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Collective Bargaining under the Fair Work Act in UK (and European) Perspective: Ideology, Individualisation and the State

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Introduction

This chapter draws on United Kingdom (and EU) experience to argue that Australian labour law may be in the midst of an enduring recalibration away from supporting and enabling the ideology and practice of workplace collectivism, particularly in trade unions, towards increasingly reflecting liberal individualist ideology and producing ever more individualised employment relations. It is contended that this tendency is discernible in both the collective bargaining and individual rights provisions of the *Fair Work Act 2009* (Cth) (FW Act) and specific implications are extracted from this analysis.

First, the fragmented bargaining that the FW Act can produce calls for imaginative collaboration between industrial relations actors in trying to make this work. Secondly, if collective bargaining really is the goal, experience to date indicates that serious consideration should be given to a new arbitration regime that works better to incentivise recalcitrant employers genuinely to embrace this. Thirdly, comparative analysis points to injustice towards individual working people in the FW Act provisions governing termination of enterprise agreements. It is striking from a United Kingdom and EU perspective that the provisions do not freeze at least individual entitlements under collective agreements at the point of termination. This comparative vantage point suggests that reversion instead to National Employment Standards (NES), Modern Awards and contractual standards insufficiently vindicates the individual stake in collective bargaining. That adds to the case for reflection on whether, both in theory and practice, the FW Act