*, Abour DA* https://www.da.dk/en/about-da/.
[119] DA: Confederation of Danish Employers ,*Member Organisations,* https://www.da.dk/en/about-da/member-organisations/.
[120] Finans Denmark Arbejdsgiver , https://arbejdsgiver.finansdanmark.dk/.

AC). Taken together, private sector union density in Denmark remains relatively stable at over 60 per cent.[121] This stands in sharp contrast to the low levels of union density in Australia, which sits at 12 per cent, and the OECD average of only 15 per cent.[122]

The primary role of the two peak-level private sector confederations, the FH and DA, is that of coordinators of private sector bargaining rounds.[123] This is achieved by setting common expiry dates and timeframes for collective agreements, ensuring the bargaining demands are within the framework set by the manufacturing agreement, and working with the conciliator to ensure that sector level bargaining parties reach agreement.[124] In the private sector collective bargaining is essentially a system of pattern bargaining through which the export-exposed manufacturing sector sets the framework for the rest of the labour market.[125] This process is coordinated by the two major employer and employee confederations through the state conciliation board. Once bargaining commences, the confederations play a coordinating role by ensuring the negotiations begin with the industrial sector which sets the framework for other sectors to follow throughout the entire round of bargaining.

The modern Danish industrial relations system can be traced back to the September Agreement (*Septemberforliget*) that was agreed between the two newly founded confederations for private sector employers and employees, the Danish Employers' and Masters' Confederation (forerunners to the *Arbejdsgiverforening*, DA) and the Danish Federation of Trade Unions (forerunners to the *Landsorganisationen i Danmark*, LO). An amended version of the Main Agreement (*Hovedaftalen*) is still in force

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121 OECD, *Trade Union Density and Collective Bargaining Coverage (Data Explorer),* OECD Statistics, Paris, https://data-explorer.oecd.org/ (accessed 29 April 2026).

122 Australian Bureau of Statistics, T*rade Union Membership*, 14 December 2022 https://www.abs.gov.au/statistics/labour/earnings-and-working-conditions/trade-union-membership/latest-release .

123 J S Madsen, J Due, S K Andersen, *Employment Relations in Denmark*, in R D Lansbury, G J Bamber (eds), *International and Comparative Employment Relations,* Routledge, Oxford, 2020, pp. 209-234, p. 223; S K Andersen, J E Dølvik, C L Ibsen, *op cit 116*, p. 29.

124 C L Ibsen, M Keune, A Garnero, *Organised Decentralisation of Collective Bargaining: Case studies of Germany, Netherlands and Denmark*, OECD Social, Employment and Migration WorkingPapers No. 217, OECD Publishing Paris, August 2018, p. 23; J Due, J S Madsen, C S Jensen, *The September Compromise: A Strategic Choice by Danish Employers in 1899, Historical Studies in Industrial Relations,* 2000, vol. 10, pp. 43- 70, p. 53.

125 C L Ibsen, *The Role of Mediation Institutions in Sweden and Denmark after Centralized Bargaining, British Journal of Industrial Relations,* 2016, vol. 54, n. 2, pp. 285- 310, pp. 285-286; S K Andersen, J E Dølvik, C L Ibsen, *op cit 116*, p. 29.

today and the latest version was updated in 1993.[126] Despite the changes and amendments, the key rights and obligations set out in the original 1899 document remain unchanged.[127]
The September Agreement recognised unions as legitimate parties in the industrial relations process.[128] The agreement provided a mutual acknowledgement that the peak-level employer and union confederations, the DA and LO, would "work together… for peaceful, stable, and good relations".[129] In return for recognition of the right to organise collectively, the unions recognised the right for employers to exercise managerial prerogative.[130] Both parties recognised each other's methods of exerting industrial pressure during collective bargaining. The employer organisations recognised the right to strike, and unions recognised the right for employers to initiate lockouts. Although the September Agreement did not lead to the full centralisation of collective bargaining, it set up a framework for a more institutionalised bargaining system. This is most evident from the fact that the two major industrial confederations, the LO and DA, agreed to take a central role in the regulation of industrial action, the settlement of disputes and resolution of breaches to existing collective agreements.[131] This system allowed a sectoral level bargaining with national level coordination to develop over the subsequent decades.

12. Collective Bargaining Step 1: Sector Level Negotiation

A private sector bargaining round usually starts in the manufacturing sector.[132] Negotiations take place between Dansk Industri (DI) and CO-Industri - a massive cartel of nine unions that include some of Denmark's largest blue-collar unions (this includes key industrial players such as 3F

[126] *Hovedaftalen* af 1973 med ændringer pr.1. marts 1981, 1. marts 1987 og 1. Januar 1993.
[127] A Wolthers, *The Danish Trade Union Movement, Equality and Diversity,* FIU-Ligestilling, Copenhagen, 2016, 17.
[128] *The September Agreement: Agreement between The Danish Employer's Association and the Danish Federation of Labor* (5 September 1899) section 4.
[129] *The September Agreement: Agreement between The Danish Employer's Association and the Danish Federation of Labor* (5 September 1899) section 4.
[130] *The September Agreement: Agreement between The Danish Employer's Association and the Danish Federation of Labor* (5 September 1899) section 4.
[131] *The September Agreement: Agreement between The Danish Employer's Association and the Danish Federation of Labor* (5 September 1899) section 3; C Jørgensen, *September Compromise Marks 100th Anniversary*, Eurofound, 27 August 1999
https://www.eurofound.europa.eu/en/resources/article/1999/september-compromise-marks-100th-anniversary.
[132] C L Ibsen, M Keune, A Garnero, *op cit 124*, pp. 24- 25.

Industry and Dansk Metal).[133] Before bargaining commences, the two organisations consult their respective membership bases in various information meetings across Denmark.[134] At this stage the unions analyse rank-and-file concerns and filter them against the claims of their counterpart, DI, to ensure the claims are viable and not disruptive of the bargaining process.[135] A key part of the negotiation process involves the lead negotiators from both sides taking a trip abroad to discuss key bargaining issues in a media/constituent-free environment.[136] During these trips abroad, potential pressure points are identified and lead negotiations work out ways to deal with them without derailing negotiations.[137] This demonstrates a key aspect of the Danish system which is based on open communication, social partnership, and mutual cooperation.

No piece of legislation dictates that negotiations must be done in this particular manner (even the Main Agreement is silent on this) other than it being unwritten custom that the manufacturing agreement is bargained first, and all other rounds of negotiations have to work within the established framework.[138] The reason why bargaining takes place around a framework set by the manufacturing sector is because manufacturing is tied to the export market and linked directly to Denmark's external economic competitiveness.[139] This ensures that cost-increases in sheltered sectors do not spill over into exposed sectors.

The coordinated bargaining framework largely developed in the 1980s due to negotiations between the DA and LO on ways to improve Denmark's international economic competitiveness in an increasingly globalised economy.[140] The post-war economic boom had ended in the developed western economies and a move away from bargaining at a confederation level towards coordinated sectoral bargaining was seen as a way to

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133 Co Industri, *Co Industri: Info & Fakta In English*, 2 January 2024 https://www.co-industri.dk/fakta/english.

134 C L Ibsen, C H Ellersgaard, A G Larsen, *Quiet Politics, Trade Unions, and the Political Elite Network: The Case of Denmark, Politics & Society,* 2021, vol. 49, n. 1, pp. 43- 73, p. 61.

135 *Ibid,* p. 61.

136 *Ibid*, 61.

137 *Ibid*, 61.

138 S K Andersen, C L Ibsen, K Alsos, K Nergaard, P Sauramo, *op cit 115*, p. 142.

139 S K Andersen, J E Dølvik, C L Ibsen, *op cit 116*, p 39; C Ibsen, *op cit 125,* pp. 285- 286.

140 T Iversen, *Power, Flexibility, and the Breakdown of Centralized Wage Bargaining: Denmark and Sweden in Comparative Perspective: Denmark and Sweden in Comparative Perspective, Comparative Politics,* 1996, vol. 28, n. 2, pp. 399- 436, p. 423; C Ibsen, *Trade Unions in Denmark,* Friedrich Ebert Stiftung, Berlin, 2012, p. 8.

improve economic efficiency through flexibility and wage moderation. Dominant employers in the manufacturing sector called for the elimination of national confederate-level bargaining which they viewed as an added cost.[141] Instead of bargaining predominantly at a national level, some employers wanted bargaining to predominantly take place at a sectoral level.[142]

The drive towards coordinated pattern bargaining was intensified on 8 December 1987 when the LO, DA and government signed a tripartite 'Common Declaration' (*Fælleserklæringen*).[143] The *Fælleserklæringen* aimed to ensure that labour costs in Denmark do not rise at a faster rate than what is sustainable for the export exposed manufacturing sector.[144] The unions agreed to wage moderation in return for a social wage based around pay increases, job guarantees, pension schemes and welfare arrangements tied to economic growth.[145] The effect of the *Fælleserklæringen* was to link productivity increases and welfare arrangements to the collective bargaining system.[146] Traditionally, collective bargaining dealt almost exclusively in matters concerning working hours and pay. However, in 1989 the manufacturing sector began to develop occupational pension schemes within collective agreements (*arbejdsmarkedspensionsordninger*).[147] This has since been extended to cover a wider range of social-welfare issues such as paid parental leave (2004), continuing education (2007), discretionary leave provisions (2007), and severance pay (2010).[148]

This move towards sectoral bargaining within a framework set by the manufacturing agreement was fully realised in 1991-1992 with the creation of two large bargaining blocks in manufacturing.[149] On the employer side, the DI was created in 1991 through the merger of various employer associations in manufacturing.[150] The DI currently represents over 60 per

[141] C Ibsen, '*op cit 125,* p 293.
[142] S K Andersen, S Kaine, R D. Lansbury, *op cit 117*, p. 51.
[143] C Ibsen, '*op cit 125,* p. 293.
[144] J Lind, H Knudsen, *Denmark: The Long Lasting Class Compromise, Employee Relations,* 2018, vol. 40, n. 4, pp. 580- 599, p. 585.
[145] C Ibsen, '*op cit 125,* p. 293.
[146] J Madsen, J Due, S K Andersen, *From Centralised Decentralisation towards Multi-Level Regulation*, Conference Paper presented at the Proceedings of the 6th European IIRA Congress: Working Europe: Visions and Realities, 25 June 2001, p. 22.
[147] Jørgen Steen Madsen, Jesper Due, Søren Kaj Andersen, *op cit 123*, p. 224.
[148] S K Andersen, J E Dølvik, C L Ibsen, *op cit 116*, p. 31.
[149] T Iversen, *op cit 140*, p. 423.
[150] *Ibid*, 423.

cent of employment within the DA.[151] Due to its large voting power within the DA executive, the DI has a *de facto* power of veto over all sectoral agreements.[152] Similarly, in 1992, Co-industri was founded as a bargaining cartel comprising of blue-collar industrial unions. The existence of these large and unified bargaining blocks ensured a strong "cross-class alliance in manufacturing – with 15 concentrated actors on both sides – was born".[153] The DI and Co-industri's influence has been a major reason why coordinated pattern bargaining, led by the manufacturing industry, has remained in Denmark, despite calls from more radical elements of the employer cohort for greater decentralisation.[154]
During the bargaining period itself, the two manufacturing cartels negotiate on a "labour cost norm" that is based on sustainable minimum wage increases linked to the export sector and non-wage issues such as parental leave, pension contributions, training support programs, etc.[155] Once the two manufacturing cartels reach an agreement on the "labour cost norm", it becomes a "framework agreement" (*Gennembrudsforlig*) for the entire round of private sector bargaining.[156] Once negotiations for the Industrial agreement are concluded, all the other private sector industries negotiate/ renew their respective sectoral agreement. All other sectoral agreements are bargained within the "labour cost norm" framework provided by the industrial agreement.[157]

13. Collective Bargaining Step 2: The Conciliation Phase and Proposal Agreement (*Maeglingsforslag*)

Once the bulk of sector level negotiations are completed, the two leading private sector confederations (FH and DA) meet before the government conciliator to wrap up the bargaining round. Through conciliation, the peak confederations ensure that agreements are completed, and any unresolved issues are finalised into a single proposal by the conciliator.

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151 C L Ibsen, *Three Approaches to Coordinated Bargaining: A Case for Power-Based Explanations, European Journal of Industrial Relations,* 2015, vol. 21, n. 1, pp. 39- 56, p. 48.
152 S K Andersen, J E Dølvik, C L Ibsen, *op cit 116*, p. 30.
153 C L Ibsen, *op cit 151*, p. 48.
154 S K Andersen, S Kaine, R D. Lansbury, *op cit 117*, p. 51.
155 C L Ibsen, C H Ellersgaard, A G Larsen, *op cit* 134, p. 61; C Ibsen, M Keune, A Garnero, *op cit 124*, pp. 24- 25.
156 C Ibsen, M Keune, A Garnero, *op cit 124*, p. 25; S K Andersen, C L Ibsen, K Alsos, K Nergaard, P Sauramo, *op cit 115*, p. 142.
157 C L Ibsen, M Keune, A Garnero, *op cit 124*, p. 25.

The conciliation board is endowed with specific powers as outlined in the Mediation Act. It may compel parties to engage in negotiations when there is a likelihood of an impending conflict.[158] Additionally, it can order a deferral of strikes and lockouts for a duration of up to two weeks.[159] The board is also empowered to call upon the disputing parties to resume negotiations on specific points of disagreement.[160] Furthermore, it can compel parties to testify before the Labour Court if there are matters that are uncertain and need further clarification. [161] The board has the authority to demand information about strikes and lockouts from bargaining parties. Conciliators are also authorised to submit a mediation proposal and to offer recommendations on concessions that could facilitate a peaceful conclusion to a dispute. [162]

If the two peak-level confederations disagree on key issues, the role of the conciliator is to assist them in reaching an agreement.[163] The DA and FH can also use the mediation process to tie up any sector level negotiations that may have reached impasse.[164] As the conciliator collects the elements of the different agreements in one proposal settlement, the areas or sectors where agreements have not been reached are combined into a single proposal agreement (*Maeglingsforslag*).[165] The proposal agreement contains provisions that are to apply to where agreement has not been

[158] *Bekendtgørelse af lov om mægling i arbejdsstridigheder* [Act on Mediation in Labor Disputes, cf. Executive Order No. 192 of 6 March 1997 with the amendments resulting from Act No. 1078 of 29 December 1999]

[159] *Bekendtgørelse af lov om mægling i arbejdsstridigheder* [Act on Mediation in Labor Disputes, cf. Executive Order No. 192 of 6 March 1997 with the amendments resulting from Act No. 1078 of 29 December 1999] Section 3 (3).

[160] *Bekendtgørelse af lov om mægling i arbejdsstridigheder* [Act on Mediation in Labor Disputes, cf. Executive Order No. 192 of 6 March 1997 with the amendments resulting from Act No. 1078 of 29 December 1999] Section 3.

[161] Section 6 (2).

[162] *Bekendtgørelse af lov om mægling i arbejdsstridigheder* [Act on Mediation in Labor Disputes, cf. Executive Order No. 192 of 6 March 1997 with the amendments resulting from Act No. 1078 of 29 December 1999] Section 4 Paragraph 3.

[163]'Forligsmandens Mæglingsforslag Samler Enighed og Uenighed', Dansk Industri (Web Page) < https://www.danskindustri.dk/ok2023/nyhedsarkiv/2023/3/forligsmandens-maglingsforslag-samler-enighed-og-uenighed/>.

[164] *Bekendtgørelse af lov om mægling i arbejdsstridigheder* [Act on Mediation in Labor Disputes, cf. Executive Order No. 192 of 6 March 1997 with the amendments resulting from Act No. 1078 of 29 December 1999] s 12 psc 3.

[165] *Bekendtgørelse af lov om mægling i arbejdsstridigheder* [Act on Mediation in Labor Disputes, cf. Executive Order No. 192 of 6 March 1997 with the amendments resulting from Act No. 1078 of 29 December 1999] s 4 (3).

reached by the relevant sectoral union/s and employer organisations. It also contains common provisions for all agreements in the private sector.[166] Usually, these provisions are based around the industrial agreement which sets the framework for the negation round. It is important to highlight that mediation is a voluntary process and neither of the two confederations are obligated to accept the proposal agreement. In addition, the conciliator's proposal is largely based on weighing up the *balance of power between the bargaining parties* and not on external socio-economic factors.[167] The Conciliators assess the balance of power between the parties so that the proposal agreement would correspond with the result of potential industrial action taken by the parties.[168] It is the industrial bargaining power of the parties that drive the process. This process differs greatly from Australia's current modern award system which is a form of state-driven sectoral regulation based on a multitude of factors that primarily include, but is not limited to, a wide range of social and economic considerations.[169]

The two confederations are required to reach an agreement and have members vote in favour of it before the March 1 deadline.[170] If parties do not reach an agreement by the March 1 deadline, bargaining parties usually send each other a warning that an industrial conflict will commence at the termination of the existing collective agreement.[171] At this stage the conciliator can exercise its powers under the Mediation Act to extend negotiations two times for up to 14 days.[172] The purpose of this provision is to give the parties more time to reach agreement and short-circuit threats of industrial action that may impede the bargaining

[166] 'Forligsmandens Mæglingsforslag Samler Enighed og Uenighed', Dansk Industri (Web Page) < https://www.danskindustri.dk/ok2023/nyhedsarkiv/2023/3/forligsmandens-maglingsforslag-samler-enighed-og-uenighed/>.
[167] J Due, J S Madsen, C S Jensen, L K Patersen, *The Survival of the Danish Model,* DJOF Publishing, Copenhagen, 1993, p. 126.
[168] *Ibid,* p. 126.
[169] See *Fair Work Act 2009* (Cth) s 134 (1).
[170] J Lind, *Denmark: The Sacred Cow of Collective Bargaining is Still Alive* in T Müller, K Vandaele, J Waddington (eds), *Collective Bargaining in Europe: Towards an Endgame* European Trade Union Institute, Brussels, 2019, pp. 151- 171, p. 165.
[171] *Ibid.*
[172] *Bekendtgørelse af lov om mægling i arbejdsstridigheder* [Act on Mediation in Labor Disputes, cf. Executive Order No. 192 of 6 March 1997 with the amendments resulting from Act No. 1078 of 29 December 1999] s 4 (5); s 4 (6).

process.[173] If no agreement can be reached after the extended deadline, the conciliator can declare the negotiations permanently closed. After five days, members of the two confederations can apply to use industrial action (ie strikes and lockouts) to promote their interests (see the section below on industrial action for more information). More frequently, however, the mediation process is finalised when the DA and FH agree on the conciliator's proposal agreement. The proposal agreement is then presented to the members of the two confederations, DA and FH, in a single ballot for approval.[174] In Danish, this power is called *Sammenkædning* and is often translated in English as the Concatenation Right (i.e. the right of the conciliator to concatenate votes into one pool).[175] At this stage, non-renewed agreements are linked to the total mediation proposal.[176]
A key feature of the Danish system is the centralised voting procedure, whereby the conciliator presents a proposal agreement and then pools together all the agreements into a single voting bloc. This mechanism enables peak-level coordination by ensuring that agreement-making occurs across industries simultaneously and reduces the risk of fragmented outcomes. [177] As Madsen *et al* observed, 'Through this voting procedure collective bargaining at sector level was in reality merged into a common multi-industry bargaining process'.[178]

14. Collective Bargaining Step 3: Voting for Replacement Agreements

Agreement by the confederations alone is insufficient; the proposal must also be approved by employers and union members through a vote. Notably, voting takes place in a single block across all sectors. Rejecting an agreement is difficult for two reasons. Firstly, on the employer side, the DI hold over 50 per cent of the vote and hence defection from the norm is very difficult.[179] On the union side, rejection requires a majority. If less than 40 per cent of eligible votes participate, then at least 25 per cent of

[173] C L Ibsen, *Conciliation, Mediation and Arbitration in Collective Bargaining in Western Europe: In Search of Control, European Journal of Industrial Relations,* 2021, vol. 27, n. 1, pp. 23- 39, p. 25.
[174] J Due, J S Madsen, C S Jensen, L K Patersen, *op cit 167,* pp. 96-97.
[175] *Ibid,* pp. 95- 96.
[176] ; S K Andersen, J E Dølvik, C L Ibsen, *op cit 116*, p. 30.
[177] C LvIbsen, M Keune, A Garnero, *op cit 124*, p 23.
[178] J Madsen, J Due, S K Andersen, *op cit 146,* p. 9.
[179] C L Ibsen, M Keune, A Garnero, *op cit 124*, p. 25.

eligible voters are required to vote 'no' for a proposal to be rejected.[180] Since members of the large Co-industri unions hold a voting majority, unions that try to defect from the "labour cost norm" and "framework agreement" (*Gennembrudsforlig*) can be easily outvoted by the Co-industri unions.

The unique voting system, combined with the strong voting power of the Co-industri unions, makes defection from the manufacturing sector's framework agreement difficult.[181] As a result, the Danish voting system has been successful at delivering stable outcomes and resolving industrial tensions, albeit under a concentrated bargaining structure where opposing interests to the manufacturing sector's labour cost norm may be marginalised.[182] In contrast to the Australian experience of decentralisation, where existing coordinating structures became sites of conflict and industrial actors increasingly pursued divergent strategies, coordination in Denmark is actively maintained through institutional design. This system is largely the product of unique historical developments, and its transferability to other industrial relations systems remains uncertain.[183]

If the employers and union members vote in favour of the agreement, then it comes into force on 1 March.[184] The new agreement would create a general peace obligation (*fredspligt*) for the term of the agreement, this means that industrial action would not be legal if it concerns a matter regulated by the collective agreement.[185]

If the agreement is voted down, the DA and FH meet again before the conciliator to work out a new proposal agreement. If agreement can not

[180] *Bekendtgørelse af lov om mægling i arbejdsstridigheder* [Act on Mediation in Labor Disputes, cf. Executive Order No. 192 of 6 March 1997 with the amendments resulting from Act No. 1078 of 29 December 1999] § 12 paragraph 8.; C L Ibsen, M Keune, A Garnero, *op cit 124*, p. 25.

[181] C L Ibsen, *op cit 151*, p. 49.

[182] *Ibid.*

[183] W Galenson, *The Danish System of Labor Relations: A Study in Industrial Peace,* Harvard, Cambridge MA, 1952, p. 108.

[184] Dansk Industri, *Overenskomster Træder Først i Kraft, når Mæglingsforslag Bliver Vedtaget',* https://www-danskindustri-dk.translate.goog/ok2023/nyhedsarkiv/2023/3/overenskomster-trader-forst-i-kraft-nar-maglingsforslag-bliver-vedtaget/?_x_tr_sl=auto&_x_tr_tl=en&_x_tr_hl=en&_x_tr_pto=wapp .

[185] Hovedaftalen af 1973 med ændringer pr.1. marts 1981, 1. marts 1987 or 1. januar 1993, Section 2; *Bekendtgørelse af lov om mægling i arbejdsstridigheder* [Act on Mediation in Labor Disputes, cf. Executive Order No. 192 of 6 March 1997 with the amendments resulting from Act No. 1078 of 29 December 1999] s 2.

be reached after five days, then both parties have a right to initiate a "conflict".[186] Since the existing collective agreements would have expired by this point, industrial action in the form of strikes and lockouts would be a legitimate means of applying bargaining pressure on the opposing side.[187] The capacity for parties to employ industrial force when required is a central pillar of the Danish system. As Due and Madsen observe, "The risk of conflict is the engine of the system. It is the element that secures concessions". [188]

Government intervention also operates as a backstop within the Danish model. If strikes and lockouts continue without a resolution in sight, the government may elect to step in and resolve the conflict. The ability for the government to step in and legislate as a last resort is essential because the structure of Danmark's centralised bargaining system, with its coordinated agreement expiry dates, exposes large parts of the economy to dire economic consequences if negotiations break down.[189]

There is no fixed rule governing when and how intervention occurs.[190] Government interventions are few and far between, the last time the government intervened to suspend industrial action was in the general strike of 1998. This uncertainty is often seen as beneficial, as it encourages parties to reach agreement rather than risk state intervention.[191]

Collective bargaining in Denmark remains highly organised and the leading employer and employee confederations play a central coordinating role in the system. This is largely due to the coordination of bargaining through a unique mediation system and voting procedure, in contrast to the more fragmented bargaining system of Australia, where coordination across firms is limited. Although collective bargaining has been partially decentralised to the sectoral level, the conciliation process remains highly centralised and controlled by the DA, FH and state conciliator.[192]

The mediation system, coupled with potential government intervention, has been effective at delivering high levels of bargaining coverage and

186 Dansk Industri, *Risiko for konflikt ved overenskomstforhandlinger,* https://www.danskindustri.dk/ok2023/nyhedsarkiv/2023/3/risiko-for-konflikt-ved-overenskomstforhandlinger/.

187 *Ibid.*

188 J Due, J S Madsen, *Septemberforliget og den Danske Model,* FAOS, Copenhagen, 1999, p. 3.

189 J Due, J S Madsen, C S Jensen, L K Patersen, *op cit 167, p. 136.*

190 Galenson, *op cit 183*, p.135.

191 *Ibid,* 135.

192 J Due, J S Madsen, C S Jensen, L K Patersen, *op cit 167,* p.183.

avoiding widespread conflicts.[193] This is clearly demonstrated by the occurrence of only three significant private sector conflicts over the past fifty years, specifically in the years 1973, 1985 and 1998, a level of stability not observed in the more decentralised systems.[194] A large part of the success of the Danish model can be attributed to what Due *et al* describe as a *centralisation of competence.*[195] Although bargaining takes place across multiple levels, conciliation and government intervention provides a clear institutionalised process for resolving bargaining impasses and concluding agreements, in contrast to systems where coordination mechanisms are weak or absent.[196] The mediation process, with its unique voting system, has been effective at constraining defectors from Denmark's manufacturing led pattern bargaining.[197] In this respect the two largest bargaining cartels, the DI and Co-industri, provide stability to the system of higher level sectoral bargaining. This process reinforces horizontal coordination by aligning outcomes across sectors, while institutional supports ensure vertical coordination within bargaining units.

15. Sustaining High Bargaining Coverage in Denmark

Collective bargaining coverage in Denmark remains exceptionally high with over 80 per cent of Danes working under a collective agreement. This stands well above the OECD average of 32 per cent.[198] Coverage is near universal in the public sector and remains high in the private sector at approximately 65 to 75 per cent.[199]

Under Danish law, a collective agreement is a legal contract binding only on parties privy to it.[200] This is because Denmark has never had generally binding collective agreements (agreements with an *erga omnes* effect) i.e. whereby a collective agreement is extended by a government

[193] J S Madsen, J Due, S K Andersen, '*op cit 123*, p. 227.
[194] J Due, J S Madsen, C S Jensen, L K Patersen, *op cit 167,* pp 134- 135.
[195] *Ibid,* p. 117.
[196] *Ibid,* **117.**
[197] C L Ibsen, *op cit 151*, p. 49.
[198] OECD*, Negotiating Our Way Up: Collective Bargaining in a Changing World of Work*, OECD Publishing Paris, 2019, p. 15.
[199] J Lind, *op cit 170*, p. 156.
[200] O Hasselbalch, *Labour Law in Denmark,* Kluwer Law International, 2019, Ch 4, §1. 817.

administrative act to be binding on entire sectors and/or industries.[201] There is also no legislation stipulating how to enter into a collective agreement, its content, or the conclusion and termination of an agreement. These rules are determined solely by the unions and employer organisations, along with case law created from the interpretation of voluntary agreements.[202] Denmark has a multi-tier collective bargaining model that involves bargaining at an industry, sectoral and local level. Sectoral agreements are negotiated by unions and employer organisations to cover an entire industry and then applied to all enterprises that are members of the relevant employer association.[203] The two main confederations of employer associations in Denmark are the DA and FA. Over 53 per cent of private sector employees work for an employer that is a member of either the DA or FA, this means that sectoral collective agreements entered between a DA/Finans Denmark Arbejdsgiver member and the relevant union/s are automatically extended to slightly over half the Danish private sector.[204] Consequently, the high levels of employer association membership ensures that bargaining coverage remains stable, even in the absence of legal provisions extending coverage. Although employer association membership is notably high at 53 per cent, it is equally important to recognise that almost half of employers do not belong to employer associations and consequently are not automatically covered by sectoral agreements. Since Denmark does not have any legislative extension mechanisms, the way bargaining coverage remains high is by "adoption agreements" (*tiltrædelsesoverenskomst*) whereby unions persuade and/or pressure employers to adopt sectoral standards.[205] This process is supported by the use of sympathy strikes and boycotts against non-compliant employers.[206]

The importance of adoption agreements and the threat of sector wide sympathy strike action is a significant contributor to Denmark's high bargaining coverage. This dynamic is illustrated by two high-profile labour disputes from Denmark's history that demonstrate the capacity of Danish unions to enforce sectoral coordination through cross-sectoral industrial

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201 R Nielsen, Ryanair-Sagen – som Eksempel på Retskildeudviklingen i Dansk Arbejdsret i EU-Kontekst' in P A Nielson, P K Schmidt, K D Weber (eds), *Erhvervsretlige emner : Juridisk Institut CBS,* Djøf Forlag, Copenhagen 2015, pp. 211- 231, p. 212.
202 Hasselbalch, *op cit 200*, Ch 4 §1. 814.
203 *Ibid,* Ch 4 §1. 812.
204 J Due and J S Madsen, *The Danish Model of Industrial Relations: Erosion or Renewal?* , *Journal of Industrial Relations,* 2008, vol. 50, n. 3, p. 513- 529, p. 516.
205 J S Madsen, J Due, S K Andersen, *op cit 123,* p. 222.
206 J Lind, *op cit 170*, p. 162.

action against individual employers seeking to operate outside the sectoral bargaining framework. The first occurred in 1981 and involved the American fast-food retailer McDonald's. When McDonald's entered Denmark they refused to sign on to the hotel and restaurant collective agreement and, instead, the company aggressively pursued direct dealings with individual employees.[207] In response, the LO and restaurant workers union RBF (*RestaurationsBranchens Forbund*) launched a campaign to pressure McDonald's to sign on to a collective agreement. The company refused to sign and after eight years of conflict, things finally reached a boiling point in 1989 when 16 LO affiliated unions pledged their commitment to sympathy strike action.[208] Transport unions boycotted freight, construction unions refused to build new restaurants for the company and the Danish Typographical Union (*Dansk Typograf-Forbund*) blacklisted McDonald's advertisements in national newspapers.[209] Through the use of mass cross-sectoral industrial pressure, McDonald's finally gave in and bargained with the RBF.[210]

The Ryanair dispute, which emerged in 2015, serves as a further example of how industrial pressure can be used to prevent single employers from undermining sectoral standards. This conflict arose when the Irish airline declined to engage in negotiations for a collective agreement concerning pilots and cabin crew stationed at their bases in Copenhagen and Billund.[211] Much like McDonald's, this case is illustrates the sectoral logic of the Danish model, demonstrating how unions can use sympathy action to enforce coordination and prevent individual employers from operating outside collectively agreed standards.

The conflict began on 9 January 2015 when The Services Union (*Serviceforbundet*) sent a letter to Ryanair expressing their intent for the company to sign a collective agreement for pilots and cabin crew at their Copenhagen and Billund bases. The company responded on 20 January 2015 explaining that they did not recognise unions (which they describe as "third parties") and instead negotiated directly with staff. In addition,

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[207] T Royle, *Worker Representation under Threat -The McDonald's Corporation and the Effectiveness of Statutory Works Councils in Seven European Union Countries, Comparative Labor Law and Policy Journal*, 2001, vol. 22, n. 1, pp. 395-432, p. 405; J McCarthy, *Winning in Secondary: Secondary Boycotts in the United States and Denmark, Arizona Journal of International and Comparative Law,* 2024, vol. 41, n. 1, pp. 108- 133, p. 109.

[208] T Knudsen, *McDonald's i Defensiven*, in *Kuverter,* February 1989, n. 3, 8.

[209] *Ibid.*

[210] Jack McCarthy, *op cit 201*, p. 110.

[211] D Golden, R Erne, *Ryanair pilots: Unlikely Pioneers of Transnational Collective Action, European Journal of Industrial Relations,* 2022, vol. 28, n. 4, pp. 451- 469, p. 457.

Ryanair maintained that since their staff were employed under Irish employment contracts, they were therefore not subject to local Danish labour regulations.[212] The company's hardline refusal to negotiate was largely due to its policy at the time to refuse recognition of any forms of organised labour or collective bargaining (this position has since been reversed in 2017).[213]

In response to Ryanair's refusal to negotiate, *Serviceforbundet* issued a main conflict notice (hovedkonfliktvarsel) on 3 February 2015. The conflict notice outlined the union's intent to take strike action and blockade the company from 26 March 2015.[214] Ryanair responded by proclaiming that they will contest any notice of conflict with legal proceedings.[215] On 3 February 2015, the LO filed a complaint to the Danish Labour Court to establish the legality of the main conflict notice.[216] There were two key issues at stake in the court proceedings. Firstly, whether *Serviceforbundet* had a right to demand Ryanair sign onto a collective agreement. Secondly, the court was called upon to determine whether *Serviceforbundet* had a right to issue a main conflict notice with an intent to take industrial action against the company even though they had no members employed at the worksite.

On 1 July 2015, the Labour Court gave three reasons for its judgement.[217] Firstly, the court based its reasoning on the general legal principle of *lex loci delicti*, which prescribes that the law be applied in the place where a wrongful act had taken place (ie Denmark).[218] Secondly, the court maintained that staff members at Ryanair's bases in Copenhagen and Billund had a strong connection to Denmark.[219] The final reason (and most relevant to this paper) was closely related to the nature of the Danish model itself. The court emphasised the importance of expanding collective agreement coverage, noting that the Danish model relies on collective agreements to regulate wages and conditions rather than statutory minimum standards.[220]

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212 *Ibid*, 457.
213 *Ibid*, 451.
214 Arbejdsrettens dom af 1. juli 2015 In case no. AR2015.0083, 2.
215 Arbejdsrettens dom af 1. juli 2015 In case no. AR2015.0083, 3.
216 Arbejdsrettens dom af 1. juli 2015 In case no. AR2015.0083.
217 Arbejdsrettens dom af 1. juli 2015 In case no. AR2015.0083.
218 Arbejdsrettens dom af 1. juli 2015 In case no. AR2015.0083, 25.
219 Arbejdsrettens dom af 1. juli 2015 In case no. AR2015.0083, 25.
220 Arbejdsrettens dom af 1. juli 2015 In case no. AR2015.0083, 27.

The court further clarified that a Danish union is permitted to negotiate with a company as long as it has a vested "interest" in doing so. What constitutes an "interest" is very broad and includes the protection of members at other workplaces from companies that avoid collective bargaining and undercut union wages. The court expressly recognised a broad union interest in preventing employers from undercutting collectively agreed standards.[221]
The judgement by the Labour Court reflects the broad and sectoral nature of collective bargaining under the Danish system and the commitment to extend sectoral agreements across a wide section of the workplace. Bargaining concerns the regulation of working conditions for the entire sector and or workforce. Consequently, a union, or group of unions, could be permitted to blockade a workplace where they lack membership to compel adherence with sectoral standards. Following the court's decision, Ryanair closed its Danish bases in July 2015.[222] In 2021, the airline re-opened its bases in Denmark under collective agreements with Dansk Metal.[223]
In summary, given that almost half of employers are not affiliated with an employer organisation, adoption agreements and industrial pressure through sympathy strike action plays a vital role in keeping bargaining coverage high and ensuring that unorganised workplaces do not undercut sectoral standards.[224] The Ryanair and McDonald's examples demonstrate that a dispute within a single enterprise could potentially escalate into a dispute with the entire Danish union movement. These two examples demonstrate how horizontal coordination is enforced across sectors through cross-sectoral industrial action. This stands in contrast to Australia, where disputes remain largely confined to the enterprise level, limiting the capacity for coordination across firms and sectors.

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221 Arbejdsrettens dom af 1. juli 2015 In case no. AR2015.0083, 35- 36; See also: J Due and J S Madsen, *op cit 188,* 3.

222 D Crouch, *Ryanair Closes Denmark Operation to Head Off Union Row*, The Guardian Online, 17 July 2015, https://www.theguardian.com/business/2015/jul/17/ryanair-closes-denmark-operation-temporarily-to-sidestep-union-dispute .

223 Kristine Nødgaard-Nielsen, *FPU: Dansk Metal har fredet Ryanair for selv at lave overenskomster med lavprisselskabet*, Fagbladet Luftfart, 14 September 2022, https://luftfart.dk/fpu-dansk-metal-har-fredet-ryanair-for-selv-at-lave-overenskomster-med-lavprisselskabet ; *Ryanair to reopen base at Copenhagen Airport*, The Local DK, 22 August 2023, https://www.thelocal.dk/20230822/ryanair-to-reopen-base-at-copenhagen-airport .

224 J S Madsen, J Due, S K Andersen, *op cit 123,* p. 222.

16. Firm Level Bargaining in a System of Organised Decentralisation

In addition to sector level bargaining, a considerable level of collective bargaining also takes place at a firm level through local agreements. This section examines the historical background of local agreements, their operation, their interaction with other bargaining levels, and how they differ from both sectoral agreements and single-enterprise agreements.

Local agreements are a particular kind of agreement that is bargained at a company or group level and cover firm specific issues such as rostering arrangements, pay, working hours, employee consultation procedures, workplace training, and overtime.[225] No legislation directly governs local agreements.[226] Instead, local agreements are created by provisions in sectoral collective agreements, hence their content and structure are set out within the sectoral agreements themselves. Local agreements can only be made between a company and a union representative, they cannot be made between individual employees or groups of non-unionised employees.[227] They are designed to supplement sectoral level collective agreements, not replace them. A local agreement cannot contain terms less favourable than those outlined in the relevant sectoral agreement.[228]

Most sectoral agreements contain provisions permitting the right to negotiate local wages once a year.[229] Bargaining units can take various forms. Some firms have company-wide agreements, while others have specific workplace agreements or agreements that cover a particular group of workers based on occupation.[230] Local bargaining parties are usually required to submit their local agreements to the peak-level confederations for review and record keeping.[231]

The most radical shift towards firm level decentralisation occurred in the late 80s when employers pushed for a more flexible wage-setting

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225 Hvad er en lokalaftale?, HK, <https://www.hk.dk/raadogstoette/overenskomst/hvad-er-en-lokalaftale>.

226 Lokalaftaler, Dansk Industri, 1 April 2023, https://www.danskindustri.dk/vi-radgiver-dig/personale/overenskomster-og-det-fagretlige-system/lokalaftaler/.

227 T P Larsen, A Ilsøe, *op cit 7*, 377.

228 J Lind, *op cit 170*, p. 151.

229 *Ibid,* p. 159.

230 C L Ibsen, M Keune, A Garnero, *op cit 124*, p. 25.

231 See for example the requirement under the Industrial Agreement: *Industrial Agreement* 2023-2025 Chapter II, Clause 8, Subclause 7.

system.[232] Although enterprise level negotiations always existed in the Danish system, it was not until the 1980s and 1990s that enterprise bargaining began to take off.[233] As mentioned above, pressure from global economic circumstances surrounding the 1987 Common Declaration prompted a gradual decentralisation of bargaining away from the confederation level to the sector organisation level, coupled with delegation of bargaining rights to parties at enterprise level.[234] The floodgates finally opened during the private sector bargaining round of 1991 when all manufacturing workers that were previously on normal (*normalløn*) and minimum wage (*minimalløn*) arrangements were immediately transferred to minimum pay (*mindstebetaling*) arrangements.[235] The bargaining round of 1991 also marked a significant expansion of localised pay agreements numerous industries, as the multi-tiered bargaining framework that had been prevalent in the manufacturing sector started to establish itself as the standard across the entire workforce.[236] In the private sector today around 85 per cent of workers covered sectoral agreements have their rates of pay set by some form of firm level wage negotiations.[237]

Denmark's system of organised decentralisation is sustained by high levels of union density and on-site union affiliated workplace representatives. Local bargaining is union driven and local shop steward networks play a pivotal role in workplace negotiations. They also link enterprise and sectoral levels by channelling workplace grievances into demands for national unions to take up at sectoral negotiations.[238] Shop stewards are formally recognised in sectoral collective agreements, and over 70 per cent of covered firms have local union representation.[239] This stands in contrast to more fragmented systems such as Australia, where workplace level representation is less embedded.

This system of union led local bargaining supports vertical coordination by ensuring that enterprise level bargaining continues to operate within a

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[232]J Lind, *op cit 170*, p. 159; J Due, J S Madsen, C S Jensen, L K Patersen, *op cit 167,* p. 198.

[233] T P Larsen, A Ilsøe, *op cit 7,* 376.

[234] J Due, J S Madsen, *op cit 204,* pp. 514- 519.

[235] J Due, J S Madsen, C S Jensen, L K Patersen, *op cit 167,* p. 224.

[236] *Ibid.*

[237] C L Ibsen, M Keune, A Garnero, *op cit 124*, pp. 24.

[238] S K Andersen, *op cit 12,* 704.

[239] A Ilsøe, A Pekarek, R Fells, *Partnership under Pressure: A Process Perspective on Decentralized Bargaining in Danish and Australian Manufacturing, European Journal of Industrial Relations,* 2018, vol. 24, n. 1, pp. 55-71, p. 58.

sectoral framework. Accordingly, the Danish system has been referred to as an articulated two tier bargaining model.[240] This approach offers several benefits, including the capacity for local bargaining representatives to concentrate on the specific requirements of the firm, the potential to cultivate flexibility at the firm level within a union bargaining structure, and an enhanced opportunity for employee voice at the local level by engaging local participants more actively in the bargaining process.[241]

Conclusions and Final Remarks

The comparison between Australia and Denmark demonstrates that outcomes of decentralisation are not determined by global economic pressures alone, but are equally the product of the institutional framework within which bargaining takes place. Denmark's multi-level bargaining model integrates the advantageous elements of both sectoral and enterprise-level negotiations. This model facilitates employee voice at both the local and sectoral levels, enabling sector-wide matters to be addressed at the sectoral level while allowing firm-specific concerns to be managed locally. This has led to Denmark developing into a system that Traxler would classify as "organised decentralisation", in which coordination across sectors is maintained while preserving flexibility at a firm level.[242] By contrast, Australia's predominantly enterprise-based model lacks these institutional coordinating structures. This has resulted in a more fragmented and less stable bargaining system.

In the 1980s, both Australia and Denmark faced similar pressure to reform their industrial relations systems in response to global economic change. Australian unions initially supported a multi-tiered bargaining system not too dissimilar to the Nordic model. With the political influence that the ACTU had via the Accord, the union movement had the opportunity to push for decentralisation within a more organised framework.[243] The ACTU explicitly wanted enterprise bargaining to operate within the existing award system and serve as "a safety valve for defusing wage pressure in labour market hotspots".[244] It envisioned enterprise bargaining as an "overaward" mechanism, whereby

[240] J Visser, *Variation in Decentralization: Articulation and Legal Culture*, in T P Larsen and A Ilsøe (eds), *Den Danske Model Set Udefra,* DJOF Publishing, Copenhagen 2016, p. 53.
[241] J Lind, *op cit 170*, p. 161.
[242] S K Andersen, J E Dølvik, C L Ibsen, *op cit 116*, p. 27.
[243] C Briggs, *op cit 40*, p. 39.
[244] *Ibid*, 34.

productivity-based bargaining operated within the framework of sectoral minimum award rates. This model would have enabled decentralisation within an organised framework broadly consistent with Denmark's system, supported by strong union structures and channels for employee voice at an enterprise level.[245]

The historical events between 1991 to 2009, however, saw Australia adopting a system of disorganised decentralisation whereby bargaining predominantly takes place at an enterprise level. Unique historical circumstances led to Australia moving towards a US-inspired single-enterprise bargaining model. In particular, the rift between unions, employer organisations and the AIRC was a core reason for the shift towards disorganised decentralisation. In contrast to Australia, Denmark's system of voluntary collective bargaining remains resilient. Denmark responded to the economic challenges of corporate globalisation in the 1980s by achieving flexibility through articulated organised decentralisation. In Denmark, firm level bargaining takes place within a framework set by sectoral level bargaining. The Danish two-tier bargaining model has proved to be effective at delivering the benefits of widescale bargaining coverage while at the same time allowing a level of flexibility for employers and unions to make arrangements to bargain at the firm level.[246] This demonstrates that the move towards disorganised decentralisation and the subsequent decline in collective bargaining coverage is not an inevitable consequence of the drive for firm level flexibility. Denmark has managed to adapt its collective bargaining system to the needs of a competitive market economy without following the disorganised decentralisation model that has been prevalent in the Anglo-American sphere. Denmark's model of organised decentralisation is a synthesis of the dual need to preserve collective bargaining coverage and allocate specific bargaining duties to firm-level players.

The Danish model demonstrates that high levels of collective bargaining coverage can be sustained under conditions of decentralisation where broad-based bargaining and coordination are preserved. With collective bargaining coverage at approximately 80% of employees, Denmark has avoided the decline in coverage observed in disorganised enterprise-based modes such as Australia. Its coordinated multi-level bargaining system has allowed Denmark to avoid the inflexibilities that sectoral bargaining models are often accused of, while at the same time providing a

[245] *Ibid.*
[246] J Visser, S Hayter and R Gammarano, *op cit 14*.

bargaining framework that prevents the race-to-the-bottom in wages and conditions that we have seen in countries with fragmented bargaining systems. This demonstrates the capacity for the Danish model to sustain both horizontal coordination across sectors and vertical coordination within bargaining units, thus ensuring that decentralisation does not degenerate into fragmentation.

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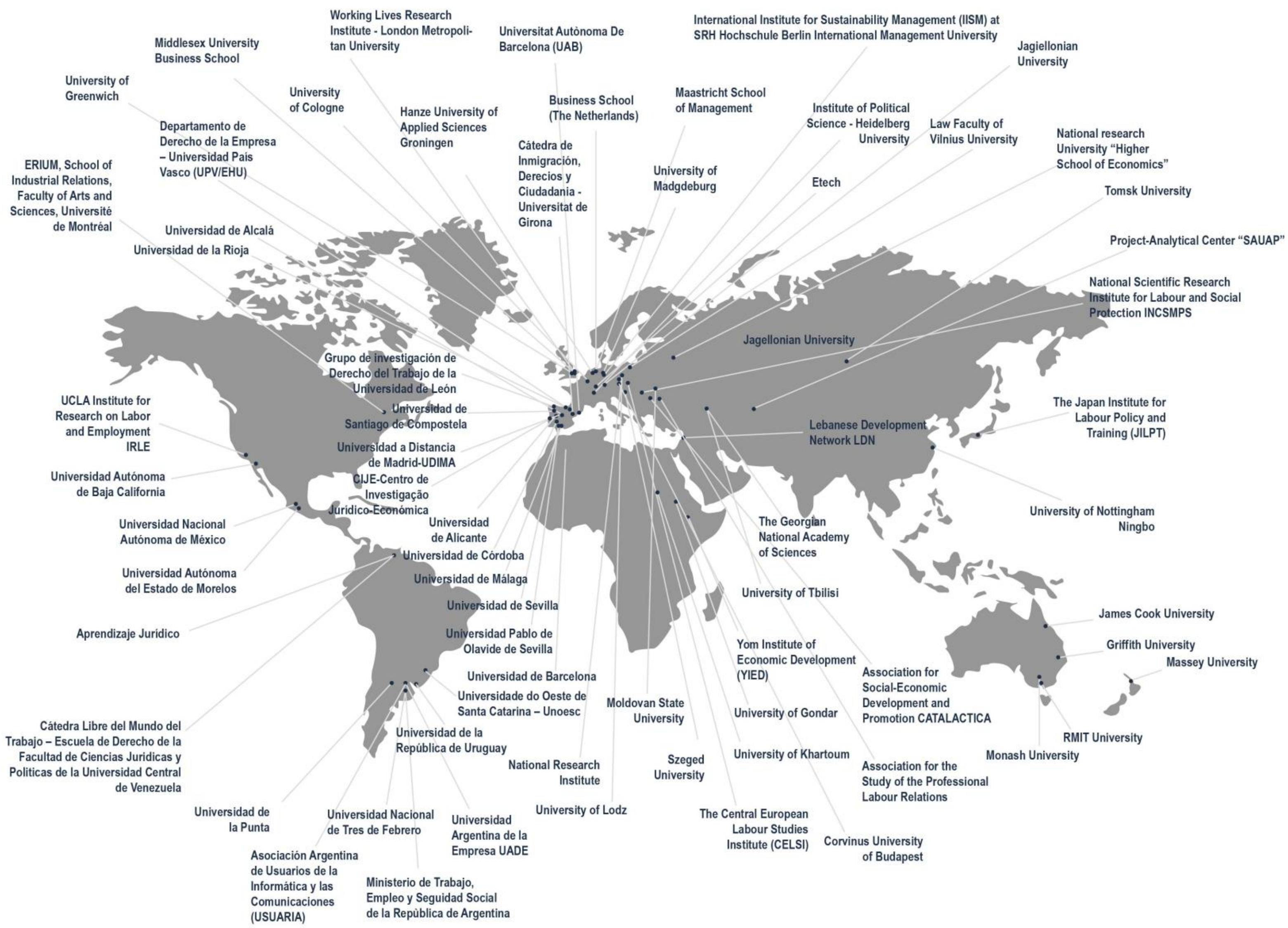

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