

# Joint Regulation of Employment

Comparing collective bargaining and  
Australian collective agreement-making

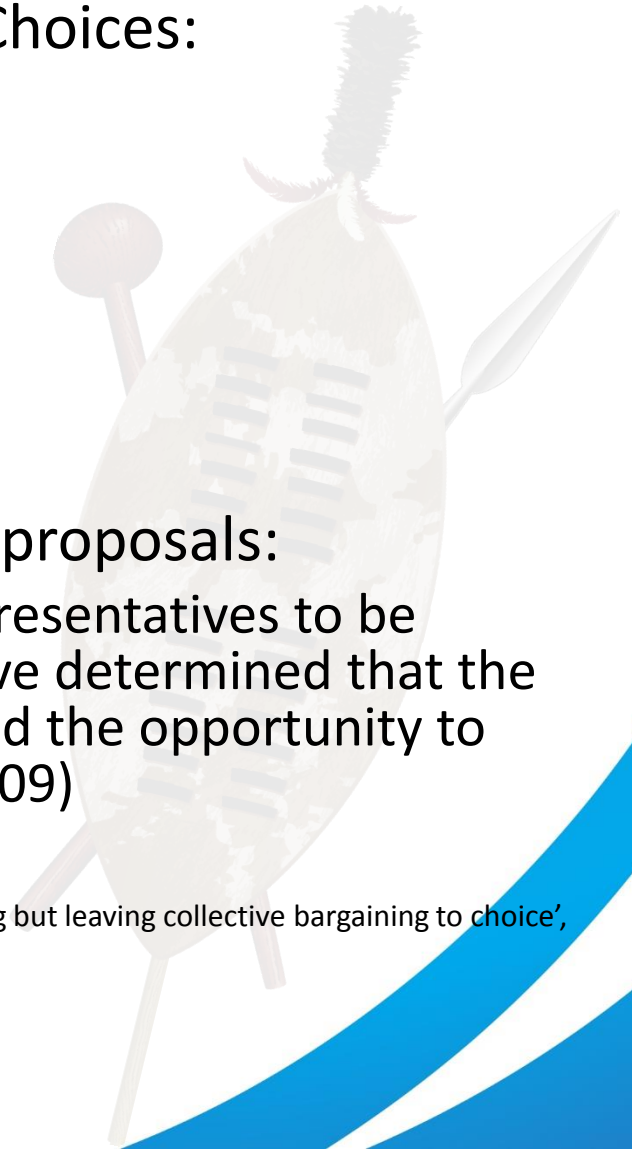


# Research Question

- How should **similarities** and differences between Australian collective agreement-making and collective bargaining in other nations be articulated and compared?
- Growing literature within Australia exploring the differences between collective agreement-making and collective bargaining

# Collective Agreement-making in Australia

- Individual Employees' Representative Choices:
  - Union
  - Non-union collective
  - Non-union individual
  - Self-Representation
  - No Representation
- Reliance on employee vote to approve proposals:
  - 'The Act does not require bargaining representatives to be actually appointed'. Instead, the FWC have determined that the requirement is simply that employees had the opportunity to appoint a representative ([2010] FWA 4509)
- See Walpole (2015) 'The Fair Work Act: Encouraging collective agreement-making but leaving collective bargaining to choice', *Labour and Industry*, 25(3), doi: [10.1080/10301763.2015.1061817](https://doi.org/10.1080/10301763.2015.1061817)

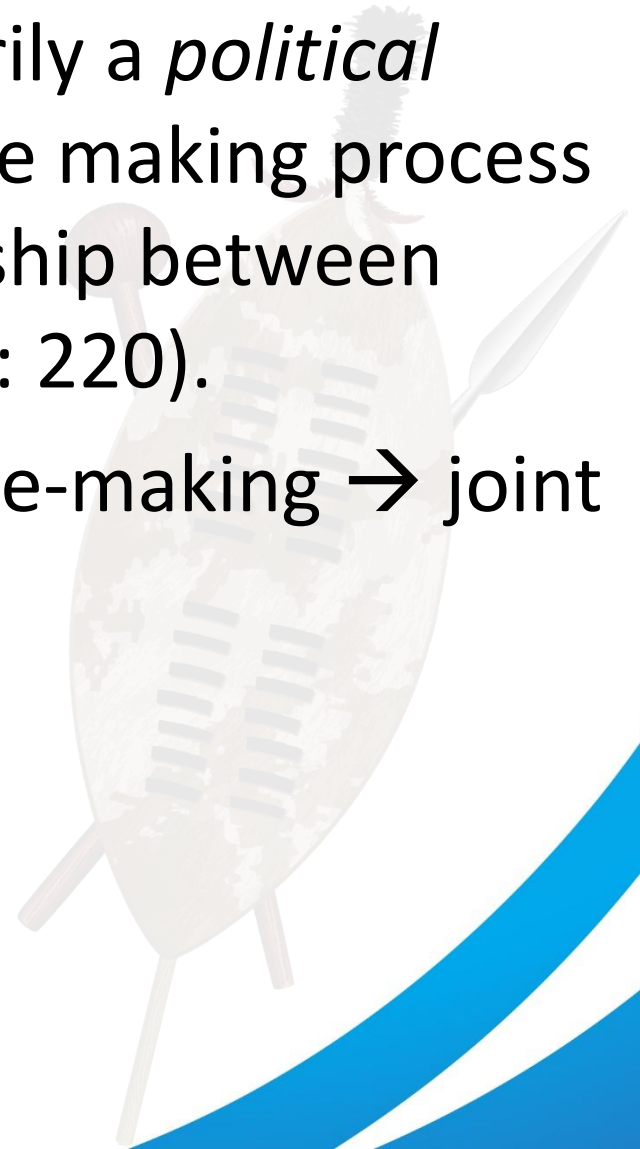


# Current Comparative Research: Across time

- ‘Collective agreement-making is a broader and more accurate category than collective bargaining, which is a subcategory of the larger construct’ (Bray et al. 2014: 329)
- Relative importance under changing labour law (1993, 1996, 2005, 2009) of:
  - statutory regulation; delegated regulation; collective agreement-making; individual contracting; and, managerial prerogative
- Collective agreement-making has limited utility if seeking comparison of substantive practices not merely technical legal forms
  - some forms of collective agreement-making more ‘resemble individual contracting or even managerial unilateralism’ than collective bargaining (Bray and Stewart 2013b: 26)
- Only operational for temporal comparisons, not cross-national

# Comparative Research Design

- ‘collective bargaining is primarily a *political* institution because... it is a rule making process and involves a power relationship between organisations’ (Flanders, 1975: 220).
- Focus on power relations + rule-making → joint regulation



# Comparative Research Design

- Sidney & Beatrice Webb: *Industrial Democracy (1898)* – union strategies establishing Common Rules
  - **Collective Bargaining**
  - Mutual Insurance
  - Legal Enactment
- Flanders: *Management and Unions (1975)* – forms of job regulation
  - Managerial Prerogative
  - Individual Contracting
  - **Joint Regulation = Collective Bargaining**
  - Tripartite Regulation
  - State Regulation
  - Unilateral Regulation by union or employer association

# External vs Internal Regulation

- Basic proposition: different types of regulation will ‘be distinguished from the rest by the *authorship* of its rules’ (Flanders, 1975: 221)
- Different material interests and capabilities → different regulatory practices
- Collective bargaining/joint regulation distinctiveness: ‘jointly determined by representatives of employers and employees’

# Comparing Employment Regulation

Authorship		
Employer Only	Managerial Prerogative	Internal Bodies only
Employer AND employee	Individual Contracting	
Employer(s) and Employee(s) and/or their representatives	<b>Joint Regulation/ Collective bargaining</b>	External Bodies included
Representatives of Employer(s) AND Employee(s) AND State	Tripartite Regulation	
State bodies only	State Regulation	
Trade Union OR Employer Association	Unilateral Regulation	



# External vs Internal Regulation

- Flanders (1975): External Regulations cannot be created or ‘changed without the **consent of an external authority**’
- External authority: a body that is not part of the employing organisation’s ‘social system, but a separate social system’
  - EG. employer associations and trade unions, memberships of the two social systems overlap

# Key Contribution

- Flanders and Clegg were not listing regulatory practices, rather this is a categorical framework
- Application beyond original context requires conceptual separation:
  - **authorship** of rules
  - **authority** to create enforceable rules



# Classifying Employment Regulation

	Authorship	Category	Empirical Practices
Internal Regulatory Authority	Employer Only	Managerial Prerogative	
	Employer AND employee	Individual Contracting	
External Regulatory Authority required	Employer(s) AND Employee(s) and/or their representatives	Joint Regulation	<b>Collective bargaining</b>
			<b>Collective Agreement-making</b>
	Representatives of Employer(s) AND Employee(s) AND State	Tripartite Regulation	
	State bodies only	State Regulation	Legislation
			Common Law
Executive Decree			
Trade Union OR Employer Association	Unilateral Regulation		

# Key Contribution

- Joint Regulation: any situation with employers and employees **sharing in the authorship** of rules about employment **subject to the consent** of an authority external to the *employment relationship*
- *‘Collective agreement-making is a broader and more accurate category than collective bargaining, which is a subcategory of the larger construct’ (Bray et al. 2014: 329)*

# Conclusion

- Cross-national comparisons of industrial relations including Australia are frustrated by legal agreement-making procedures unlike collective bargaining
- Comparison = articulating differences AND similarities
- Joint Regulation allows comparison of analytically important features of rules:
  - Which parties devised/authored them
  - Authority/power relations between groups