Evaluation of the Short-Term Impacts of the Employment Relations Act 2000

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EXECUTIVE SUMMARY

The evaluation of the short-term impacts of the Employment Relations Act was undertaken by the Department of Labour. The evaluation focused on the extent to which the Act's intermediate objectives, such as the promotion of collective bargaining and the requirement for good faith in employment relationships, have been realised since the Act was brought into effect. The evaluation used a mixed methods approach including five main sources of data: national surveys of employers and employees, case study research involving employees and employers and unions, a survey of all registered unions, and interviews with unions.

Key results from the research include the following:

There has been limited impact so far of the ERA on most employers, particularly those in small workplaces.

The majority of employers were aware of the good faith obligation and the requirement for written agreements. Use of written agreements has increased, but many employees, particularly in smaller workplaces, still do not have formal agreements. Most employers considered themselves to be acting in accordance with the good faith obligation but interpretations of what good faith means varied. Unions expressed concern about the inability to enforce good faith provisions.

There has been relatively little change seen so far in the extent and coverage of collective bargaining. Increases tended to be in areas where there is existing union coverage and a history of unionisation at the workplace, most notably in the public sector. Low growth in union membership and resources, and free-riding by non union employees on collective terms and conditions, were perceived to be key barriers to greater collective coverage. The research suggests there has been some increase in willingness to enter into collective bargaining but ongoing difficulties in some areas.

Many employees were unaware of the role of unions and have a low demand for union services seeing little value in them. Many of these employees have had little experience of unions, were often in workplaces with no union presence and individual arrangements. Parties were often satisfied with their existing arrangements. Many new unions have emerged providing site specific representation for groups of employees but these represent only a fraction of total union membership.

Most employers and many employees perceived bargaining power to be equal at their workplaces. Where there were perceived changes since the introduction of the ERA, employers and employees saw bargaining power as slightly favouring employees. Some unions perceived

the ERA to have improved their union's ability to get a new collective, to increase members wages and improve other terms and conditions.

Most employers and employees would prefer to deal with employment relationship problems directly with each other. There is a reluctance to involve a third party. Most who had used mediation services, viewed them favourably.

The research showed that unions have been most active in those sectors where they had a presence before the Act was introduced, partly because of their resource constraints. There has been little increase in the levels of union coverage as a proportion of the workforce since the ERA was introduced.

1. INTRODUCTION

This report presents the findings of a three-year evaluation of the Employment Relations Act 2000 (ERA) undertaken by the Department of Labour. It investigates the extent to which parties to employment relations are aware of, and are conducting their relationships in accordance with, the intermediate objectives of the Act. The report draws together findings from research undertaken with employers, employees and unions within a broader evaluation strategy.

1.1. Objectives of the Employment Relations Act

The Employment Relations Act has two over-arching objectives:

- 3 (a) to build productive employment relationships through the promotion of mutual trust and confidence in all aspects of the employment environment and of the employment relationship

- 3 (b) to promote observance in New Zealand of the principles underlying the International Labour Organisation (ILO) Convention 87 on freedom of association, and Convention 98 on the right to organise and bargain collectively.

Six lower level or intermediate objectives are listed under section 3 (a):

- recognising that employment relationships must be built on good faith behaviour;
- acknowledging and addressing the inherent inequality of bargaining power in employment relationships;
- promoting collective bargaining;
- protecting the integrity of individual choice;
- promoting mediation as the primary problem solving mechanism; and
- reducing the need for judicial intervention.

1.2. Evaluation strategy

The evaluation investigates whether and how the intermediate objectives of the Act have been realised, by looking at the attitudes and behaviours of parties to employment relationships in New Zealand workplaces.

2. METHODOLOGY

2.1. Evaluation objectives

The evaluation objectives are closely linked to the intermediate objectives of the ERA:

- assess the extent to which employment relationships under the ERA are built on good faith behaviour
- assess employer, employee and union perceptions of the equality of bargaining processes following the introduction of the ERA
- assess the extent to which collective bargaining has been promoted since the introduction of the ERA
- assess the extent to which the concept of individual choice about entering into collective or individual arrangements exists in practice in workplaces under the ERA
- assess the extent to which mediation is used as the primary problem-solving mechanism to resolve problems between employees and employers under the ERA
- assess the extent to which there has been a reduction in the use of judicial intervention to resolve problems between employees and employers under the ERA.

2.2. Some limitations of the scope

At this stage the over-arching objective of the ERA – to build productive employment relationships – has not been assessed. Further work in relation to this objective will be developed based on the findings of the first stage of evaluation work.

The second overarching objective of the Act is to promote ILO conventions 98 (on the right to organise and bargain collectively) and 87 (on rights to freedom of association). Detailed assessment of the Act's performance against this objective is beyond the scope and timeframe of this evaluation strategy. However, due to strong linkages between this objective and objectives 3a (ii) on acknowledging and addressing the inherent inequality of bargaining power, 3a (iii) on promoting collective bargaining and 3a (iv) on protecting individual choice, the evaluation has produced relevant data about performance against this objective.

2.3. Overall approach

The ERA evaluation strategy adopted a mixed methods approach to address the evaluation objectives within the framework of the logic diagram (see Appendix 1/Project methodology/Programme logic diagram).

There were two key stages to the evaluation. Stage one (July 2000 – June 2001) involved a range of exploratory and developmental activities to build a theory about the intended outcomes of the ERA, to establish evaluation objectives and information needs, and to select data collection methods. Stage two involved a set of research projects (summarised in section 2.6).

2.4. Development of a programme logic

The evaluation focused on measuring changes due to the Act by observing behavioural and non-behavioural changes and their subsequent effects. A detailed programme logic was developed based on a broad logic of the policy changes (see Appendix 1/Project methodology/Programme logic diagram). Through observing whether the programme logic has been met, or not met, the evaluation has assessed the extent to which the objectives of the Act have been realised.

2.5. Key assumptions underlying the ERA

The model of the Act's consequences (see Appendix 1/ Project methodology/Programme logic diagram), and therefore the ability of the evaluation to measure whether the overall objectives have been met, depends on several assumptions:

- The relevant parties (employers, unions, employees) will understand what is expected of them to act in good faith.
- The ERA provisions governing the formation of unions, their rights in negotiating collective agreements and securing access to employees, and rights for employees will make union membership more attractive to workers.
- Good faith behaviours will lead to increased communication and trust in the workplace, and will help offset some of the consequences of what is assumed to be unequal bargaining power.
- Changes in behaviour and the availability of mediation services will result in improved working relationships in workplaces.

2.6. Methods of data collection

A mixed methods approach was used to collect both quantitative and qualitative data from employers, employees and unions.

The methods used are summarised in the table below. The surveys provided generalisable information on the frequency of experiences and views of key parties to employment

relationships. Case studies and interviews were undertaken to collect more in-depth data to help explain the experiences and views of the key parties to employment relationships.

Table 1.1: Methods of data collection

Projects	Groups involved		
	Employers	Employees	Unions
Employee survey (national survey of 2000 employees)		structured telephone interviews	-
Employer survey (national survey of 2000 worksites)	structured telephone interviews	-	-
Case study research	in-depth face-to-face interviews	in-depth face-to-face interviews	in-depth face-to-face interviews
Survey of unions (census of all unions)	-	-	structured postal survey
Qualitative research with unions	-	-	face to face semi-structured interviews with secretaries and/or other senior union officials

Refer to Appendix 1/Project methodology/Methods of data collection for more detailed information about the methods of data collection.

2.7. Strengths and limitations of the evaluation approach

2.7.1. Strengths of the evaluation approach

The strengths of the methodological approach adopted for this report were as follows:

Mixed methods approach

A range of data sources was used to address questions in the evaluation. This enabled collection of both quantitative and qualitative data from a range of perspectives and triangulation of findings.

Use of external researchers

The evaluation used external researchers to access skills and resources not available within the Department. The use of external researchers also provided a degree of impartiality to the research process.

Focus on collecting data on Māori and Pacific employees

Specific strategies were employed to ensure that data on Māori and Pacific peoples was collected. For example:

- using New Zealand electoral role data to construct Māori sample for the employee survey
- establishing quotas of Māori and Pacific peoples survey respondents
- nomination of Māori businesses to approach for the case study research by the Māori Perspectives Unit of the Department of Labour
- involvement of Māori and Pacific researchers in survey contracts.

Development of relationships with internal and external stakeholder groups

The research team developed relationships with key stakeholders internally and externally. These stakeholders included:

- Labour Market Policy Group policy teams (Department of Labour)
- Employment Relations Service (Department of Labour)
- Business New Zealand
- New Zealand Council of Trade Unions (NZCTU)
- government departments
- academic groups.

The Department consulted with these groups at several stages during the evaluation, including:

- the development of the evaluation objectives
- the development of research questions
- the survey design phases
- the interpretation of preliminary findings – for example, the Department held a series of workshops with the groups mentioned above to report on and discuss the preliminary data.

External advice and peer review

Lois-ellin Datta[1] was contracted to assist in the development of the data collection and programme logic. Patricia Rogers[2] was contracted to assist the research team in analysis and reporting.

[1] Lois-Ellin Datta has worked in evaluation at Federal level for the US Government for 30 years. She has been the director of various government organisations. As a result, she has worked across a broad range of areas in national programmes related to health care, quality housing, employment, public assistance, welfare, tax incentives, immigration and education.

[2] Dr Patricia Rogers is Programme Co-ordinator at the Collaborative Institute for Research, Consulting and Learning in Evaluation (CIRCLE) at the Royal Melbourne Institute of Technology in Australia.

2.7.2. Limitations of the evaluation approach

There were a number of factors (such as time scale, funding, available data, ethical considerations) that imposed limitations on the ERA evaluation.

Difficulty in attributing outcomes to the ERA

The report is limited in the degree to which impacts can be attributed directly to the ERA. The ability to attribute outcomes to the reforms is confounded by:

- the impacts of other interventions affecting workplaces – the ERA was only one of many factors affecting workplace relationships over our period of analysis
- the relatively short period of time that workplaces have been exposed to the new regime
- ongoing changes in the economy and employment outlook.

Inability to measure long-term outcomes of the ERA

The ERA, in conjunction with a wide range of other factors, is likely to have long-term effects on employment relations in New Zealand workplaces. These long-term effects have not been able to be assessed over the three-year timeframe of the evaluation.

Inability to measure business productivity and costs

In this evaluation it has not been possible to measure the impact of the reforms on business productivity or the costs to businesses, unions and employees of complying with the ERA.

For information on the process of analysis used in the evaluation, see Appendix 1/Project methodology/Analysis across the projects.

3. BACKGROUND

3.1. The Employment Relations Act in context

The Employment Relations Act was introduced at a point of low levels of union representation that could also be seen as representing a low point of the potential decline in collective bargaining. This possibility needs to be assessed against the comparatively strong labour market that may lessen motivation among employees to contemplate collective employment arrangements. As well, there has been a larger growth in employment arrangements such as part time and contract-based employment over permanent, full-time employment over this period.

Overall, it is likely that the full economic impact of the regulatory change will be hard to discern. Econometric studies which have sought to identify evidence that the Employment Contracts Act affected labour market outcomes, either in real wages or unemployment, have produced no clear evidence of a decisive impact from the regulation. Neither has it been demonstrated that the Employment Contracts Act had an impact on redistributing income from wages and salaries to company profits. It is likely that a preponderance of individual and informal employment relationships makes small organisations comparatively impervious to employment relations regulation.

The immediate changes resulting from the Employment Relations Act also need to be judged against the evidence of how workplace relations evolved under the Employment Contracts Act and how this was connected to broader developments in the labour market during the 1990s. This section also considers what these developments might imply in terms of expected levels of change from the ERA.

3.2. Workplace relations under the Employment Contracts Act

The Employment Contracts Act brought immediate changes to bargaining arrangements and union membership, but by the mid-1990s comparative stability had returned to employment relationships. There was a de-collectivisation of industrial relations in the years immediately after the 1991 Act. Post 1995, there was consolidation by both unions and employers around the relationships set by the Employment Contracts Act, at least as observed through the outcome of collective bargaining (Harbridge and Crawford, 1999).

Beyond the stabilisation of the structure of employment relations, some research suggested the re-emergence of consultation and co-operation between employers and employees, including positive attitudes to union representation and collective styles of bargaining (Gilson and Wagar, 1997). The Business Practices Survey was conducted around the time of the Employment

Relations Act's introduction and found that 86% of all businesses measured their employee satisfaction in a systematic way (Ministry of Economic Development, 2002).

The development of a two-tiered workforce was highlighted in a survey of employees undertaken during November 1998. As with other evidence collected during the later period of the Employment Contracts Act, employees on high and low incomes were found to be experiencing new bargaining structures in different ways (Rasmussen, McLaughlin and Boxall, 2000). Close to two-thirds described their present pay and conditions of employment as 'good' or 'very good'. A higher proportion agreed (or 'strongly agreed') that if an aspect of their employment caused dissatisfaction, they felt 'comfortable' about talking about it with their boss.

Against the overall positive findings, workers in low-skilled occupations, on lower incomes or working part-time most frequently had little choice about bargaining and representation, had no negotiation options and were unlikely to secure changes if there were. These employees were also least satisfied with their contract outcomes.

3.3. Labour market trends during the 1990s

Over this time there was a period of employment expansion. From late 1991, when New Zealand experienced its highest unemployment rate in more than 50 years, a period of employment growth followed. Total employment grew by 18.4%, from 1.48 million in June 1990 to 1.76 million in June 2000. Over the same period, the working age population increased by 15.1%, from 2.51 million to 2.89 million. These trends allowed unemployment to fall with only a modest change in the labour force participation rate (from 63.9% to 64.8%).

Despite an average employment growth of 1.4%, the labour market continued to have spare capacity. Official unemployment was 7.5% in 2000 compared to 7.1% in 1990, although it had reached a peak of 10.6% in 1992. The overall employment growth hides the redistribution of employment between males and females. In 1987, 71.2% of males of working age participated in full-time work; in 1990, the rate was 63.7% and by 1999, it was 60.2% (figures cited in Morrison, 2001). Female participation rates increased during the 1990s but significantly only for part-time participation.

The proportion of part-timers looking for full time work grew from 4.7% to 14.5%, a slightly higher growth than that for males (5.1% to 13.2%). Over the five years post 1995, the average increase in real wages was 0.6%. The real increase was significantly lower for blue collar and customer, service and sales employees than it was for professionals. The low rate of wage growth experienced across large parts of the workforce, combined with evidence of unsatisfied demand for longer hours of work, led Morrison (2001) to observe that:

…by the end of the decade [1990s] few of those most disadvantaged by restructuring of the public and manufacturing sectors in the 1980s had re-established their pre-reform position. The 1990s offered new employment opportunities for some, but did little for those who started the decade at the end of the queue [page 86].

3.4. Scope for change from the Employment Relations Act

A number of factors could lead us not to expect large-scale changes from the Employment Relations Act.

The Act, for example, requires that employees covered by a collective must join a union that is a party to that collective. However, the impact of this on union membership is diluted by allowing the continuance of individual agreements for employees whose job could be covered by the collective agreement. It is likely that where collective agreements still remain, after the ECA, they are likely to be of a form that employers are broadly satisfied with. Employers would be likely to seek to retain comparable terms and conditions in their individual and collective agreements. In turn, if the same employment conditions can be obtained without joining a union, the incentive for employees to join a collective may reduce.

The binding together of union membership and collective bargaining may also lead to an initial drop in collective bargaining coverage. At the end of the Employment Contracts Act, an estimated 420,000 workers were employed on collective contracts, while union membership had fallen to around 300,000 (Harbridge and Thickett, 2001).

Some of these employers may have had a non-union collective contract in place but would favour individual agreements over a unionised collective agreement. Similarly, some employees may oppose union membership, at least of an existing industry-wide union. A high proportion of the non-union collective employment was found in workplaces that had no or little union membership. An alternative is the possibility for these workplaces to form new 'workplace' unions to comply with the ERA.

The introduction of 'good faith' as the basis for conducting employment relationships has potentially wide significance, but there are reasons to believe any impact will take time to emerge. The Act sets out minimum requirements consistent with good faith bargaining, and these are further elaborated in the code of good faith.

The codification of good faith obligations partly reflects existing common practice, with the intention of making it more uniform across New Zealand (Walsh and Harbridge, 2001). Case law may need to develop before the application of the good faith requirement to information disclosure and to matters beyond bargaining becomes significant. As well, it has been noted that

where information disclosure obligations have operated for some time, as in the United States and Europe, they have not radically altered the balance of bargaining power (Brown, 1996). For example, sharing financial information with union officials binds them to confidentiality agreements that can limit the ability of union negotiators to explain the reasons for their decisions.

3.5. Trade union membership

A growth in trade union membership may be the most immediate impact of the Employment Relations Act. This will arise from the requirement that unions registered under the Act have the sole entitlement to negotiate collective agreements. Beyond this, opportunities for membership growth arise from the provisions of the Act that give union representatives rights of access to workplaces for purposes related to the 'employment of members' and for purposes related to the 'business of the union'. These provisions apply even to access to workplaces where a union currently has no members. Paid leave for 'employment relations education' gives training opportunities for union representatives. As well as raising the effectiveness of unions in the workplace, training has the potential to help in recruiting workplace delegates and in overall participation in union activity.

Potential changes in union membership should be considered in the light of changes that unions underwent during the 1990s. Prior to the Employment Contracts Act, statutory protections had reduced the reliance of unions on competitive recruitment. After 1987, registered unions had to operate with a minimum membership of 1000. A period of membership consolidation resulted until the Employment Contracts Act came into effect. Although the major impact of the Employment Contracts Act was a sharp decline in union membership, a secondary trend saw the growth of small unions (Barry and Walsh, 2002). Unions with more than 5000 members retained more than 80% of all union members, helped by big unions reducing in number from 28 to 12 from 1991 to 1999. In contrast to the perception of the relative success of big unions, unions with fewer than 1000 members were the only ones to increase their absolute membership during the 1990s. These small unions partly reflected constraints on union organisation, but in some cases they responded to a demand from particular groups of workers for more focused and assertive representation than provided by being part of a large union (Barry and Walsh, 2002).

Although there was a consolidation of resources into a few large unions, membership concentration was associated with an uneven decline across sectors of the economy. By 2000, four sectors accounted for more than 90% of union members: public and community services; manufacturing; transport and storage; and financial and business services (May, Walsh, Thickett and Harbridge, 2001).

A further level of concentration exists when union membership among individual workplaces is examined. Typically if a workplace retained union members a large proportion of the workplace belonged to a union. It has been suggested that a union seeking to use its limited resources effectively may be best advised to target workplaces where workers have already demonstrated their support for unions (Walsh and Harbridge, 2001). The recruitment strategies developed by unions during the 1990s tended to take this focus (Boxall and Haynes, 1997). Employees tend to join unions for their traditional industrial services of collective bargaining, contract enforcement, grievance representation and out of empathy for the concept of unionism that is most likely to exist in activities that have retained union membership (Iverson and Ballard, 1996). Efforts to promote membership through non-industrial services such as financial services and consumer discounts appear to have had little influence on individual decisions to join unions (Barry and Walsh, 2002).

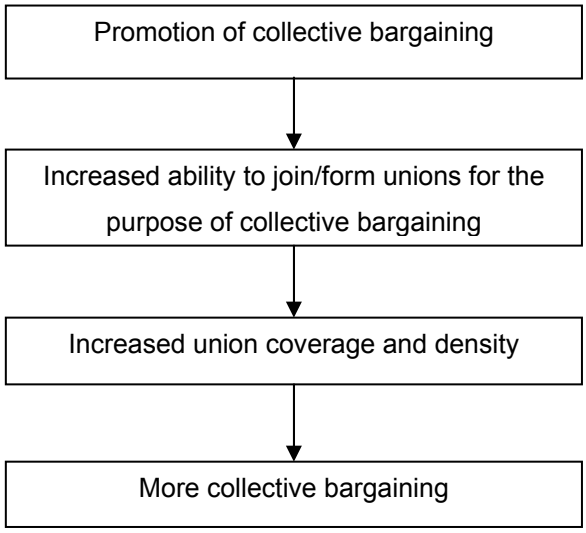
3.6. Further considerations

The Employment Relations Act permits collective contracts negotiated under the Employment Contracts Act without a prior expiry date to continue until 31 July 2003. The lag is potentially significant because, during the later years of the Employment Contracts Act, more than 50% of employees on collective contracts were on contracts lasting 24 months or more (Harbridge and Thickett, 2001). Varying the expiry date to some time after 1 July 2001 was possible, but depended on a trade union ballot of the members affected; a staggered response could be expected.

4. PROMOTION OF COLLECTIVE BARGAINING

The evaluation policy logic model suggested that for collective bargaining to be promoted, an increasing number of employees would need to join or form unions. All parties have a role in promoting opportunities for employees to join unions. For example employers must follow obligations about unions' roles at worksites, unions would need to be visible and accessible for employees to be able to join them, and employees would need to have both a need and interest in joining unions. If union coverage and density increased, unions would be able to undertake more collective bargaining.

Figure 4.1



4.1. The requirement for written agreements

The ERA requires that employment agreements, whether collective or individual, must be in writing (section 54 on collective agreements and section 65 on individual agreements). This requirement applies to all employment agreements regardless of the involvement of unions.

4.1.1. Awareness of the requirement for written agreements

The site survey found that 80% of site respondents were aware of the requirement for written agreements, 19% were unaware and 1% unsure.

Awareness increased with number of employees, with 97% of those worksites employing 50 or more, both single and multi-site, being aware of the requirement. It was also high for those in central government (91%). Just over three-quarters (77%) of sites with four to nine employees were aware of the requirement for written agreements – in other words, employees at one-quarter of small sites had an employer who was not aware of the requirement to have written agreements with employees.

4.1.2. Formalisation of agreements

Hector and Hobby (1998) estimated, from enterprise based research conducted in the late 1990s, that 10% of all employees were covered by unwritten contracts and that smaller firms were more likely to not use written contracts (45% of firms with four to nine employees).

Twelve percent of employees in the ERA evaluation survey reported that they currently had no formal agreement or did not know what agreement they were on. Seven percent of employees were not aware of being on an employment agreement. A further 3% did not know what type of agreement they were on and 2% said they had a verbal agreement. Employees in smaller workplaces were more likely to not be aware of being on any agreement.

Of employees who were aware of being on some type of agreement, 84% had both seen and signed a written agreement. Employees in larger workplaces were more likely to have seen and signed an agreement.

The case study research indicated why some smaller workplaces were less likely to use written agreements. One employee at a small workplace explained that a written agreement might be unnecessary due to relationships being based on mutual trust and benefit:

> *It doesn't matter if we have a contract or not, because we trust each other. It would be their loss if they don't think my skills are good enough and put me down the road.*

The employee survey also found that 13% of employees who did not have a written agreement before the ERA had gained one since the ERA.

4.1.3. Other changes due to the requirement for written agreements

The ERA requirement for written agreement also led to some changes to the content of agreements. Thirty-two percent of employers using individual agreements said that the requirement for written agreements had led them to make changes to the content of individual agreements. Employers at organisations with 10 to 49 employees that had multiple sites were more likely to report having made changes (45%).

The key changes these employers reported having made were as follows (17% did not know):

Changes to wording of agreement:

- changes to specific clauses re work conditions and employee rights (41%)
- need for compliance with statutory requirements/updating to comply with the new Act, such as making sure everyone has their own agreement (19%)
- changes in wording of the contract (13%).

Actions taken:

- provide employees with information about entitlements (including union representation) (11%)
- written agreements offered (7%).

4.2. Union role in promoting collective bargaining

The evaluation policy logic model assumed that for change to occur in the volume of collective bargaining employee awareness and association with unions would need to increase. The surveys captured perceptions of change in union activity at workplaces as an indicator of the potential for increased collective bargaining. More detailed discussion on association with unions is presented in Chapter 7.

4.2.1. Perceptions of union activity and influence at workplaces

The employee survey found little overall change in the level of union activity at workplaces. Just over half of the employees who were qualified to comment [3] (54%) thought there had been no change in union activity at their sites since the introduction of the ERA, 17% thought unions had become more active, 18% thought they had become less active, and 11% were unsure.

Employees who were union members in a collective, in a larger workplace, or in central government were more likely than other groups to report increased union activity. A small group working in the personal and other services sector perceived unions to be less active.

Data on union influence at workplaces showed a similar pattern to data on perceptions of union activity. Perceptions of change in activity and change in influence were positively correlated. Those who were more likely to report increased union influence showed a similar profile to the previous question, being: those who had joined a union since October 2000 (53%), other union members (25%), those on collectives (21%), and workers in central government (24%).

The case study data indicated that employers in small and medium-sized organisations had low expectations of a union presence being established in their organisations where it currently did not exist.

4.3. Bargaining over individual agreements

The coverage of collective agreements early in 2003 was estimated to be between 15% and 20% of the employed labour force. The majority of employees were therefore not covered by collective agreements.

[3] Employees who were with the same employer both before and after the ERA's introduction.

The ERA aims to protect the right for employers and employees to enter into individual arrangements. The evaluation looked at how these arrangements were entered into and what, if any, bargaining occurs. More detailed discussion of the exercise of provisions aimed at protecting individual choice is contained in Chapter 8.

4.3.1. Coverage of individual agreements

The employee survey asked respondents what type of agreement they were on. Just over half (54%) of employees reported that they were on an individual agreement. Just over a third (36%) of employees reported that they were on a collective agreement.

The proportion of employees who reported being covered by a collective agreement in the employee survey is significantly higher than other estimates of collective agreement coverage at the time[4]. It is likely some difference is due to employee misunderstanding of whether they are on a collective agreement or an individual agreement that is similar to the collective (see Section 4.5 about extension of collective terms and conditions).

4.3.2. Occurrence of bargaining for those on individual agreements

The evaluation looked at the occurrence of bargaining for those on individual arrangements. Data from employees at the same workplace since before the ERA who were consistently on an individual arrangement, and data from those employed on an individual arrangement since the ERA came into effect, indicate how frequently and in what circumstances bargaining over and changes to individual arrangements are made.

Employee-initiated bargaining over IEAs

Of those who were with the same employer and on an individual arrangement both before and during the ERA (44% of 1092 employees), 16% had sought changes to their terms and conditions of employment. Seven percent of those who had sought changes reported major changes; the other 9% included 2% for whom negotiations were still under way. The surveys did not collect information on the occurrence of bargaining at the start of employment.

Improvements to terms and conditions of IEAs

Thirty-four percent of sites with individual agreements said that the terms and conditions of at least some of their individual agreements had improved since October 2000[5]. Those who reported improved individual terms and conditions were over-represented in the single site 50-plus employee grouping (50%), health/community services (47%), construction (46%) and education (45%). There were no significant differences by level of unionisation.

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[4] The Employment Relations Service database of collective contracts and agreements covered 14% of the employed labour force, while the Industrial Relation Centre database covered close to 18%.

[5] This equates with 26% of all sites.

Fifteen percent of employees who had an individual agreement both before and during the ERA reported that there had been major changes to their agreement since October 2000.

4.3.3. Scope of bargaining for those on individual arrangements

The case studies indicated that employees on IEAs had the most scope for bargaining of all employees at the start of employment. Some employees with higher labour market power expressed greater confidence in their ability to bargain with their employer. However, most employees on individual arrangements in the case studies had not bargained at the start of their employment; they typically accepted the terms and conditions offered to them by the employer.

One employer, who operated a café, explained that employees who lacked experience in the workforce were particularly likely to accept what was offered without negotiation:

> *Most new employees just sign the contract. And say 'when do I start?'. It is different for those who are older or in a big career. However it's different here. For many it's their first job and they don't view it as a career or even a long-term position ...*

Where bargaining did occur, it was usually over starting salary, starting date, leave and tasks. Few other terms and conditions of employment were discussed. The terms and conditions set out in statutes were found to apply as a minimum code, for example statutory holidays.

4.3.4. Factors affecting bargaining over individual arrangements

More than three-quarters of employees surveyed reported being either 'very satisfied' (31%) or 'satisfied' (52%) with their current terms and conditions of employment. Employees on collectives reported lower satisfaction levels. Those working in small organisations expressed higher satisfaction levels.

The case studies gave some indications of how workplace relationships can vary by size of organisation. Employees in the small organisations appeared to identify closely with the business, to have knowledge about its viability and be more reluctant to take any action that might threaten the business viability. Most employees in small businesses were reluctant to bargain for themselves, if that meant they might be seen as putting themselves before or above others, or disturbing the close, family-like relationship in their workplace.

In larger organisations, the existence of systems to manage the employment arrangements of large groups of employees provided a platform for bargaining. Larger organisations were more likely to have written IEAs and an annual cycle for reviewing and renewing each

employee's performance agreement. The greater formality in these organisations may promote consciousness of terms and conditions and encourage interaction about them.

In organisations where there was no union presence, or formal structure for employee representation, employees were more likely to have less familiarity with bargaining dynamics or understanding of how their terms and conditions could be improved.

4.3.5. Bargaining over collective agreements

The ERA aim to promote collective bargaining implies an intention that the volume and/or coverage of collective bargaining should increase. The evaluation collected data about use of collectives before and after the ERA to indicate changes in volume and coverage of collective bargaining. Measurement of change in the use of collectives is complicated, as collective contracts formed under the Employment Contracts Act may remain in effect until the middle of 2003. Also, because the ERA changed the formal requirements for the constitution of a collective employment arrangement, in some cases two different types of collective arrangement were compared.

The case studies and union interviews help to explain why collective bargaining and participation in collective bargaining does or does not occur in different contexts.

4.4. Use of collective agreements

Data from the site survey comparing agreement structure in early 2002 with agreement structure before the ERA was introduced showed little change in the proportion of sites using collective agreements.

Table 4.1: Use of agreements reported by employer representatives

Agreement type	Percentage of sites[6]		
	Pre-ERA N=1956	Currently (of those that existed pre-ERA) N=1956	Currently (all sites) N=2004
Collective only	8%	8%	8%
Both collective and individual	11%	12%	12%
Individual only	59%	65%	66%
Other[7]	23%	15%	15%

SOURCE: Site survey 2003

There was a 1% net increase in the proportion of sites with collective arrangements, a 7% increase in the proportion with individual arrangements, and a corresponding decrease in those using 'other' types of agreements.

Data was also collected on the predominant form of agreement at worksites. The proportion of sites where collectives were the predominant agreement remained similar (14% pre-ERA and 15% currently), while those reporting predominance of individual arrangements increased from 62% to 69%. The number of sites reporting predominance of neither type of agreement decreased from 24% to 16%.

Despite the low overall change in the use of collective agreements, there is evidence of a decrease in the use of collectives by some sites due to the requirement for a union to be involved in negotiations. Of sites with collectives before October 2000, more than a third (38%) had at least some employees on non-union collectives[8]. Since the ERA came into effect, a third of these (32%) had reduced their use of collectives, including 25% that now had no collective agreements. Those that reported currently having only individual agreements were much more likely to have had no union involved in their pre-ERA collectives (64%).

4.4.1. Volume of collective bargaining

While 20% of employers report they now use collective agreements, only 12% reported having undertaken collective bargaining under the ERA. The following table shows what has happened to collectives that existed before the ERA, and the history of current collectives.

[6] Percentages may not add up to 100 due to rounding.

[7] The 'other' category includes those who reported at least some agreements that were unclassifiable, including unspecified verbal and/or written agreements and verbal collectives.

[8] 31% had all their employees on non-union collectives.

Table 4.2: Current status of pre-ERA collective agreements

Current status of pre-October 2000 collectives	Sites with collectives pre-Oct 2000 (N=740) (Est=11,764) %	Share of pre-Oct 2000 collectives (Est=15,838) %
Rolled over without renegotiation	29	23*
Completed renegotiation	52	56
Renegotiated following workplace ballot	(11)	(12)
Still being renegotiated	14	9
Lapsed without renegotiation	14	12

SOURCE: Site survey 2003

**Share under represented because of higher levels with unknown numbers*

Renegotiation was more likely to have been completed in larger and more unionised sites. A small proportion (11%) were aware that renegotiation of their collectives had occurred following the conduct of a secret ballot by employees.

Of the collectives that weren't negotiated, most had been rolled over without negotiation, and some lapsed. The quarter of collectives that had been rolled over without any negotiation having taking place were more often smaller sites.

The table above shows that 35% of collectives had not been renegotiated. Of these, most had rolled over without negotiation, while some lapsed. The quarter of collectives that had been rolled over without any negotiation were often smaller sites. It is possible that many of these lapsed due to requirements for unions to be involved in negotiation of collectives.

Data on the history of current collectives shows the volume of new collective bargaining that has occurred under the ERA.

Table 4.3: History of current collective agreements

History of current collectives	Sites with current collectives (%)	Share of current collectives (%)
Rolled over without renegotiation	27	21
Renegotiated	50	52
Still being negotiated	13	8
New since October 2000	23	19

SOURCE: Site survey 2003

The table shows that almost three-quarters of current collectives existed before the Act and that a quarter of current collectives have not involved negotiation. Nineteen percent of all current collectives[9] have been negotiated for the first time under the Act.

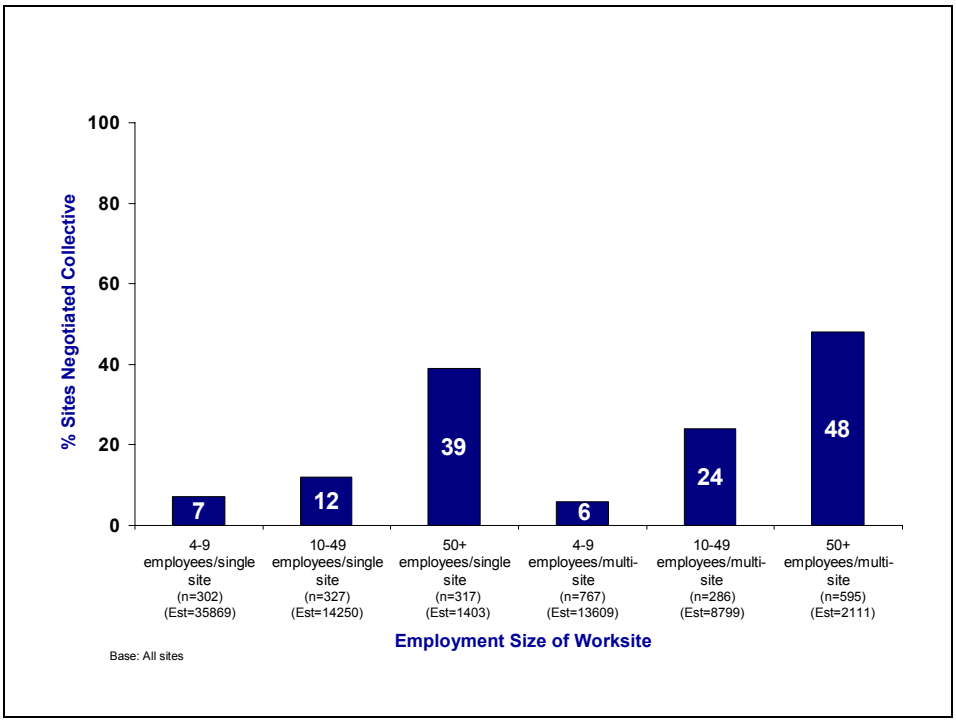
While there has been a slight increase in the proportion of sites that report having collectives, there has been more significant change underlying this in the expiry of old contracts without negotiation and formalisation of agreements in terms of the Act requirements.

4.4.2. Where has change in use of collectives occurred?

The incidence of collective bargaining was positively correlated with the size of organisation and level of union membership, as shown in the figures below.

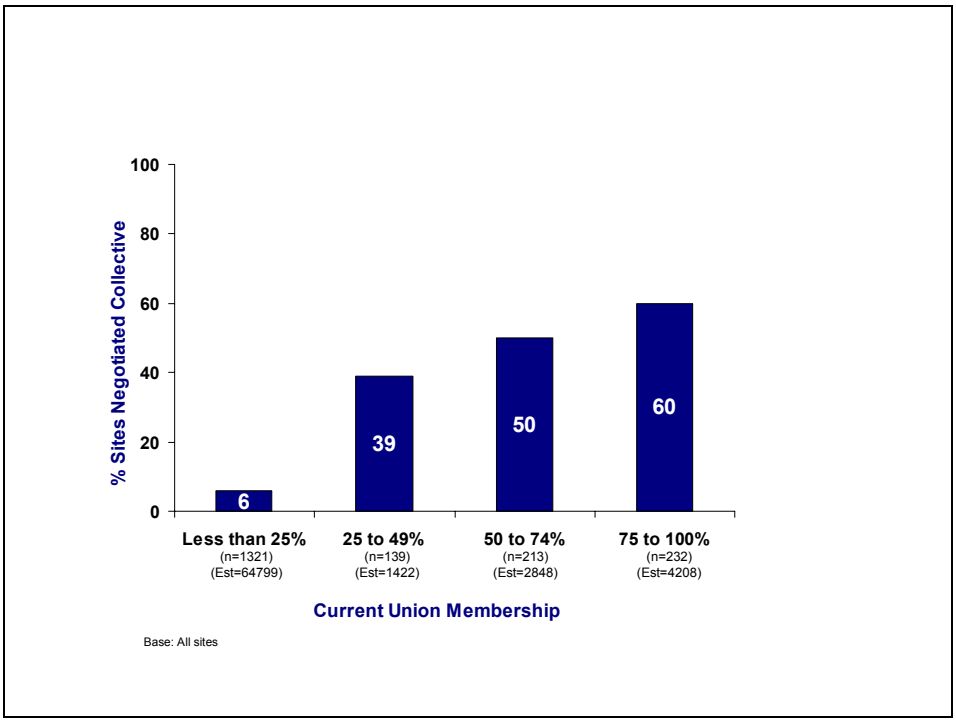
[9] 23% of the sites with current collectives had negotiated new collectives since October 2000. Translated to total sites, this represented 4% with new collectives. The new collectives accounted for 19% of all the current collectives, but the level of new collectives may have been under-represented.

Figure 4.2: Negotiation of collective agreements under the ERA by size of site



SOURCE: Site survey 2003

Figure 4.3: Negotiation of collective agreements under the ERA by union membership level



SOURCE: Site survey 2003

Negotiation rates were higher in the central (55%) and local government (32%) sectors, plus the industry groups of manufacturing (17%), government administration (71%), and education

(37%). Lower rates were reported from the private sector (8%), plus agriculture (2%), retail trade (6%) and business/property services (4%).

The case studies indicated that a history of union activity and organisational familiarity with bargaining appeared to increase the likelihood of collective bargaining. In smaller organisations, lack of a union presence or poorly resourced unions were factors decreasing the likelihood of bargaining. Also, employers and employees in smaller organisations often shared a view that their employment relationship did not require the inclusion of a third, 'outside' body such as a union.

If unions had secured access to employees and recruited members, this could be a precursor to a sizeable increase in the proportion of employees operating under a collective agreement, the case studies indicated.

4.4.3. Coverage of collective bargaining

The site, employee and union surveys indicated little change in the proportion of employees covered by collectives.

Table 4.4: Changes in proportion of employees covered by collective agreements

Changes in proportion of employees on collectives at worksites	
Proportion of employees on collectives	Worksites*
Stayed the same	63%
Increased	15%
Decreased	20%
Don't know	1%

SOURCE: Employee survey 2003 *Based on sites that existed pre and post ERA and have collectives (N=849)

Almost two thirds of sites using collectives reported that the proportion of employees these covered had not changed since the ERA came into effect. Slightly more sites reported a decrease in the proportion of employees on collectives.

4.4.4. Where has change in coverage of agreements occurred

Change in the proportion of employees covered by collectives was positively correlated with the size of workplace and level of unionisation. Sites with 75% or more of their employees in unions were more likely to report an increase in the proportions of employees on collectives (27%), while those with fewer than 25% were more likely to report a decrease (32%). Single sites with 50-plus employees were more likely than others to report a decrease (34%).

4.4.5. Multi-employer collective agreements

The ERA aim to promote collective bargaining includes an intention to promote bargaining for multi-employer collective agreements (MECAs).

Fourteen percent of employers reported being party to a MECA at the time of the research. The proportion of agreements that were MECAs did not change after the Act. The Employment Relations Service reported that 1% of agreements in the collective agreements database are multi-employer agreements, although these cover 6% of employees[10].

At the time the research was conducted, nine unions reported being party to at least one multi-employer collective agreement (MECA). The unions involved in MECA arrangements were predominantly larger unions, which existed before the ERA. Most were party to only one agreement although two reported being party to more than five MECAs.

Interestingly, 61 unions said it was a priority for them to gain new types of agreements such as multi-employer or multi-party agreements. However, just one in 10 considered that their ability to gain new types of agreements had improved.

4.4.6. Outcomes of collective bargaining

Eighty-three percent of all employees were either satisfied or very satisfied with their current terms of employment, with 8% either dissatisfied or very dissatisfied. Of employees who had been with their employer since before October 2000, just under a quarter (24%) said their terms and conditions were now better and 69% said they were the same. New union members were slightly more likely to report improvements. No marked differences were reported between those on collectives and on individual agreements.

Of unions that had negotiated collectives both before and under the ERA, almost half (47%) said their members' terms and conditions were better, 42% said they were neither better nor worse, and 3% said they were worse. Larger unions were more likely to report improved terms and conditions for their members.

4.5. Barriers to the promotion of collective bargaining

This section discusses some of the reported barriers to greater promotion of collective bargaining. These included: communication during and after bargaining, extension of collectively negotiated terms and conditions, free-riding, and some MECA bargaining issues. Section 7.2 discusses further the relationships between demand for union services and promotion of collective bargaining.

[10] ERA Info (Volume 10).

4.5.1. Bargaining process

The ERA sets out some basic requirements for the conduct of collective bargaining and particularly for good faith behaviour. Employers and unions involved in collective bargaining are required to:

- respect the role of the other's representative by not seeking to bargain directly with those for whom the representative acts
- not do anything to undermine the bargaining process or the authority of the other's representative.

Some of those interviewed in the case studies and union research identified aspects of employer behaviour that undermined collective bargaining in their workplaces. These included:

- addressing all staff during bargaining to inform them that they would receive the same terms and conditions as were being bargained over, for example:

  The employer put notice out [saying that] once agreement is settled you'll all get it.

- addressing staff on individual agreements to inform them they would receive the same terms and conditions as those on the collective, for example:

  We wanted 3.8 increase, the employer said 3.25 then went to non-union members and offered them 3.25 backdated. Lawyer said unless an ICA person says they were put under pressure it won't stand up in court…

- offering a signing bonus to those on collective or individual agreements, while bargaining was under way to sign up to an individual agreement
- supporting the establishment and development of an in-house union to undermine the role of an existing union.

Typically, employers constructed their communication outside of the bargaining relationship as an issue of fairness to all staff and, ultimately, as a breach of good faith. In several cases, employers explained that they were not prepared to treat some of their employees differently, and in some cases said their communication of this message to staff was an issue of good faith. Investigation of practice in relation to the 30-day rule also indicated that how employers represented the value of different types of agreement to employees was an important factor in the choices employees made.

Some public sector employers said their main concern about the bargaining process to date was instances of union representatives not recognising the bargaining authority of the employer representative and contacting more senior personnel.

4.5.2. Extension of collectively negotiated terms and conditions

The extension of collectively negotiated terms and conditions to employees who were on individual agreements was perceived by unions to be the most significant barrier to promotion of collective bargaining and unionisation. Unions referred to the situation where non-union members receive the benefits of union negotiations as free-riding or free-loading.

Unions argued that the efforts and resources unions and members invest in collective bargaining should be recognised in the application of the collective:

> *There is a benefit of collective engagement and it should be recognised and incentivised.*

They perceived the extension of collective terms and conditions as unfair to union members because their fees pay for the union to represent them in collective bargaining:

> *We say it is discrimination because the union members are paying an extra $5 in union fees.*

4.5.3. Extent of free-riding

Most unions perceived the incidence of free-riding to be widespread in workplaces where they had negotiated collective agreements. Only six unions reported that union-negotiated terms and conditions were not passed on to employees on individual agreements.

Unions were also asked how often they perceived that collective benefits negotiated by them were passed on to employees on individual arrangements.

Table 4.5: How often benefits negotiated by the union are received by employees on individual agreements

How often collective terms are passed on	100+	50	10-49	3-9	2	1	Don't know/ Did not reply	Total	Grand Total
Always	3	2	9	9	4	20	3	50	56.8%
Usually	5	1	10	3	2	10		31	35.2%
Sometimes				2	1		2	5	5.7%
Rarely									0.0%
Don't know/Did not reply						1	1	2	2.3%
Total	8	3	19	14	7	31	6	88	100.0%

SOURCE: Union research report 2003

The case studies found similarly that almost all employees employed on IEAs received identical terms and conditions to employees on CEAs where there was an applicable CEA in the workplace. In one case, an employer offered employees on IEAs better terms and conditions than those secured through collective bargaining to discourage union membership. A number of employers in the case studies had also taken steps to ensure that bargaining outcomes were identical for employees on IEAs and CEAs.

4.5.4. Impacts/rationalisation of free-riding

Unions identified both employer and non-union employee interests in short-term free-riding. Non-union employees gained the services of the union without having to pay the weekly fees, or only had to pay them until an agreement was reached. Some employees saw little reason to remain a union member once they had gained the benefits of a collective settlement. One union explained:

> *When you go to settle a negotiation membership rises…Once they get their back pay they drop off. They are not covered by the CEA but have the same T&C.*

Free-riding can reduce costs for an employer by enabling them to negotiate once with a union, then extend the terms and conditions to all employees without having to negotiate with each of them individually. One union explained:

Employers admit unions are good for easy collectivisation and good relationships but are fearful of unions having more power.

4.5.5. Countering free-riding

Most unions felt the employers they dealt with continued to pass negotiated benefits to non-union members on the basis that they could not, or would not, treat some employees differently from others.

Several unions interviewed had come to some arrangements to avoid free-riding by negotiating collectives including:

- providing a signing bonus for union employees
- requiring that back pay only to be given to employees who were union members
- delaying employees' receipt of collective provisions until they had been members for a specified period
- union members receiving additional leave or superannuation.

Another union had 'union only' provisions in two collectives and explained that this required individuals to actively initiate bargaining on own behalf to get the same terms and conditions. This was described as a compromise that forced individual employees to appreciate the work the union had put in. Despite this, the union reported that free-riding continued.

A large private sector union arranged with an employer for a 'period of advantage', two months during which the benefits of the collective were not passed on.

Unions perceived these types of arrangements to be rare, and an unreliable way to promote collectivisation.

A private sector union advocated the use of bargaining agent fees and perceived that few employees chose this arrangement if they were 'philosophically aware'. However, in late 2002 the court found this was in breach of s8 of the ERA (voluntary union membership) in that it had the effect of requiring non-union employees to not become members of any other union, or to do so would cost over and above the bargaining agent fee. The use of the fee was also found to be in breach of 11 in imposing undue influence on employees to be members of the union. The company was ordered to remove the clause and repay monies deducted.

4.5.6. The role of the ERA in promoting/preventing free-riding

The ERA was in some cases perceived by unions to facilitate free-riding by not specifically preventing it. Some comments by unions about this are presented below:

We need to extend coverage to new sites and stop freeloading and to extend within old areas to improve collective bargaining. Freeloading is the ERA issue.

We hoped a change would be to address the freeloader. This is a major impediment to recruitment.

Should be in the ERA – a union and employer shall agree what to do about freeloading.

ERA does not promote collective bargaining but makes it ok. No significant change in collective coverage or union density so act is not achieving its objective.

Still no incentive for union members because of freeloading.

4.5.7. Barriers to MECA bargaining

Interviewees in the case studies and union research identified several barriers to MECA bargaining, and to reaching a MECA.

Costs involved

A key concern expressed by both employers and unions, in both the public and private sectors, was the costs of time and energy that MECA bargaining involved. The costs of assembling both delegates and employers were seen as particularly problematical.

Several unions, both large and medium-sized and in the public and private sectors, commented on lack of employer organisation as a significant barrier to MECA bargaining. These unions reported that they did a lot of co-ordinating of employers for bargaining to happen, but that frequently a lack of co-ordination prevented MECA bargaining from occurring. Two unions commented that a weakness of the Act was that it didn't require employers to also have a representative for bargaining and that this made MECA bargaining overly complex:

…the Act is designed for enterprise bargaining, there is no mechanism to get one central representative for bargaining. May get 30 advocates, one from each employer. There are technical obligations on unions regarding consolidation, but it doesn't run in two directions…

…the Act should say the employers must agree on a process for effective consideration of claims and how to meet. Need them to form a unit as do the unions…

In the public sector, officials of unions that were party to a MECA, identified this was also a problem for them, but it had not prevented bargaining from proceeding.

In the cases of single employers with single site CEAs, employers preferred any collective agreement to apply only in their own organisation and opposed being joined to a multi-employer collective agreement. Even where the employer had two or more sites at which employees did essentially the same work and a multi-site CEA might apply, the employers usually preferred single site CEAs.

Competitive pressures

Unions also commented that it was difficult to introduce collective processes to business that operated in highly competitive environments. Many reported resistance to collectively bargaining at sites where only individual agreements existed, and resistance to multi-employer bargaining where employers were accustomed to site-specific agreements.

Two key aspects of MECA bargaining were seen as affecting the willingness of employers to bargain in highly competitive environments:

- the expectation that they would be forced to share commercially sensitive information with competitors
- the potential standardisation of terms and conditions, which might reduce the attractiveness of employment at their sites.

In some cases, a MECA was expected to introduce a level of rigidity that might affect a workplace's ability to respond to different pressure points in the industry. One private sector union gave as an example a situation where staff at separate companies who contracted out work and who provided work on contract would be covered by the same MECA. One union reported that a MECA would not be helpful for the industry it covered because employers used arguments about competition and globalisation to maintain flexibility of operations.

Most unions felt that whether bargain occurred ultimately depended on the level of employer interest.

Easier to reach MECAs in public sector

A public sector union explained that similarity of conditions and employers who were interested in collectivisation of staff and businesses in the public sector were key factors in their ability to achieve MECAs.

The union reported that a grand-parenting approach was needed to bring all agreements up to the standard of the best ones, but that this still required significant compromises by either party. The same union reported a stark contrast in working with private sector employers:

[there is] not enough legislation to force people to the table. They use coverage to exclude groups [from bargaining]

New unions also a barrier to MECA bargaining

A large private sector union said the formation of new, site-based unions also enabled sites to resist MECA bargaining.

Some unions make steps towards MECAs

Having recognised and experienced these barriers, several unions commented that any effort towards MECA bargaining in the short term was primarily focused on reducing differences in terms and conditions between groups, establishing collectives, or lining up the expiry of agreements.

4.6. Observations

Although increased formalisation of employment agreements in response to the ERA was apparent, many employees still did not have agreements, in particular those working in smaller organisations. Most employers were aware of the ERA requirement for employment agreements to be made in writing. Almost all the larger employers were aware of this, but smaller employers had far lower levels of awareness.

While it is difficult to compare the use of agreements before and after introduction of the ERA, the evaluation indicates that the Act has promoted the use of formal agreements. Some employers had also made changes to content and wording of agreements to reflect the Act's requirements.

At the time of the research, approximately one in 10 employees did not have a written employment agreement. This in part reflects the reduced formality of relationships in smaller workplaces. Employees who did not have an agreement might be less aware of their employment rights and less likely to have some basis for bargaining over their terms and conditions with their employer.

The commencement of employment was seen as the main opportunity for bargaining over terms and conditions. The evaluation data on frequency and type of bargaining indicate that bargaining rarely occurred for those on individual arrangements. Terms and conditions were altered as a result of employer initiative as frequently as they were as a result of employee initiative. Those in larger organisations were more likely to engage in bargaining with their employer, and to have gained improvements to their terms and conditions. Whether employees sought to bargain with their employers depended on their access to bargaining agents, awareness and understanding of their terms and conditions, and workplace dynamics.

The data suggests that formal systems increase the likelihood of bargaining and improvements in terms and conditions. The availability of formal agreements in some smaller workplaces where performance management systems and bargaining agents didn't previously exist appears to have promoted interest in bargaining.

Levels of collective bargaining and coverage have not increased significantly since the ERA came into effect. Smaller workplaces remain predominantly unaffected by efforts to promote collective bargaining, unless they are part of a MECA arrangement.

Although a significant proportion of collective agreements were newly negotiated under the ERA, these partly replaced ECA collectives that lapsed and were not renegotiated, possibly due to ERA requirements for union involvement. A number of new unions have formed to negotiate collective agreements, mainly where more established unions do not have coverage.

While there has been little change in the overall coverage of collective bargaining, there is evidence of stability and slight increases in use and coverage of collective arrangements.

Low demand for union services and low union resources were factors affecting the lack of change in level of unionisation and collectivisation. Most change that has occurred in volume and coverage of collective bargaining has been in larger, more unionised and public sector workplaces. Evidence that a proportion of pre-ERA collective agreements have expired without being renegotiated, or have been renegotiated without union involvement may signal areas for further collectivisation.

There has also been little new multi-employer collective bargaining. Private sector unions perceive a continued lack of employer interest and co-ordination as key barriers to more MECA bargaining occurring under the ERA.

The analysis indicates that union resources have been channelled mainly into sites with existing membership and potential for expanded coverage. Some larger unions have achieved large gains in coverage while others have experienced more modest improvements. Employees at larger workplaces where unions have good or improved access to members and improved coverage were more likely to report improved terms and conditions. Employees at sites that are less accessible or have less opportunity for coverage improvements (such as single sites) were more likely to experience decreases in coverage.

Union strength at the introduction of the Act and familiarity with bargaining processes were key variables in ability to promote the Acts objective to promote collective bargaining. Unions

reporting most success in the first years of the ERA were public sector unions, and larger private sector unions.

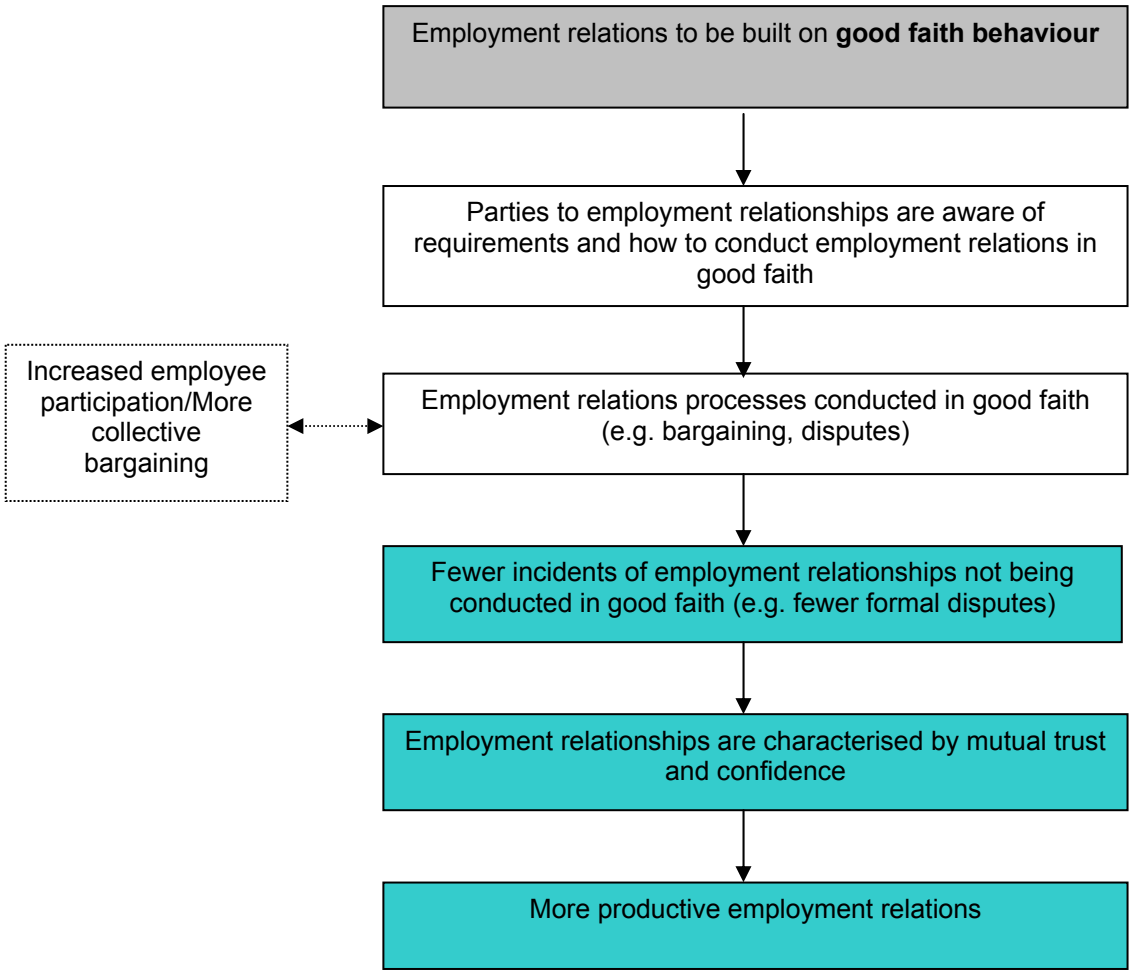
Almost all unions reported that extension of collective terms and conditions to those on individual arrangements was the most significant barrier to greater growth of unions and collective coverage. Employers for the most part perceived that the extension of conditions to all employees regardless of agreement type was consistent with the Act's requirements for good faith behaviour and freedom of choice.

5. GOOD FAITH

5.1. Introduction

The evaluation policy logic model suggested that for employers, employees and unions to act in good faith, they first had to be aware of the Act's requirements to act in good faith. It was anticipated that parties to employment relationships would then conduct their relationships in good faith. This would reduce incidents of employment relationships not being conducted in good faith (for example, fewer formal disputes), and promote employment relationships that are characterised by mutual trust and confidence, and ultimately these relationships would be more productive.

Figure 5.1: Good faith component of the policy logic model



5.2. Perceptions of relationship quality

The evaluation collected information on perceptions of relationship quality to provide some indication of the perceived quality of relationships and need for change.

5.2.1. Employee perceptions of the quality of employment relations between employers and employees

The employee survey indicated that the majority of employees rated the current relationships between employers and employees at their worksite as good (34%) or very good (49%), with just 5% rating employment relationships negatively.

More than two-thirds of employees who had been employed at their workplace before the Act came into effect (68%) thought there had not been any change in the quality of relationships between employers and employees.

Twenty-two percent reported an improvement in relations since October 2000 (7% saying that they were now 'a lot better' and 15% 'better'), while 8% felt relations had worsened (7% 'worse' and 2% 'a lot worse'). Māori reported much higher levels of improvement (43%, with 4% worsened), as did Pacific peoples (52% better and 9% worsened).

Those who thought relations were now better were more likely to be working at a site with four to nine employees (30%). Those who were more likely to think relations had worsened had been in a union since before ERA (16%), in a collective (13%), working with 100-plus employees (13%), or in central government (14%).

Those who perceived a net movement in bargaining power towards employees were more likely to report an improvement in employer-employee relations (31%). Likewise, those perceiving that employers now had more bargaining power were more likely to report a worsening in relations (32%).

The case study research indicated some reasons why employees might characterise employer and employee relations as positive or negative. For example, employees who perceived employer-employee relations in their workplace to be positive typically characterised the relations as having one or more of the following:

- 'give and take' between the employer and employees
- management who were approachable
- an emphasis on a team approach/inclusive decision making
- a sense that the employer trusted the employees
- provision of special or additional conditions that were valued by employees.

The case study research also indicated that employees who perceived employer-employee relations in their workplace to be less than positive characterised these relationships as having one or more of the following:

- poor communication between management and employees

- a lack of trust
- management who were dictatorial and/or had a ‘take it or leave it’ approach.

5.2.2. Employee perceptions of the quality of employment relations between employees

The majority (91%) of employees rated relations between employees at their workplaces as good or very good. Just 1% of employees rated employment relations between employees at their workplaces negatively.

Approximately three-quarters (76%) of employees who were employed at their workplaces before the Act came into effect rated relationships between employees as not having changed compared with before October 2000. Nineteen percent thought the relationships between employees had improved, while 3% thought they had deteriorated.

5.2.3. Employer perceptions of relationship quality following the ERA

The site survey looked at employers views of whether the ERA had impacted on the quality of employment relations at their workplaces. Just over a third of all sites that existed prior to October 2000 (36%) reported that the ERA had changed their organisation's approach to employment relations. Single sites with 10 to 49 employees were more likely to report changes (47%), while single sites with fewer than 10 employees were less likely to report changes (30%). Other groups more likely to report changes were those who had switched from being predominantly collective to having individual agreements (58%), and those with decreased proportions of staff on collective agreements (55%).

Employers were divided over whether the ERA was contributing towards more trusting relationships between employers and employees at their site. The level of agreement with this statement is shown in the table below.

Table 5.1: ERA contributing to more trusting employer-employee relationships

ERA contributes to more trusting employer-employee relationships	Sample with sites pre-ERA (N=1956) (Est=74,093) %
Agree a lot	6
Agree	11
Agree a little	10
Neither agree nor disagree	33
Disagree a little	10
Disagree	12
Disagree a lot	10
Don't know	6
Refused to respond	1

SOURCE: Site survey 2003

Those more likely to agree were those with only collectives (46%), sites with at least 75% union membership (48%), and those with management support of unions (46%). There was no clear pattern with increasing proportions of employees on collectives.

The case studies showed examples of employers/managers who reported changed employers relations at their workplaces. However, they were not always willing to attribute any of these changes to the ERA. For example, in one case an employer said union involvement after the ERA at his previously un-unionised workplace led him to consult more with his staff and this had led to improved employer-employee relations. In this case, it was unlikely the union would have gained access to the employees without the access provisions of the ERA.

5.3. Awareness of good faith

5.3.1. Employer awareness of good faith

Two-thirds of employers (66%) said they had heard of the good faith obligation of the ERA. Awareness increased by number of employees, for both single and multi-site organisations.

Those most likely to have heard of the good faith obligation were sites:

- with 75% to 100% unionisation
- with employees as members of the five largest unions
- with multi-employer collectives
- with single site collectives

- with individual agreements only
- in central government
- with an HR manager.

Sites which had negotiated a CEA since the new Act came into effect were not significantly more likely to be aware of the good faith obligation.

Employer awareness of the good faith obligation was more likely to be lower at sites that had only IEAs.

The case studies found that in small workplaces with staff employed without formal written agreements the employer was unlikely to be aware of the good faith obligation of the ERA. There was reliance on informal rather than formal rules in such workplaces. For example, the owner of a small hairdressing salon who did not use formal written agreements for most of her staff said she:

> *…had not heard of good faith. She thought it meant that 'employees were trustworthy and that they could be left unsupervised, and that you could have faith in them'. She said that was her experience at the salon…*

5.3.2. Employee awareness of good faith

Just over a quarter (28%) of employees surveyed had heard about the good faith obligation of the Employment Relations Act. Levels of awareness were slightly lower among Māori (23%) and Pacific peoples (17%). Awareness of the good faith obligation was higher:

- in central government (44%)
- among those on incomes of $50,000 and above (56%)
- for those who had joined a union before October 2000 (45%).

Employees interviewed in cases involving collectives had not always heard of the term good faith in relation to the ERA, especially if they were not directly involved in bargaining. Employees who were aware of the term were usually found in organisations with well-established collectives and an active union presence.

5.4. Understanding of good faith

Of employers who were aware of the good faith obligation, 83% thought it applied to all aspects of employment relations and 7% that it applied only to employment agreement negotiations, while 8% were undecided and 1% did not respond.

The case studies illustrated that employees and employers across a wide range of contexts typically understood good faith as being about 'fairness, trust, openness, being up-front and

being honest'. This was the case whether they were aware of the term 'good faith' in relation to the ERA or not. For example:

- an employer at a small web design company where everyone was on an IEA described good faith as being 'up-front and not double dealing'
- an employee on an IEA at large organisation where everyone was on an IEA described good faith as 'honesty among all – employees and employers trying to work together to solve a common goal'
- an employee in a public sector workplace with a history of collective bargaining said when asked about the term 'good faith', 'both parties are open and honest ... they look at what the other is trying to achieve*',* it's about being 'fair, not disadvantaging the other party, not doing the dirty on the other'
- an employee who was a member of a new single site union reported that good faith is 'knowing that if you put up a good argument you'll be listened to'.

The case studies illustrated that what good faith was seen to apply to varied by size of organisation and degree of unionisation. In cases involving organisations that did not have collectives, employers and employees described good faith in terms of their operational activities.

Employers, union officials and delegates in organizations that did have collectives usually described good faith in terms of the bargaining process, especially if they had been directly involved in bargaining. For example:

- an employer at a large organisation which recently underwent collective bargaining for the first time described good faith as 'if two groups come to the table, they present a list of conditions – come to agreement and stand by their word and everyone works together to achieve that'.

Employees who were not delegates in these cases typically described good faith in terms of their operational activities. For example an employee who was a member of a large, established, single employer union with a history of collective bargaining reported he had not heard of the term 'good faith', but to him it meant 'a fair wage for a decent day's work'. an employee at a workplace with a new collective and only recent union involvement said good faith means 'doing your job properly, don't do anything half pie'.

In some cases where unions were active, some employees talked about good faith in terms of bargaining. For example, an employee at a large organisation with a well-established union and collective described good faith as:

...about giving and taking, and with the ERA bargaining is a bit more equal, it is not so confrontational and not take it or leave it.

In the case studies, unions typically explained good faith in terms of bargaining with employers and talked about it in legalistic or procedural manner. For example, the union in a case involving a large organisation in the financial sector saw good faith as a requirement for both parties to take 'methodical steps to achieve a solution' whenever the parties were bargaining. The union official said that:

The code is about looking at other's side and chewing it over before making response. Good faith is about getting closer to agreement every time you meet. Blocking this creative process is bad faith…

The case studies illustrated that employers apply good faith differently. For example, at a large service sector workplace, the managers interpreted the requirement on them to bargain in good faith to mean that they should be 'fair' to all employees whether they were union members or not. The managers ensured that there was no material or perceived advantage to employees who belonged to the union. The belief that all employees should receive the same terms and conditions regardless of union membership was a common theme among employers in the case studies.

In another case involving a large primary sector company, the employer saw good faith as the framework for communicating and working with employees. He saw no room or requirement for the involvement of a third party in the form of a union in that relationship, and did not believe that acting in good faith extended to a requirement to make open financial disclosure to the union or employees.

5.5. Evidence of good faith in employment relations

5.5.1. Employee perceptions of good faith in employment relations

Of employees who were aware of the good faith obligation, 81% felt that employment relations at their workplace were conducted in good faith. Another 9% reported this to be the case sometimes, with 8% believing good faith was not present. Māori and Pacific peoples were less likely to report good faith being present. Among Māori 67% said it was present, 17% sometimes present, and 11% that it wasn't. With Pacific peoples, the figures were 60%, 3% and 24%, with a further 13% who did not know (for the main survey and Māori, the level was 3%).

5.5.2. Union perceptions of good faith in employment relations

More than two-thirds of unions (68%) thought that all or most employers they deal with acted in good faith. This data, by membership level, is presented in the table below. Unions with

fewer members, and fewer relationships, were more likely to report that all the employers they dealt with acted in good faith.

Table 5.2: What proportion of employers do unions think act in good faith?

Proportion of employers who act in good faith	Existed as union pre-ERA – large (>8000)	Existed as union pre-ERA – medium (1000-7999)	Existed as union pre-ERA – small (<1000)	Non-union party to collective	Did not exist pre-ERA	Total	Grand total
All	1		8	26	22	57	41.3%
¾ + (but not all)	4	9	7	2	4	26	18.8%
Less than ¾	4	6	1			11	8.0%
Less than ½		5	3	2	1	11	8.0%
Less than ¼		1	1			2	1.4%
None		2	9	3	1	15	10.9%
Don't know/Did not reply	1	1	1	5	8	16	11.6%
Total	10	24	30	38	36	138	100.0%

SOURCE: Union research report 2003

5.5.3. Impact of requirement for good faith on relationships

Unions were asked about the impact of good faith on their relationships with employers, other unions, and with their own members.

Just over half of all unions (56%) reported that the good faith requirement had made no difference to the union's relationships with employers, 33% thought it had made relationships better, and 4% thought it had made relationships worse.
Almost two-thirds of unions (62%) felt that the good faith obligation had made no difference to their relationships with other unions, 14% thought it had made relationships better, and 4% thought it had made relationships worse.

Almost three-quarters (73%) of unions felt that the good faith obligation had made no difference to relationships between the union and its members, while 12% thought it had made relationships better. This did not appear to vary significantly by the number of members the union had.

A common theme of the union interviews was that it was better to operate without formal reference to good faith. One interviewee explained: 'Good faith is a coin you don't want to devalue', another suggested good faith (if formally invoked) might 'get in the way of good

relationships'. Those interviewed talked about good faith as something parties were aware of but used only as a check on behaviour, or a reminder, when a disagreement occurred.

In the case studies there were a variety of examples of good faith behaviour across workplaces.

In cases involving small workplaces and the exclusive use of IEAs, good faith was evident in the conduct of employment relationships. The following were examples provided of good faith behaviour:

- providing special terms and conditions that are valued by the employees (such as sponsorship through discounted purchases, additional leave, superannuation contributions)
- providing employees with pay increases without employees raising the matter explicitly
- recognising and respecting the cultural values and practices of employees in the terms and conditions and operation of the organisation.

In one case involving an organisation with a single site collective, the parties involved had previously had contentious bargaining relations. While the employer attributed the improved relations at the site to his management style, employees interviewed attributed the change to the good faith clause in the ERA. For example an employee said:

> *Good faith has made a difference – with the walkout[11], it was not under good faith and no body talked through any of the issues. The same would not happen if people acted in good faith, and now people tend to. With good faith provisions, things take longer but it produces good results. The last round of negotiations went smoothly because of good faith.*

In a case involving the negotiation of a MECA in the public sector, the good faith shown during negotiations meant that a highly complex negotiating process and a large agreement was concluded without any suggestion of the need for industrial action. One of the union organisers in the case said:

> *This [good faith] was pivotal. There was a genuine respect for each other's position even though we were diametrically opposed.*

The completed bargaining process created a significant platform for constructive engagement in the next round. Employers, employees and the union reported that their experience of negotiations demonstrated that working in good faith is productive in achieving positive bargaining outcomes. An employee and union delegate said:

[11] This incident occurred in a past bargaining round prior to the ERA.

Our bargaining was in good faith. At the beginning of the bargaining session they had documents saying it was 'all going to be done in good faith'. She believes it was done in good faith because they came to an agreement about what was happening at the beginning. They agreed at first who'd talk to whom. There was 'no going home talking to the press'. Any statements were made as a collective by management and [the union]. It 'didn't feel anyone was trying to get one over the other'. 'It was a remarkable process. We started in separate rooms – management and [the union], but came together for some discussions and to have lunch together.' They all had morning tea together. 'No nastiness'. She 'used to think it was odd, saying "no", "yes", "maybe", next minute having lunch together, talking about everything else. It didn't happen last time.' It's 'supposed to mean being open and honest with each other. I personally thought that was the case.'

The employer at one of the workplaces in the MECA now conducts regular meetings with unions on each site, and these have also improved the relationships between union and employer. The employer believes this has reduced the risk of parties not acting in good faith in the future.

5.6. Where good faith behaviour was not evident

The employee survey found that 9% of employees thought employment relations at their workplaces were sometimes conducted in good faith and 8% thought they were not. Those employees reporting that good faith was present only sometimes or not at all were over-represented among those working in central government (25%) and those who had been union members since pre-ERA (27%).

The case studies suggested some reasons why employees might report relations were not conducted in good faith. For example, in cases where collective bargaining had been contentious, one or all of the parties involved gave instances of bad faith behaviour. At one large service sector organisation, the employer did not observe the terms of the good faith agreement that it had agreed would apply during the bargaining process. The employer was reported as being obstructive and undermining the bargaining process with the union. Employees and the union also lacked experience of collective bargaining and this contributed to employer allegations that the union and employees had not acted in good faith.

In cases where the employer passed on the terms and conditions achieved by collective bargaining to non-union employees and the union presence was newly established and/or struggling, the union typically described the employer's behaviour as not being in good faith.

A common theme among union officials interviewed in the case studies was that the good faith obligation was idealistic and could not be enforced in reality. This theme also emerged

from the in-depth interviews with unions. The most commonly raised barriers to more widespread good faith practice was a perception that there was no, or insufficient, risk to not acting in good faith. This was frequently expressed as 'good faith has no teeth'.

Several unions had not pursued cases that they thought were breaches of good faith because of:

- lack of resources
- anticipated lack of penalty
- the unlikelihood of being able to get a resolution while the issue was live
- the difficulty of getting employees to testify to a perceived breach
- wanting to avoid court outcomes that might impact negatively on the scope of good faith.

Two examples of perceived breaches were: pressuring members not to take industrial action, and; pressure to accept a particular agreement where another union had already reached an agreement with an employer. One union thought unions were not obliged to act in good faith with one another outside of collective bargaining, and this made it difficult for smaller and competing unions to represent their members effectively.

5.7. Making changes because of good faith

5.7.1. Perceived need for change

Of employer representatives who were aware of the good faith obligation (N = 1559), 71% had considered how good faith could apply at their workplace. Nineteen percent[12] reported having made changes to meet the good faith obligation at their workplace and 52% had considered but not made any changes. This 52% included 2% who thought they should make changes, but the rest did not feel any change was needed. The 19% who had made changes included 2% who thought they should make further changes.

Most unions (80%) had not made changes to meet the good faith requirement of the ERA. The following table shows that proportionately smaller unions were less likely to have made changes due to good faith than larger unions. Of the unions representing more than 8000 members, half had made changes.

[12] Based on those who were aware of the good faith obligation.

Table 5.3: How many unions have made changes due to the good faith requirement?

Whether made change	Existed as union pre-ERA – large (>8000)	Existed as union pre-ERA – medium (1000-7999)	Existed as union pre-ERA – small (<1000)	Non-union party to collective	Did not exist pre-ERA	Total	Grand total
Yes	5	8	4	5	3	25	18.1%
No	5	15	26	33	32	111	80.4%
Did not reply		1			1	2	1.4%
Total	10	24	30	38	36	138	100.0%

SOURCE: Union research report 2003

Some unions (15%) said they planned to make changes in the future, but most (84%) did not plan to. This did not appear to vary significantly by size of union.

5.7.2. Changes made by employers and unions

In the employer survey, the following were the main types of changes that employers had made in relation to the good faith requirement[13]:

Increased communications with staff:

- More communications and discussions with staff/keeping staff informed about company issues/more staff input into the content of agreements/talking to employees and working out solutions to problems/better documentation (31%).
- Providing employees with information about entitlements and rights/advising them that they could seek outside advice and providing time to do this/support and advice for staff (6%).

Bargaining and changes to terms and conditions:

- Pay increases/ health and safety issues/better working conditions/performance reviews and appraisals (23%).

Improved documentation/procedures:

- Changing management approach and procedures/more cautious/detailed policies and procedures manual/disputes procedure/stronger HR strategies/written letter of offer/being honest and up-front (22%).
- Compliance with ERA/ensuring it is implemented/amendment of clauses in agreements/written contracts and agreements (8%).

[13] Based on those who reported having made changes to meet the good faith obligation.

Good faith bargaining and behaviour:

- Formalised agreement on the meaning of good faith/willingness to act in fairness/ensuring managers are aware of good faith (13%).

Union relationships:

- Access and membership/readily available to work with unions/partnership/making staff aware of the option to join a union (6%).

Those with both collective and individual agreements were more likely than others to mention changes related to union relationships (21%), as were those with 50% to 74% unionisation (28%). Those with management that supported union membership were much more likely to mention issues relating to good faith bargaining and behaviour (35%).

Most changes unions reported were to bargaining processes:

- to establish or use a process agreement
- to the style of bargaining, or;
- the involvement of bargaining agents.

Three unions reported that good faith had changed the way they interacted with their memberships: to have less direct communication with membership during bargaining, to change recruitment procedures, and to clarify rights and duties to members.

The case studies provide some examples of changes in behaviour, at least in part as a result of the good faith obligation under the ERA.

In one case involving MECA bargaining, the employers made administrative changes to comply with the ERA. The existence of the good faith provisions in the ERA exerted some influence over setting the goals of employees and the union for the bargaining round. The requirement of good faith also established the code of good faith that applied during the bargaining process.

In some cases where collective bargaining was contentious, there has been a change in behaviour in an effort to improve relations between the parties. For example, in one organisation new to collective bargaining, the union secured significantly improved access and the employer has stopped overtly obstructing that access. Union members are now able to meet regularly and freely at the site without the constraints previously imposed on union meetings by the managers. The employer also hired a manager to improve relations with the union.

The case studies also provide examples of the good faith obligations having had little or no impact. This appeared to occur where the obligations were not known or not seen as relevant to their situation. For example:

In cases involving IEAs in organisations without a collective, the employers and employees typically had low awareness and knowledge of the good faith obligations (as outlined in the ERA) and what these obligations might mean for their behaviour.

In cases involving collective bargaining where relations between the employer and the union were well-established and positive, there was little incentive or need to change behaviour when the ERA was introduced. In one case, employment relationships and associated behaviour had changed largely as a result of successive rounds of restructuring of the company during the 1990s. Good faith and team spirit had developed at this time, so the ERA had had little impact in this regard.

5.8. Observations

Most employees rated relations between employees and employers at their workplaces positively. Less than one-quarter thought the quality of relations between employers and employees had improved since the introduction of the ERA. Those who thought relations were now better were more likely to be working at small workplaces. Most employees also rated relations between employees positively. Less than one-quarter of employees employed at their worksites October 2000 thought employee-employee relations had changed.

Two-thirds of employers were aware of the good faith obligation of the ERA. Awareness increased by number of employees and was more likely to be lower at sites with only IEAs. Just over one-quarter of employees were aware of the good faith obligation of the ERA.

Employees and employers across a range of cases typically understood good faith as being about 'fairness, trust, openness, being up-front and being honest.

Unions typically described good faith in terms of bargaining with employers, and tended to talk about it in terms of legal or procedural issues.

What good faith was seen to apply to commonly varied by the size of organisation, degree of unionisation and level of involvement in bargaining. Employers, union officials and delegates in cases involving collectives usually described good faith in terms of the bargaining process. In these cases, employees who were not delegates typically described good faith in terms of their operational activities.

Most employees who were aware of good faith, and more than two-thirds of unions, thought their employment relations were conducted in good faith. Less than one-fifth of employees reported that employment relations at their workplaces were only sometimes or never conducted in good faith.

In the case studies, bad faith examples were given where collective bargaining had been contentious. Contrary to the survey results, these cases were typically among parties experiencing collective bargaining for the first time.

Very few employers who were aware of good faith felt they should make changes. The most common changes employers reported making to meet the good faith requirements included increased communications with staff, changes to terms and conditions, and improved documentation and procedures.

More than three-quarters of unions had not made changes to meet the good faith requirement of the ERA. Changes unions did report were mainly to bargaining processes.

A common theme among union officials interviewed in the case studies and union research was that the good faith obligation was idealistic and could not be enforced in reality. Interviewees felt this inhibited the spread of good faith behaviour.

6. GOOD FAITH IN COLLECTIVE BARGAINING

This section discusses the extent to which parties perceive bargaining to be conducted in good faith and specific impacts of the ERA requirements on bargaining relationships.

6.1. Willingness to bargain

The Act requires employers to enter into collective bargaining when it is initiated by a union in accordance with the Act. Unions that existed before the ERA and are party to a collective agreement under the ERA were asked whether they had perceived a change in willingness to bargain since the introduction of the ERA.

Just over a half of all unions perceived no change in employer willingness, and just under a third reported that employers were more willing. Just over a third of the larger unions (more than 1000 members) and a quarter of the smaller unions perceived that employer willingness had increased.

A number of union interviewees explained that whether employers were more willing or not, the ERA requires parties to sit down and negotiate, and this means employers are more prepared to negotiate. Several private sector unions reported that some of the employers they dealt with were still highly resistant to bargaining.

6.2. Providing information for collective bargaining

The ERA introduced provisions to guide what and how information is exchanged between parties for collective bargaining. S34 (2) of the ERA requires that requests for information be made in writing, are sufficiently detailed about information requested, relate to a particular bargaining claim and specify a reasonable timeframe for provision of the information. If either employer or union considers the information to be confidential, an independent reviewer may be appointed by mutual agreement. The surveys sought to establish how frequently information was exchanged and whether this had changed under the ERA.

6.2.1. Volume of information requesting

The site survey found that a quarter of sites involved in collective bargaining since October 2000 had received requests for information from unions as part of the negotiations. Those with higher levels of union membership were more likely to report receiving requests for information. Information requesting was also higher in both local (52%) and central government (45%) worksites.

All of the largest unions and most established unions with more than 1000 members (80%) had requested information. Those that hadn't were typically smaller unions, although a high number of small and new unions had requested information for bargaining purposes.

Most of the unions that had requested information under the ERA reported that the amount of information they requested had increased under the Act. Most of the larger established unions had requested more under the Act. A third of unions and higher proportions of the smaller unions reported no change in the volume of information they requested.

6.2.2. Responding to requests for information

Most employers who had received requests for information reported having at least once given the unions everything they asked for (84%), 13% had given them part of what they asked for, and 2% had declined a request at least once. There were 7% who were unsure[14]. Employers that currently had predominantly individual agreements were less likely to report having given everything (56%) and more likely to be unsure (30%). Sites with less than 25% union membership were also less likely to have given everything (56%). Supporters of unions did not differ in their responses.

Unions that had requested information under the ERA were asked how frequently they received what was requested. Most unions that requested information felt they had received what they wanted most of the time.

One in five unions received the information they wanted on less than half of the occasions that they requested it. This group included unions within each of the five union types. Some of the differences between amounts requested and received may be due to the nature of requests.

Just over half of the unions, and more than two-thirds of the larger unions felt that the amount of information they now received was greater than what they had received before the ERA. Most of the remainder reported no change.

Public sector unions felt they made less use of the information provision procedures because much relevant information was already available. Most private sector unions reported significant use of the information requesting provisions, but more barriers to receiving information. Smaller unions reported that they were more likely to rely on trust and sometimes reluctant to introduce more formality into bargaining relationships by formally requesting information.

[14] More than one option could apply to each site.

The case studies found that in some situations employers maintained that an open flow of information about company performance, particularly where it required staff understanding of cost cutting, reduced the need for formal requesting.

The site survey asked those who had provided information to unions as part of bargaining what type of information they had provided. Nineteen percent had given a written report summarising the trading position of the company, 27% had given a verbal report of the same, and 61% had supplied some other type of information. The other main types of information were staff names/membership lists and pay scales/remuneration.

Several of the smaller and medium-sized unions commented that regardless of the obligations upon employers, the information they received was often not relevant or useful. Two unions reported a further barrier was the requirement to link information they were interested in to particular claims, and a number felt that even if they did so they would not receive relevant information. One union said that it needed to do more to relate requests to specific claims.

6.2.3. Use of independent reviewers

Although the ERA encourages the use of independent reviewers, both site and union data indicated that independent reviewers were rarely used. Just 8% of sites that had received requests for information had engaged an independent reviewer. The large unions also reported little use of reviewers and said that this was due to mainly to the amount of work or cost involved.

6.3. Code of good faith

A code of good faith has been prepared by employer, union and state sector representatives and is available from the Department of Labour. The code aims to provide guidance to employers and unions in the application of good faith to bargaining towards collective agreement.

6.3.1. Use of the code of good faith

Just over half (56%) of unions reported that they had used the code of good faith for bargaining. All of the large unions and almost all the medium-sized unions had used the code. A similar proportion of smaller unions and newly established unions had used the code as had not. Most of those interviewed had used the code to provide ideas or guidance for their bargaining arrangements at some point, but didn't necessarily refer to it regularly. Unions that hadn't used the code were smaller and more likely to have less formal bargaining arrangements. Several unions explained that they hadn't used the code because they thought this would make their relationships more legalistic and formal.

6.3.2. Perceptions of the usefulness of the code of good faith

Several unions felt that there was limited value in a more detailed code because parties needed to work out what the requirement meant in their own relationships. This was more likely to be expressed by unions which had well-developed bargaining relationships. A few unions that had more confrontational bargaining relationships were interested in a more prescriptive code that includes examples of 'good faith and bad faith behaviour'. Two unions described the code as 'wishy-washy' and 'airy-fairy'.

6.3.3. Effect of ERA on unions' ability to improve bargaining relationships

Nearly half of the unions surveyed reported that the ERA had made it easier for them to improve bargaining relationships. Nine out of the 10 largest unions reported that it had become easier. Approximately half of the medium and small unions reported that it had become easier, while a third of those that had been a non-union party to a collective before the ERA felt that their ability to improve bargaining relationships had stayed the same.

Of the 92 unions that stated that they aimed to improve bargaining arrangements, 41 said this was easier under the ERA, while 40 said there had been no change.

6.3.4. Perceptions of bargaining process

Employees who had been involved in some form of negotiation or renegotiation of their agreement under the ERA were asked whether they perceived the process to have been fair or unfair. The table below shows that the majority of employees involved in some form of bargaining perceived the process to have been fair.

Table 6.1: Perceptions of fairness of bargaining process

Fairness of process	New employee	Changed from IEA to CEA	Changes made to IEA	Negotiations about CEA to cover their job	CEA renegotiated
	(N=472) (Est=53,2635) %	(N=31) (Est=34,457) %	(N=34) (Est=43,629) %	(N=56) (Est=56,195) %	(N=221) (Est=205,859) %
Fair	82	75	81	54	74
Unfair	6	15	2	19	15
Neither fair nor unfair	7	9	17	9	5
Don't know/Did not respond	5	2	1	18	6

SOURCE: Employee survey 2003

6.4. Observations

There were indications that employer willingness to bargain has increased since the introduction of the ERA. Some unions continued to experience resistance to bargaining, but expressed confidence that the Act enabled them to bring employers to the bargaining table if necessary.

Only a quarter of sites involved in bargaining had received requests for information, but most unions reported using the provisions in bargaining. Most unions reported that the volume of information they requested and received had increased.

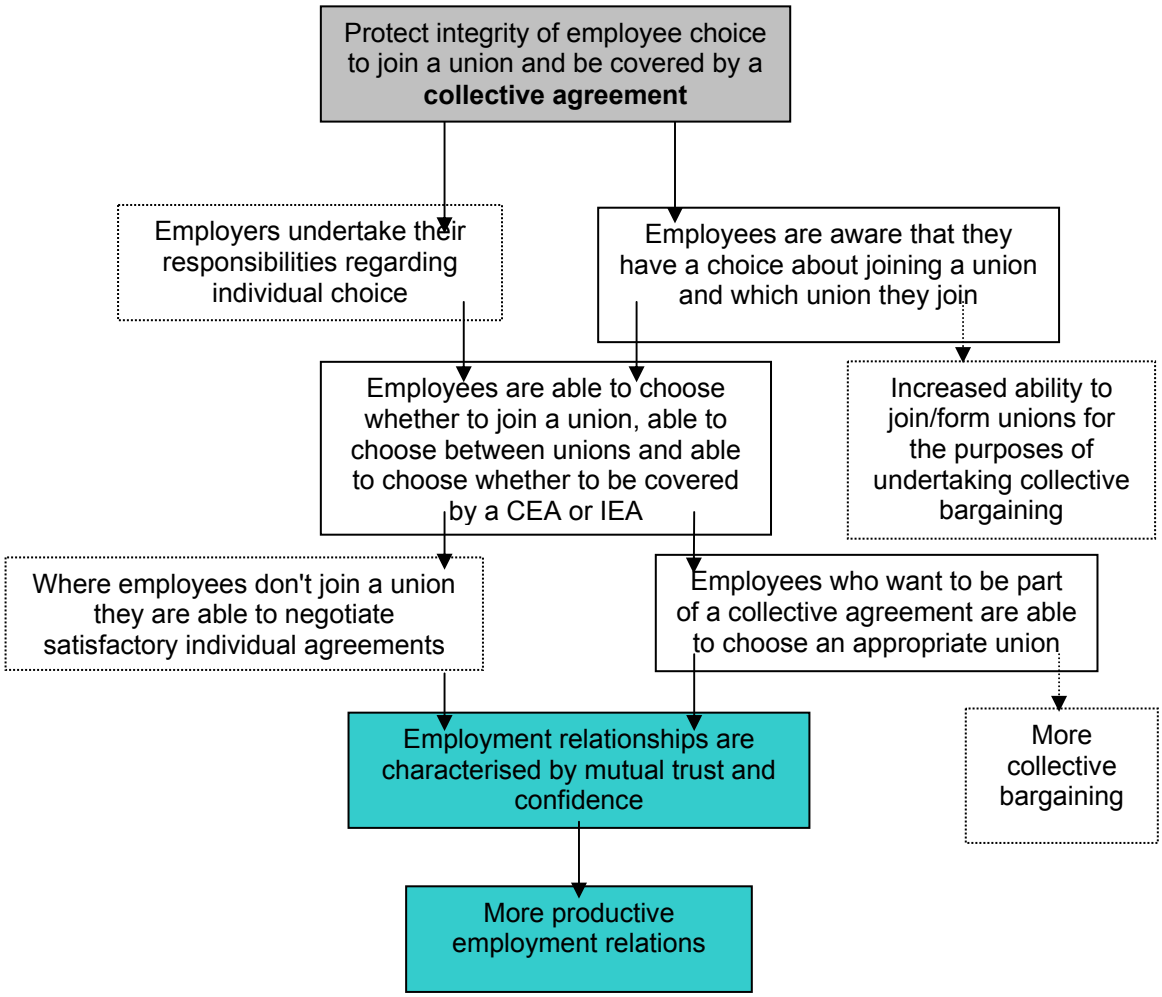
Most employers who had received requests for information felt they had given unions everything they had asked for. Some unions in the private sector reported that they continued to experience an unco-operative response from employers, with others doubting they would receive the information they would like if they asked for it. The effort involved, nature of relationships, reluctance to introduce formality and doubt that they would get useful information were further barriers to more use of the Act's provisions. Little use had been made of independent reviewers.

Just over half of the unions had used the code, mainly to help establish bargaining arrangements. While public sector unions had less use for the code, several private sector unions felt it wasn't strong enough.

7. FREEDOM OF ASSOCIATION AND THE OPERATION OF UNIONS

The ERA aims to protect the integrity of individual choice. For employees to have a choice of employment agreement they need to be able to be covered by either collective or individual employment arrangements. Under the ERA, a union is required to negotiate a collective agreements. Therefore, a precursor to employees having a choice of agreement is having access to a union. This is illustrated in the evaluation policy logic diagram below.

Figure 7.1: Freedom of association component of the policy logic diagram



7.1. Union access to employees

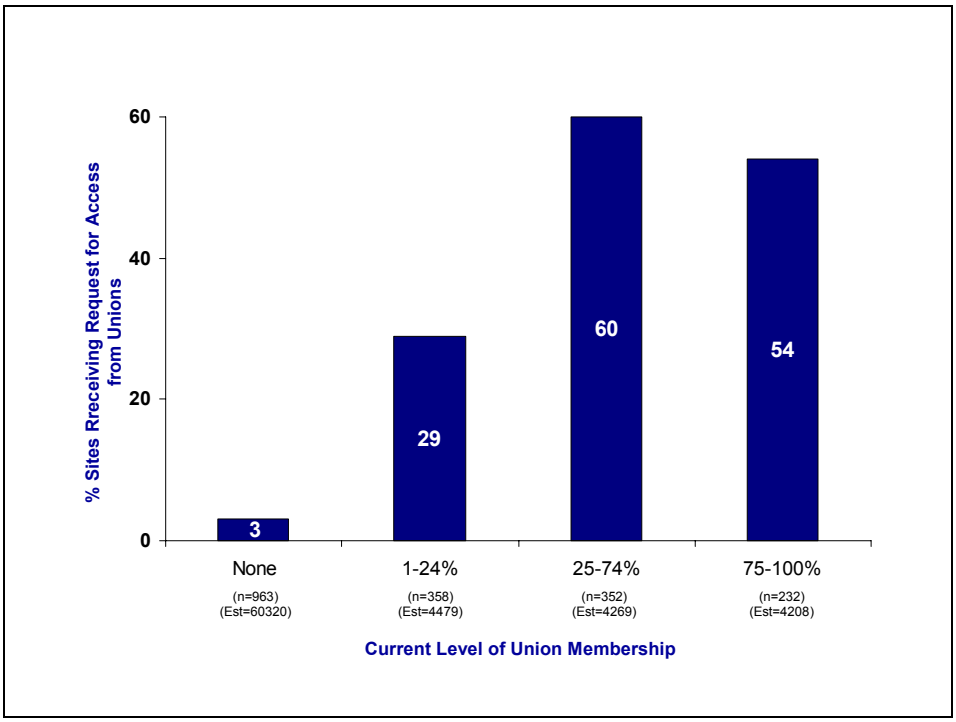
Union access to sites is an important aspect of employees being able to have a choice of employment agreement. By gaining access to workplaces, unions are able to inform employees about the role a union could play in their workplace. If employees request it, a union can begin negotiations for a collective employment agreement. Only at sites with a CEA can employees choose between that and an IEA.

7.1.1. Experience of access rights under the ERA

Under the ERA, unions can submit formal requests to employers for access to employees at a site. Unions are most likely to use formal requests for access where they have had difficulties obtaining access in the past.

In the site survey, 11% of employers reported having received requests from a union for access to employees since October 2000. The level was higher for employers that had both individual and collective agreements (42%) while those with collectives only were 24%. The level of requests for access was lower for those sites with individual agreements only (5%) or 'other' agreements (2%). Almost three-quarters (71%) of requests to employers for access were from unions with existing members at the site. Only 26% of requests were from unions without existing members[15]. As shown in the figure below requests for union access tended to increase with increasing proportions of employees in unions.

Figure 7.2: Requests from unions for access by unionisation



SOURCE: Site survey 2003

Seventy-three percent of the 85 unions that had existed before October 2000 considered their access to sites where they already had members had not changed since the ERA came into effect. Only six unions thought their access had improved. However, none of the unions in the survey considered their access to have worsened.

[15] The balance (with the 71% above) were those who did not know.

The union survey indicated that unions which had accessed new sites were more likely to experience a growth in membership. Among unions that reported accessing new sites, double the number reported an increase in their membership (20 unions) than reported a decrease (10 unions). For those that had not accessed any new sites, fairly equal numbers experienced a membership increase (17 unions) and a decrease (16 unions).

The union survey highlighted that the following factors are relevant to whether unions access new sites:

- *being a large or medium-sized union*. Access to new sites was less common for smaller unions. Moreover, larger unions reported having accessed more sites. These unions were the only ones to have accessed 50 or more sites. Established unions with fewer than 1000 members had accessed less than 50 sites each. Unions that were a non-union party to a collective pre-ERA had each accessed only one or two new sites.
- *having paid officials*. It was more likely that those that accessed new sites also had paid officials. Twenty-seven of the 36 unions that had accessed new sites had paid officials.
- having increasing their union membership as a key aim.

In-depth interviews with unions and the case study research suggested that unions did not always use the formal access provisions to reach employees in the workplace. For example, where unions have had good access to staff prior to and after the introduction of ERA, they have not needed to use the formal access provisions.

Despite the improved access provisions in the ERA, there appeared to be a number of factors that limit the ability of unions to make the most use of the provisions. These included:

- *limited union resources*. For example, in one case where a union accessed a new site, membership increased significantly there. The union organiser reported that this increase had come about because the union (a large, nationwide union) had put considerable resources into developing the site and could not replicate this at other sites. The organiser explained:

  It is very resource intensive getting access. The hospitality area seems to have a lot of experience or even perhaps training in marginalising unions in workplaces.

changed workplace practices. For example, difficulty gaining access to staff working outside normal hours and/or in difficult to reach locations. A large private sector union commented that the ERA had legitimised unions and union business to an extent, but now faced problems ‘inside the gate’. It referred to difficulties in locating highly mobile groups of employees when access in principle had been granted.

7.2. Union membership

Under the ERA, employees have an absolute right:

- to choose to join a union or to choose to not join a union
- to join a particular union in preference to joining some other union
- to resign from a union.

It is illegal for anyone to use 'undue influence' to try to make another person join or not join a union or to resign from a union. No-one may discriminate against the employee on the basis of their membership, or non-membership, of a union.

This section looks at perceptions of union membership, union membership trends and some reasons for why employees do or do not join unions.

7.2.1. Perceptions of union membership

The site survey found that management support for employees at their site joining unions tended to be neutral (61%), although there were more who reported being supportive (23%) than being opposed (8%)[16]. Opposition to employees joining unions was higher in wholesale trade (17%).

Support for unions was closely related to:

- the level of union membership, with support rising with increasing union membership at the site
- the presence of collective agreements – 53% among those with collectives only and 46% where they had both collective and individual agreements
- being a central government (71%) site as opposed to a site in the private sector (19%).

Consistent with this, support was higher in government administration (62%), education (61%) and health/community services (35%). It was also higher for finance/insurance (39%).

The case study research suggested that employers' perceptions of union membership were shaped by their past experience with unions and collective bargaining. For example, in cases involving a long history of collective bargaining, the employers were typically comfortable about working with unions. In one case involving two large public sector health organisations and another involving a large private sector organisation, the employers had long ago adopted a strategy of working with the unions. The employers' views of particular unions were

[16] The level of opposition may be understated, as some employers may not have wanted to admit to having opposing unions.

shaped by their experiences with them. For example, the employer of a large private organisation commented:

> *…that working with [union A] made it easy but that working with [union B] at [a particular site] made it difficult. He thought that they [union B] were very negative.*
>
> *[that he] expects them to be professional but [union B] are not. '[Union A] is very professional and we have good relationships.' [Union B] in previous years had always taken them to the point where there were industrial disputes. He said, 'they always seem to want more. Settlements have been protracted. We haven't given them more, it's just taken longer to get an agreement. Its almost like they don't believe there should be a settlement without industrial action.'*

In cases where employers had little or no experience of unions, the employers typically preferred not to have unions involved in the workplace. Those interviewed typically sought to frustrate employees' union involvement (for example, by passing on terms and conditions) to reduce the need for that involvement (by providing terms and conditions valued by employees). In two cases management interviewed expressed a preference for staff being on IEAs. Management at these workplaces were outwardly supportive of employees' choice to join a union but undertook a number of actions that undermined the union and the CEA negotiated by the union for example making the terms and conditions of the IEAs slightly better than the CEA.

A third (32%) of employees thought their employers supported union membership in their workplace, but the rest thought their employers were either neutral (26%), opposed (11%), or they did not know their employer's position (32%).

Since October 2000, 62% of employees thought there had been no change in the level of employer support for unions and 21% did not know. Only 9% of employees[17] thought their employer had shown more support for union membership and the same proportion thought they were showing less support. Those who had joined a union since October 2000 were more likely to think employer support had increased (38%), as were other union members (15%). Those in elementary occupations were more likely to report decreases in employer support for unions (24%). Changes in support did not vary by number of employees.

Most union members were either 'very satisfied' or 'satisfied' (76%) with the performance of their union. Those who had joined since October 2000 expressed a similar level of satisfaction (76%) to those who had also been members prior to ERA (77%).

[17] Based on those with the same employer before October 2000.

Haynes et al (2003) also found that most union members were satisfied with their union. They found that most union members reported they were loyal to their union (84.3%), trusted the union leadership to keep its promises to members (86.0%) and agreed that their union fought really hard when important employee interests were threatened (84.5%).

In addition, Haynes et al asked employees whether they believed that they would better or worse off without a union in their workplace. Haynes et al (2003, pp28) found that:

> *…at unionised workplaces, the majority (57.8%) of workers believe that they would be worse off without a union and only a very small minority believe that they would be better off (6.2%). By contrast, at non-unionised workplaces, most workers think that the union would make no difference (69.8%), while about the same number think that they would be better off with a union (15.7%) than without (14.5%). The implication is that unions are perceived as doing a good job (or, at least, not a bad job) at their workplaces – including by some non-members – but that they have not convinced enough workers in non-union sites that they can truly make a difference there to attract them.*

7.2.2. Union membership trends

The employee survey revealed that only 23% of employees in the sample were currently members of a union, this rising to 34% for Māori and 42% for Pacific peoples. The findings were broadly consistent with the findings of the survey of employees carried out by Haynes et al (2003). They found that 27.6% of those surveyed reported being a member of a union, but that this overstated the level of union membership – by around 4% – due to a skew in the sample towards those industries and occupations with higher membership levels.

The employee survey found that union membership increased with increasing numbers of employees the person was working with; from 5% in the one to three grouping to 35% in the 100-plus grouping. Membership levels were also higher among professionals (42%), plant and machinery operators (39%) and those working in central government (58%). There were no significant differences in union membership based on gender, but young employees (18-24 years were significantly less likely to be union members (9% of young people compared to an average of 23%).

The site survey also revealed that the level of unionisation varied by employment size of the worksite. At single sites with fewer than 10 employees most (90%) had less than 25% union representation. The single sites with 10 to 49 employees were more likely to have 75% to 100%, while the single sites with 50-plus employees were more likely to have over 50% membership (30%). Among multi-sites, those with 50-plus employees were above average for the 25% to 74% grouping (28%).

Unionisation was particularly low in the following industry groups: agriculture (98% of sites have less than 25% unionisation), wholesale trade (95%), retail trade (93%), accommodation/cafes (94%), and business and property services (98%).

The site survey indicated little change in the proportion of employees belonging to unions pre and post ERA (Table 7.1). From the percentages given for union membership, it has been possible to identify 3% of the total sites that increased their percentage and a similar percentage that decreased. There will have been others that did not increase or decrease enough to change categories.

Table 7.1: Percentage of employees belonging to unions

Percentage of employees belonging to unions	All sites that existed before October 2000 (N=1956) (Est=74,093)		Sites with collectives before October 2000 (N=784) (Est=12,218)	
	Before October 2000 %	Currently %	Before October 2000 %	Currently %
75-100%	5	6	23	26
50-74%	3	4	15	15
25-49%	2	2	8	7
11-24%	2	2	7	6
1-10%	5	4	10	8
None	75	78	33	32
Don't know	7	4	4	5
Did not respond	1	1	1	1

SOURCE: Site survey 2003

A similar trend was observed in the employee survey. Of those employees who had been with the same employer in October 2000, 4% had joined a union since this time. For Māori, the level was 8% and for Pacific peoples the level was 13%. The level was higher in central government (8%) and health and community services (10%).

Among sites that currently had both a collective and individual agreement, 12% reported a category increase in employees in unions and 7% a decrease. Among those with a collective only, 9% reported an increase in union membership and 3% a decrease. Those with only individual agreements reported little change – 1% increased and 3% decreased.

Just 1% of sites reported having begun union membership since October 2000. They were more likely to be from multi-sites with 10 to 49 employees (4%), which was also a type of site

that was above average for existing union membership (28%). The only industry sector that was significantly higher was manufacturing (5%), which was not one of the sectors that was higher for existing union membership (average at 16%).

Those that had non-union collectives before the new Act and reported an increase in unionisation accounted for only 0.4% of sites that had existed before October 2000[18].

Consistent with the limited union expansion to new sites, there were few new union members. Of those who belonged to unions in the main survey (N=387), 77% were existing members before October 2002, 11% were new first-time members and 10% were new members who had belonged to a union some time previously. For Māori (N=182), there were 69% existing pre-ERA, 13% first time and 18% new but former members.

7.2.3. Reasons employees join unions

The employee survey indicated that employees joined unions for a variety of reasons. The table below presents reasons provided for union membership.

[18] This small number is insufficient to provide any analysis of this group.

Table 7.2: Reasons for union membership

Reason for being a union member	Main survey (N=387) (Est=377,261) %	Māori (N=182) (Est=59,212) %	Pacific peoples (N=31) (Est=28,807) %
Benefits: Thought would offer assistance if dispute arose	26	21	29
Thought might improve pay/conditions	20	17	25
To represent workers' views	17	21	11
They look after/support their members/give back-up/advice	13	18	17
Protection/protection of rights	10	10	4
Strength in numbers/solidarity	11	8	3
More security/safer	4	5	15
Job security	4	1	5
Insurance cover/indemnity insurance	4	1	0
Extra benefits/perks (such as discount card, mortgage discounts, welfare housing, retirement fund, funeral payout)	3	3	0
Influence of employer: Had to join/company policy	2	6	0
Influence of fellow employees: Fellow employees were joining/fellow employees supportive of union	11	11	5
Other reasons: For negotiations/to renegotiate contract	9	4	12
Had to be union member to be on collective	6	8	5
Generally supportive of unions/believe in unions	3	2	0
Always been a union member	1	3	0

SOURCE: Employee survey 2003

The reasons given by employee survey respondents for joining a union were consistent with those given by employees in the case studies involving union members. The case study research illustrated that employees typically joined unions under one or more of the following circumstances:

- where union density was high (that is, what most employees in the organisation did). For example, an employee at a large public sector organisation said: 'I switched to [the union] when I came to [this section of the organisation]. I like the fact [the union]

was the professional body as well as the union.' An employee and a union delegate who was part of the same case said: 'The union and the collective will remain strong – union membership is strengthened by the indemnity cover. This is the best thing about [the union]'.

- where the union was seen as providing insurance (such as against an arbitrary employer or the negative impact of any possible restructuring). For example, an employee for a large financial institution said:

It was a personal decision to join the union. She knew there was some industrial action coming up. She thought there was safety in numbers. There has been a lot of talk...

- where employees were angry at their employer's past or present behaviour and felt the union would give them more power
- where employees believed they could obtain better outcomes through collective bargaining.

There were some examples of employees who wanted to bargain collectively but did not want to join a traditional union or use the union's services other than for bargaining. In these cases, employees were typically members of single-employer or site-based unions and viewed them as being different to traditional unions. For example, a teacher at a private school who was a member of the site-based union said:

People are not members of the union because they're unionists. [The site-based union] is an entirely pragmatic response to the change in the law.

An employee in another case involving a site-based union explained that he joined this union rather than the larger multi-site union:

…because of their non strike policy.

In another case, employees did not think an outside union would represent their interests as well as the site-based union:

The staff were not keen on an outside union. They wanted the [single employer union] to represent them. [Those] running the [single employer union] come from the [sellers] – they know what we want, they know us.

As stated earlier, the majority of employees are not union members. The table below shows reasons provided for not being a union member.

Table 7.3: Main reasons given by employees for not being a member of a union

Reason for not being a union member	Main survey (N=1170) (Est=1,273,311) %	Māori (N=331) (Est=115,040) %	Pacific peoples (N=56) (Est=40,406) %
Perceived not to be an option/not appropriate: No union at workplace	16	9	20
Never had the option/opportunity	1	5	0
Did not know could join union	4	2	3
There is no union in my field/industry	4	3	0
Don't work enough hours	3	2	1
I'm management	2	*	2
Never sure how long job will last/Never been employed long enough for it to be an issue/Just started back at work	1	1	4
Only a small number of staff	1	1	4
Happy with contract/current agreement I have	2	1	3
Casual/semi-retired so doesn't arise	1	*	3
No benefits/has costs: No need/Get by okay without unions	9	8	3
Too costly/can't afford it	6	7	0
Have good relationship with employer	4	5	5
Unions haven't helped in past/They don't do a lot/they're useless	5	4	2
I can negotiate my own agreement	5	5	0
Can see no benefits/advantages	4	1	2
Prefer individual agreement/Better off with individual agreements	2	1	3
Lack of knowledge about unions: No-one ever asked me/Haven't been approached	6	6	4
Don't know much/enough about unions	4	4	3
Lack of interest: Haven't thought about it	4	5	0
Can't be bothered/apathy	1	2	7
Not interested/Don't want to	3	4	4
Never been in a union	3	2	4
Haven't got around to it	1	1	3
Opposition to unions: Do not support unions/collectives	8	4	1
Employer openly critical of union membership	1	1	4

SOURCE: Employee survey 2003

Only 4% of employees said they did not know they could join a union. Those aged 18 to 25 years in the main survey (N=131) were more likely to name lack of knowledge about unions as their reason for not being a member (14% vs 4%).

In the case studies, the reasons employees gave for not joining unions were similar to those identified in the employee survey. Common themes that emerged were:

Employees perceived that they were well looked after by their employer. For example, an employee at a medium-sized site where everyone was on an IEA explained that:

> *They've [the employers] tried to make everyone even, fair. Differences are based on skills and whether you're a supervisor. We discussed it, then sat down one by one and he [the employer] asked what we wanted to do. We all trust each other, they've [the employers] never let me down.*

In some cases, employees believed they should be responsible for looking after their own employment relationships. For example, an employee in an organisation with a collective said she had chosen not to join the union because she liked to make her own decisions and 'at the end of the day, if I balls up, it's me'. An employee in his 30s at a small retail organisation commented that: 'If you can't look after yourself or as a group [at a workplace] then you've really got problems, haven't you?'

Some employees felt it was not something they were prepared to pay for. For example, a young employee in a public sector organisation said he was aware that he could join a union – he had been informed 'as part of the induction process referred to PSA collective. I could not see any difference, the contracts are similar so it wasn't worthwhile. You had to pay but it was the same contract.' He added that he would 'join in the circumstances, say, where or the job was not performance-based, like a teacher'.

Another employee said she had resigned from the union recently because of increased fees:

> *It amounted to about $200 pa. She had just brought a house and thought dollars could be better used. She had never used the union. Non-union staff get same deal as non-union anyway.*

In some cases, employees had little knowledge or personal experience of the union's role, purpose or relevance for them personally. A young employee at a large organisation with a newly established collective did not join the union. A young employee in a cafe where everyone was on an IEA said she 'didn't know what a union was and hadn't been contacted by one'. Employees may have had a negative past experience of unions. An employee at a newly unionised site said he had previously been a union member but didn't think it was worth it explaining that 'They f****d up the holiday pay.'

In some cases employees felt that joining a union would disrupt the close working relationships at the workplace by introducing a third party.

Some employees believed they could not join even if they wanted to. For example, there were managers who believed it was either illegal for managers to be in a union or they have inferred or been told that their employer requires them not to join the union.

7.3. Employment Relations Education Leave (EREL)

Under the ERA, eligible employees can take paid employment relations education leave (EREL) to undertake approved courses in employment relations education, if their union allocates EREL to them. The education is aimed at improving relationships between unions, employees and employers by increasing understanding of employment relations, especially the duty of good faith. EREL can only be used for education of a type that is approved by the Minister of Labour.

EREL is available only union members who are bound by a collective agreement between their employer and their union, or involved in negotiations for a collective agreement, or bound by a collective employment contract (under the Employment Contracts Act 1991) which is still in force.

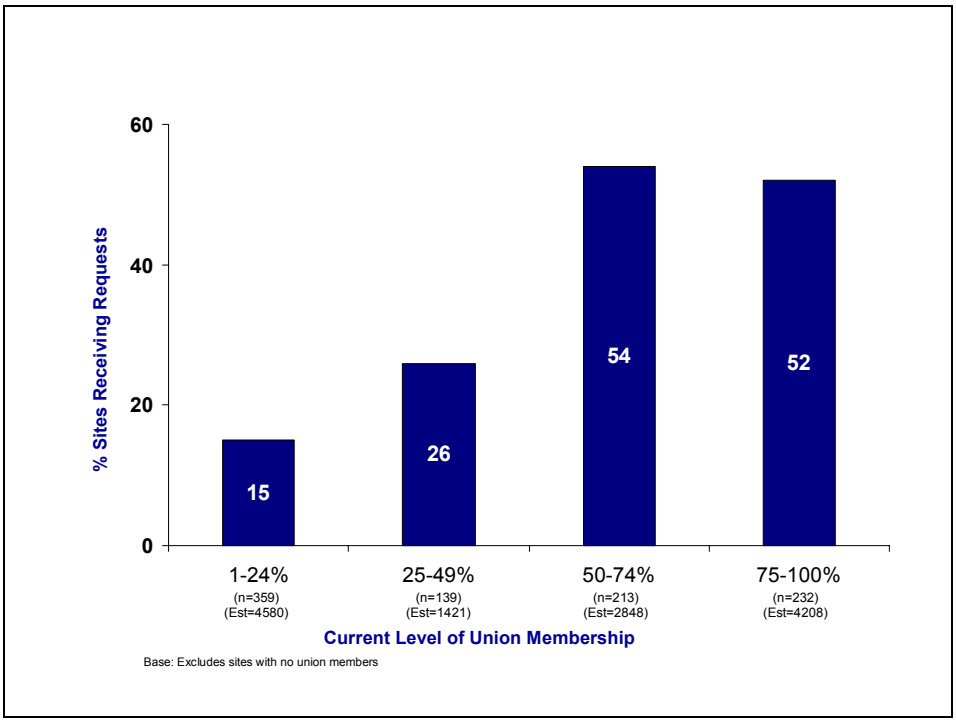
7.3.1. Use of EREL

There appears to have been low use of EREL by unions. Of those sites which had employees belonging to unions[19], 31% had received requests from a union for staff to have Employment Relations Education Leave (EREL). Union survey data and in-depth interviews with union officials revealed that almost most unions felt had not used as much of the EREL entitlement available to them and as much as they would have liked to use.

EREL has been used most frequently at sites that are more highly collectivised, at larger sites, in the public sector, and where there is a larger, more established union.

[19] This includes all sites except those who said they had 'none' belonging to the union. It therefore includes those who were unsure or refused to answer.

Figure 7.3: Requests for Employment Relations Education Leave



SOURCE: Site survey 2003

EREL was used more frequently at larger sites. The site survey found that at organisations with multiple sites, the level of requests increased with the number of employees, from 18% where there were fewer than 10 employees, to 50% where there were 50 or more. There were indications of a similar pattern among those with single sites.

The site survey found that EREL was more likely to be used in the public sector. In central government, requests for EREL were at 56%, compared with 21% for the private sector. One union in a case study said:

> *…we use up what we're allocated: We provide education on effective delegates, the aged care sector, privacy stuff, role of a delegate and health and safety.*

As well as at larger sites with more employees, EREL was more likely to be used where there was a larger, more established union.

However, the union survey found that EREL had no impact on the amount of time the majority of small unions or unions that did not exist before the ERA spent on education. The case study research suggested that this might be because the unions did not know about EREL or did not perceive it as useful. In three cases involving single-employer unions formed just prior to the ERA, the union officials/delegates and members typically did not know what EREL was or, if they did know, what it was – they had not used it. For example, a member of a single-employer union said she 'has had no training as a delegate' and had not heard of EREL.

The union interviews and case studies suggested that some unions were facing difficulties in using EREL. These included:

- *administrative difficulties*: the union interviews indicated that larger private sector unions perceived themselves as being more burdened by the administrative requirements than public sector unions because they worked with more single and more small employers. This included working out entitlements, contacting employers and potential participants, and negotiating leave. The EREL allowance calculation was also perceived to restrict what could be done for smaller sites. One large private sector union felt that a minimum of five days per site was needed for the smallest sites to enable them to perform adequately

- *difficulties in replacing staff who attended courses*: Some unions in the education and health sectors faced difficulties in replacing staff while they took EREL. This was a source of tension that put pressure on both the union and the staff concerned. Tension also arose where boards of trustees had to fund both the union members who took leave and their replacement while the leave was taken. The unions claimed to have to work co-operatively with employers to negotiate the leave for staff.

7.4. Observations

Less than one-quarter of employees were union members and there had been little change in the proportion of employees belonging to unions due to the ERA. There were a range of reasons provided as to why employees did or did not join or remain in a union. Reasons for joining a union included a belief that the union would offer assistance if a dispute arose, might improve pay and/or conditions, represent workers' views and provide support to members. The most common reason given by employees for not being a union member was that there was no union at their workplace, and other reasons included a belief that they did not need a union or they did not support unions or collectives.

While the ERA gives unions the right to enter workplaces, there were few reported union requests for access to new sites. Most requests for access were at sites with existing members and those with higher proportions of employees in unions. However, it appears to be beneficial to unions to access new sites, with those accessing sites more likely to experience a growth in membership.

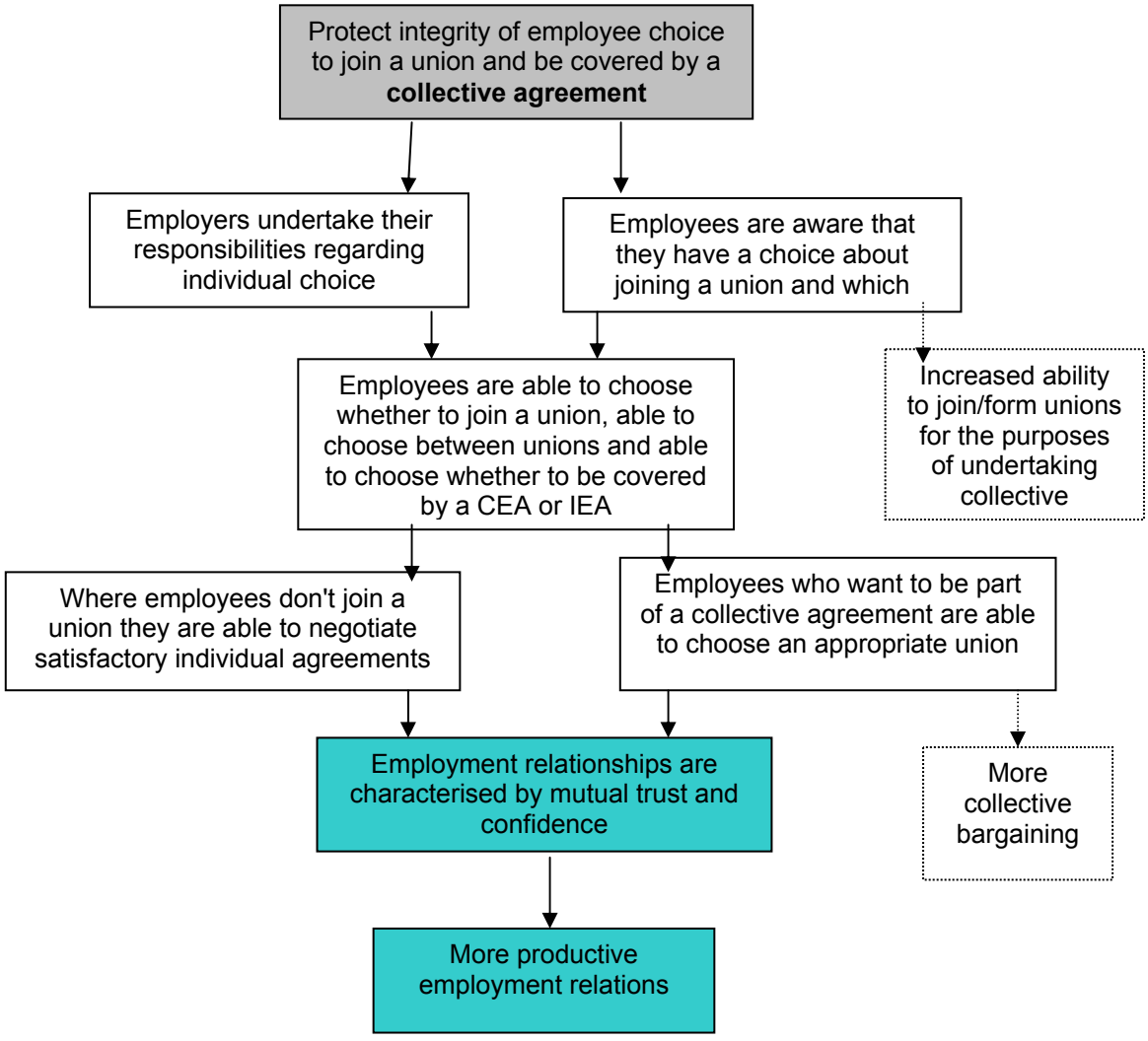
EREL has the potential to play a role in protecting the integrity of individual choice. Unions can use EREL to educate delegates who would then be better placed to inform existing and new/potential members about the ERA and the role of unions in the workplace.

There appears to have been relatively low overall use of EREL by unions. Where EREL has been used it is most frequently at sites that are more highly collectivised, at larger sites, in the public sector and where there is a larger, more established union. EREL may not be used by small and/or single employer unions because they do not know about it or do not perceive it as being useful. Several unions reported that administration and staff replacement issues prevented them using more of their EREL entitlement.

8. CHOICE OF AGREEMENT

The evaluation policy logic model (see Appendix 1/Project methodology/Programme logic diagram) suggested the Act's objective of protecting the integrity of employee choice to join a union and be covered by a collective agreement would lead to the following behaviour:

Figure 8.1: Individual choice component of the policy logic diagram



8.1. Rights and responsibilities regarding individual choice under the ERA

All employment agreements (IEAs or CEAs) must be in writing. All employees have the right to seek advice on their employment agreement when they start employment.

When negotiating for an individual employment agreement where there is no relevant collective agreement, the employer and employee are required to negotiate an individual

employment agreement (IEA) which sets out the terms and conditions of employment. An employer must, when offering a person a job:

- give the person a copy of the intended IEA, which must not have anything in it that is less than what is required by legislation[20]
- advise the person that he or she is entitled to seek independent advice about the intended agreement
- give the person a reasonable opportunity to get that advice.

When a collective agreement negotiated by the employee's union covers the work, the employee's minimum terms and conditions of employment must be those set out in the collective agreement. The employer and employee may agree to other terms that are additional to, or better than, the collective agreement so long as those other terms can comfortably sit alongside those in the collective agreement.

When there is a relevant collective agreement and the new employee is not a union member, the employer and employee make an individual employment agreement based on the collective agreement. Details are as follows:

For the first 30 days, the employee's individual employment agreement consists of the terms and conditions of employment in the collective agreement. The employer and the employee may also agree to other terms that are additional to, or better than, the collective agreement so long as those other terms can comfortably sit alongside those in the collective agreement.

After that 30-day period, the employee's terms and conditions of employment can be varied by agreement. In other words, after (but not before) the end of the 30 days, the employer and employee can agree to vary (upwards or downwards) the terms taken from the collective agreement. The original individual employment agreement cannot provide for the terms and conditions of employment to change automatically at the end of the 30-day period.

When offering the employee the job, the employer must inform the employee:

- that there is a collective agreement covering the employee's work
- of the employee's right to join the union[21] and

- how to contact the union
- that, if the employee joins the union, the collective agreement will bind the employee
- that if the employee does not join the union, the employee's terms and conditions are those in the collective agreement for the first 30 days, along with any agreed additional or better terms.

The employer must also give the employee a copy of the collective agreement and, if the employee agrees, promptly inform the union that the employee has started work.

8.1.1. Employees seeking advice before signing agreements

Fewer than half (43%) of new employees reported being advised by their employer that they had the right to get advice on their agreement before signing it. Among Māori and Pacific peoples, the levels were 47% and 54%.

Of employees who were told they could get advice (N=215 in main survey), 45% said the employer told them how much time they had to get further advice, while for Māori the level was 35%. Although the time given varied considerably, as shown in the table below, almost all (98%) were satisfied with the time allowed.

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[20] Under the ERA, where there is no CEA the IEA must be in writing and must include:

- the names of the employer and the employee (to make clear who the parties to the agreement are)
- a description of the work (to make clear what the employee is actually expected to do)
- an indication of where the employee is to work
- an indication of arrangements relating to working hours
- wage rates or salary.

[21] An employee has an absolute right:

- to choose to join a union or to choose to not join a union
- to join a particular union in preference to joining some other union
- to resign from a union.

It is illegal for anyone to use 'undue influence' to try to make another person join or not join a union or to resign from a union. No-one can discriminate against an employee on the basis of their membership, or non-membership, of a union.

Table 8.1: Time employer gave to seek advice

Time employer gave to seek advice	Employees who were told time was available (N=90) (Est=102,227) %
Up to one week	35
Up to two weeks	14
Up to one month	22
Over a month	7
As much as needed	17
Don't know/Did not respond	5

SOURCE: Employee survey 2003

Proportion of employees who sought advice

Only a small proportion of employees (16% of the main survey sample) actually sought advice. For Māori, the level was 18%, while for the small number of Pacific peoples it was 39%. The sources of advice were as in Table 8.2. The small number of Māori means the findings for this group need to be interpreted with caution.

Table 8.2: Sources of advice

Who advice sought from	(N=75) (Est=84,466) %
Employer	4
Friend or family member – not fellow employees	57
Fellow employees	11
Union representative in the workplace	8
Union representative outside the workplace	4
Lawyer	17
Colleagues from the industry	5

SOURCE: Employee survey 2003

Those seeking advice were more likely than other new employees to have been told by their employer about their right to get advice (70% vs 38%). However, they did not differ in terms of whether the employer told them how much time they had to seek further advice; the amount of time allowed; their satisfaction with the time given; whether their employer informed them about any unions; their satisfaction with the amount of information provided by the employer. Most of the new employees were satisfied with the amount of information their employer had provided about their employment agreement (83%), while 11% were dissatisfied. Level of

satisfaction did not differ between the private and public sectors, or by number of employees.[22] Among Māori, 73% were satisfied, with a similar level for Pacific peoples (74%).

8.2. Who has a choice of agreement?

Nineteen percent of sites had collective agreements[23] and 77% had individual agreements[24]. There were 12% that had both collectives and individual agreements, leaving 66% with only individual and 8% with only collectives[25]. An additional 15% are classified as 'other'[26]. Refer to Chapter 4 for further information on sites with and without collectives.

The employee survey found that 42% of employees in the main survey had a choice of agreement[27]. A similar proportion of Māori and Pacific employees reported having a choice of agreement – 46% and 51% respectively.

The site survey showed that 66% of sites reported having only individual agreements. Under these circumstances, employees at these sites have no choice – an individual employment agreement is the only type of agreement available to them.

The employee survey found that 47%[28] of employees did not have a collective in their workplace and therefore did not have a choice of agreement, and another 11% were unsure. For Māori, there were 36% without a collective and another 18% who were unsure. For Pacific peoples, 26% had no collective and 19% were unsure.

Two-thirds of employees had seen and signed their agreement, 11% had seen a written copy of their agreement but not signed one, 14% had not seen their current agreement, and 7% were not aware of being on any agreement. These proportions were generally quite similar for

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[22] There were too few people answering the question to report for either Māori or Pacific peoples.

[23] An additional 2% said they had collectives, but then reported that at least some of these were only verbal, so these sites have been included in the 'other' category.

[24] Of these, 20% reported that at least some were verbal only.

[25] Due to rounding, the sum of the 12% with 'both collectives and individual agreements' and the 8% with 'collective agreements only' exceeds the 19% of sites with collective agreements.

[26] This includes the 6% that had no agreements for all their employees and the 2% that had at least some verbal collectives. It also includes 5% that reported having verbal agreements but did not specify a type, 0.2% with letters of appointment, 0.1% that said they had written agreements (no detail provided) and 1.5% that gave responses that could not be classified (including 'don't know' and 'refused to say'). If a site had people on individual or collective agreements and one of these 'other ' options, they were included in the individual or collective category and not 'other'. The only exception was that any site with any verbal collectives was always put in the 'other' category.

[27] Employees were asked if anyone else in their workplace currently doing the same job as them was on a CEA.

[28] The actual level who don't have a collective agreement at their workplace is likely to be higher because of indications that some employees thought they were on a collective agreement due to being on similar terms and conditions.

Māori, while for Pacific peoples 14% had seen but not signed, 19% had not seen their current agreement and 64% had signed.

Employees most likely to have signed were those in local government (84%) and those in workplaces with 100 or more employees (72%) (see also sections 8.3 and 8.4).

8.3. What happens where there is no choice between a CEA and an IEA?

8.3.1. Employer awareness of written agreements

The site survey revealed that 80% of sites were aware of the requirement under the ERA to have written employment agreements; for those with only individual agreements, the figure was 85%. It was lowest for those who were not aware of having IEAs or CEAs (51%). Awareness increased with the number of employees, reaching 97% among both single and multi-site employers with 50 or more staff.

The case study research suggests that some employers may prefer not to have written agreements. For example, an employer at a small retail store who knew he should have written agreements said:

> *…he had talked to his staff about having formal agreements. He said his staff didn't care whether they had them or not. However, he reiterated that he had heard some horror stories and thought he should do something about formalising the agreements.*

The employee survey found that those with individual agreements were more likely (than the average – 66%) to have signed their employment agreement (80%). However, those with one to three employees at their workplace were more likely not to have seen their current agreement (28%, which was in addition to the 17% of this group who were not aware of being on any agreement). As the collective bargaining section indicated, employees in small workplaces were more likely to be on IEAs.

The case studies had examples of employees without written agreements and these were typically in small organisations. In cases where employees trusted their employer, they were unconcerned about not having a written agreement. For example, an employee at a small retail store said:

> *…he felt comfortable in his employment relationship then he wouldn't see the need to sign an agreement. He said if felt uncomfortable about a job situation then he would definitely sign an agreement – cross all the t's and dot all the i's.*

However, if it was a happy, trusting employment relationship then he wouldn't feel the need to back it up with a formal contract.

The site survey revealed that just over a third of employers at sites with only IEAs (34%) made changes to their IEAs because of the requirement to have written agreements, and 46% made no changes. Overall, the main changes made were:

- to wording of agreements (such as changes to specific clauses regarding work conditions and employee rights; changes to meet statutory requirements)
- provision of information on entitlements
- offering written agreements.

Just over a third of sites with only IEAs (35%) made improvements to their IEAs because of the requirement to have written agreements.

8.3.2. How is choice constructed?

As mentioned earlier, 66% of sites offer employees only individual agreements (refer to section 8.2). The case study research illustrated that in cases involving organisations offering only IEAs, employees did not have a choice of agreements. Only a few employees interviewed had some awareness that a collective agreement was technically an option for them. However, they understood that a collective meant a union presence and did not necessarily wish to have that.

The case studies suggested that in circumstances where all staff were employed on IEAs, employers typically preferred such arrangements. Their employees had so far displayed no interest in joining or forming a union (a precursor to negotiation of a collective), a union had never visited their organisation and, as the employer, they preferred IEAs. For example, one employer in an organisation with just over 20 staff said:

There is no CEA at [name of organisation]. His sole focus in setting up [name of organisation] was to serve the customers. He didn't set it up to become overburdened with administration. ... [He] felt unions would just be another outside influence he would have to deal with. He has never been approached by a union and has never had any of the staff talk to him about them. He said he knows about unions from his time working in the freezing works. He doesn't know of any small business with a union presence. He doesn't expect them to come to his workplace as he thinks they will focus on big work places e.g. timber mills.

There were examples of employers that had offered to facilitate the creation of a CEA in their organisation, but employees had declined the offer, as they preferred their IEAs.

One employer in a large organisation where all staff were employed on IEAs observed that, in his view, very few New Zealand companies could ever offer individually differentiated employment agreements because few organisations were able to afford truly individual terms and conditions.

8.3.3. What choices are made? Why?

The case studies explored whether or not employees in organisations where everyone was on an IEA had considered joining or forming a union with the purpose of forming a collective.

In cases involving employees on IEAs in organisations that used only IEAs, employees typically accepted the terms and conditions they were offered and the form they were offered in. In these organisations, employees (and employers) typically did not report there had been any discussion about employees forming or joining a union to negotiate a collective. Some employees in these organisations did not know they could potentially join a union and negotiate a collective. These were typically young employees. Other employees, when asked, reported that they would not choose to be covered by a collective. For example, an employee in a small web design organisation said he had 'no interest in unions or a collective contract. Likes his own freedom'.

Some employees interviewed reported having considered collective coverage. These organisations were all large or medium-sized, and three of the four had had experience of union membership or involvement. However, a common theme in these organisations was a belief among the employees interviewed that the employer was a good employer and there was no need for a union presence.

The employees interviewed in one case agreed with the employer and trusted the employer to look after their interests. However, they perceived that they were more vulnerable on IEAs, and if their current situation changed they would consider moving back to a collective arrangement.

There were also cases where employers made a determined effort to demonstrate to staff that they would be no better off on a collective agreement than they were on their individual agreements.

8.4. What happens where there is a choice between a CEA and an IEA?

8.4.1. Awareness of written agreements

Most sites that currently had both individual and collective agreements were more aware of the requirement under the ERA to have written employment agreements. For those with only collectives, awareness was 80%.

Employees who were union members and had joined before October 2000 were more likely to have seen but not signed their agreement (25%), as were those on a collective (20%).

8.4.2. How is choice constructed?

The provisions of the ERA contemplate employees choosing between a collective and an individual employment agreement. However, the case studies found that where employees could choose between a collective and an individual arrangement, their real choice was whether to join the union or not. Employees who joined the union almost all joined the CEA, and the employer offered employees who did not join the union the derivative IEA. Employees who chose an IEA based on the CEA almost always received the same terms and conditions as employees on the CEA.

In the case studies, management interviewed at sites with new collectives expressed a preference for staff being on an IEA. Management at these sites were outwardly supportive of choice but undertook a number of actions that undermined the union and the CEA negotiated by the union. For example, in one case the management made the terms and conditions of the IEAs slightly better than those of the CEA, developed non-union structures to rival union structures, and maintained high staff turnover along with a culture of team leaders/supervisors being on IEAs. The employers argued that these actions were about treating all staff, regardless of union membership, 'fairly'.

At organisations where there was a history of collective agreements and union density was high, the employers still offered employees on IEAs the same or very similar terms and conditions as the collective negotiated by the union offered. However, the employers in these cases were more accepting of the union presence in the workplace. For example, one employer said:

> *If we were hiring new staff who could be covered by a CEA, it wouldn't be a major thrust for me to put them on IEA. At this site, we don't have much problem from the union people, so happy to use union as point of leverage on occasions. Union people can bring sensibilities to situations, which would otherwise be*

chaos. (Name) recognises that many people have trouble advocating for themselves and need someone to advocate for them.

8.4.3. What are employees offered?

When new employees started at their workplace, only 27% of those where there was a collective available (N=49) reported having been offered a choice between a collective and an individual agreement by their employer.

In addition to the 5% of all employees who did change agreement types, another 15% said their employer had given them the option of changing agreement types since October 2000. Eight percent were offered the chance to change to an individual and 7% to a collective.

8.4.4. Awareness and operation of the 30-day rule

The employee survey revealed that of new employees with a collective in their workplace (N=165 in the main survey), 28% were aware of the rule allowing them up to 30 days to make a decision to join a collective or individual agreement. Awareness of the 30 day rule among Māori was 23%.

As with the employee survey, employees in the case study research typically did not demonstrate that they were aware of the 30-day rule. Moreover, one case illustrated that even if employees were aware of having 30 days to decide which agreement they were on, it did not necessarily mean they understood what they were choosing between. For example, in one case an employee was aware that he had a choice of agreements and had one month to choose between them. When questioned further, he revealed that he did not know what a union was or what a collective would offer.

Unions were asked whether the 30-day rule had changed their ability to recruit employees as union members. Just over half of all unions that had existed before the ERA as a union or non-union party to a collective reported that the 30-day rule had had no impact on their ability to recruit new members. Only six unions thought it was harder, 21 thought it had become easier and 21 did not rate the effect of the 30-day rule.

In the union interviews, respondents perceived practice in relation to the 30-day rule as being highly variable. Unions commonly perceived that the rule resulted in either no tangible outcomes, or negative outcomes in terms of their recruitment of members.

Of those who said the 30-day rule had no impact, reasons given included the following:

- Some reported that while employees have choice about joining union/collective, there is little incentive to choose the collective when

employers provide the same terms and conditions to those on an individual agreement.

- Some unions reported that employers did not inform the union about new employees. This was supported by the employee survey – of those new employees at sites with unions operating, only 28% said that before signing their agreement their employer had told them about the union.
- Others reported that the 30-day rule wasn't used because there were already structures or processes in place to contact new employees.

Some unions reported that the 30-day rule provided an incentive for employees to choose the IEA over the CEA because the terms and conditions of the IEA could not be worse than those of the collective in the first 30 days. However, the case study research suggests that employee understanding of the benefits of union membership and collective coverage may be a more important factor in employees' decisions than whether the agreements are the same or not. In cases where there was high union density and a strong union culture, most new employees chose a collective agreement. In cases where there was not a strong union culture, employee decisions were more variable. A union delegate in such a case commented that for:

> *…most people – choice about CEA or IEA is an understanding issue. Often people don't understand what union membership and CEA can offer. He doesn't think that [the employer] blatantly sells IEAs over CEAs. It's more an issue about knowledge.*

In the case studies, some employers in large organisations reported that the 30-day rule was administratively difficult. In one case, this was because the organisation, which had a new collective, had yet to develop systems for tracking new employees.

By contrast, another organisation, though admitting that the rule created costs, had systems to track new employees to ensure they made a choice.

8.4.5. What choices are made? Why?

Employees in organisations where staff are employed on collectives are able to exercise their right to choose between a collective and an individual employment arrangement. However, only a small proportion of new employees (7%) chose to be on an IEA when there was a collective available to them. The corresponding figure for Māori was 1%[29].

The site survey reported that a small percentage of sites (13%) had experienced new employees switching from the collective to individual agreements during or just after the first 30 days of employment. This was more likely where the predominant agreement was

[29] There were too few Pacific peoples to allow for reporting.

individual (26%). Where collectives were predominant, 10% reported some switching to individual agreements. Switching was also more likely at sites with 50 or more employees and where the organisation had multiple sites (34%).

Where union membership was lower. Higher levels of switching were reported by sites with 25-49% union membership (27%), with a downward trend for the higher levels of union membership (11% switching at the next level and 8% in the high level union membership sites). Inconsistent with this trend were those with collectives but less than 25% union membership, which reported only 16% switching.

Switching was not linked to the size of the union, the level among the top five unions being 16%. Sites with employers that were supportive of unions were less likely to report switching to individual agreements (6%).

The employee survey asked all employees who had been with the same employer before October 2000[30] whether they had changed agreements. The proportions reporting having changed to individual agreements were 5% for the main survey, 5% for Māori and 4% for Pacific peoples. The levels of changing to an IEA did not differ significantly across the different groups. There were no significant differences by worksite employment size.

Refer to section 8.4.3 for information on the number of employees who had been given the option of changing agreement types since October 2000.

The employee survey and case studies both explored why some employees chose to be covered by an IEA when they could have been covered by a collective. The employee survey found that reasons for not being part of the collective clustered around the following:

- opposition to unions
- regarding joining the collective as inappropriate or not an option
- not seeing any benefit in joining.

The most frequent reason given (unprompted) by those who were at a workplace with a collective but were not on it (N=93) and new employees (N=30)[31] for not being part of the collective was opposition to unions.

As stated above, a small proportion of employees changed from a collective to an individual agreement (5%). The reasons they gave for moving to an individual agreement were broadly similar to those given by new employees who chose an IEA (there were 4% ‘don't know’

[30] These employees could therefore comment on changes following the introduction of the new Act.

[31] Only 30 employees supplied reasons, so the findings need to be interpreted with some caution.

responses). However, employees who changed from a CEA to an IEA most often mentioned the following reasons for the change:

- they felt encouraged or pressured by their employer (28%)
- they thought the move might improve their pay/conditions (35%).

Twenty-one percent of those who changed to an IEA from a collective reported that there were 'major differences' between the terms and conditions of the old and new agreements.

In response to a separate question, where there was a collective available 4% of new employees felt their employers had wanted them to choose an individual agreement. Of those new employees who felt their employer did want them to choose a particular type, 68% felt their employer had 'encouraged' them to do so.

There were some examples in the case studies of employees switching from collectives to individual agreements after the introduction of the ERA. An employee in a large hospitality organisation that recently acquired a union presence switched from the collective to an individual agreement because of dissatisfaction with the union and a belief that she could look after herself. She said:

> *Most of those who came on board with me resigned because we can look after ourselves. We didn't like the notices and the speaking about our immediate bosses.*

In another case, a union member indicated that several people on her shift had left the union because they were not satisfied with the union. She said:

> *The union official comes out for meetings. They say they will do things, put things forward but nothing happens ... About 7 or 8 out of 30 staff on her shift are part of the union. Seemed like everyone was in it to start with. But this number declined.*

8.4.6. Employees choosing a CEA

Just under a third (30%) of the new employees[32] were on collectives compared with 39% of those who had remained with the same employer since October 2000, which was a significant difference.

[32] 57% of new employees were on individual agreements, 6% were not aware of being on any agreement and 7% were classified as 'other'.

The lower rate of collectivisation among new employees was more pronounced for Māori (31% vs 47%). There were also indications of a similar pattern for Pacific peoples, but the numbers were too small to enable reporting.

The employee survey found that the majority (80%) of new employees who had a collective available joined it. The survey suggested that a small proportion (11%) of new employees chose to join the collective because they felt their employers had wanted them to choose a collective agreement.

The site survey and case study research suggested that the response of new employees to having a choice of agreement was more variable and that the agreement new employees chose depended on their context. Of sites that had taken on new employees and had both collective and individual agreements, 44% reported that new employees mostly opted for the collective, 20% said it was about equal, 28% mostly opted for individual agreements, 7% were unsure and 1% said there was actually no choice.

The choice of agreement was related to the level of unionisation at the site, with increasing unionisation associated with more choices of collective agreements. The choice was also closely linked to the type of agreement that was predominant at the site. Those with predominantly collective agreements were more likely to report new employees opting for collectives (62%). Likewise, those with predominantly individual agreements were more likely to have new employees choosing them (72%).

These results are consistent with the case study research. In cases involving well-established collectives and high union density, interviewees in the case studies reported that employees opted for the collective. In cases involving newly established collectives and lower union density, some employees opted for the collective and some for the individual arrangements.

In all of these cases, employees perceived little difference between the two types of agreements, and the significant choice for them was whether or not to join a union. However, the significance they attached to this differed depending on the organisation's union density. In the cases with high union density, union members were not concerned about whether those on IEAs had the same terms and conditions as the applicable CEA. In the cases with low union density, union members were concerned about whether those on IEAs had the same terms and conditions as the applicable CEA.

The employee survey asked all employees who had been with the same employer before October 2000 whether they had changed agreements. Only a small proportion of employees (4%) had changed to a collective agreement – for Māori the figure was 8% and for Pacific peoples it was 4%. Not surprisingly, those who were new to unions were more likely to have

changed to a collective (23% main survey and 40% Māori). The reasons they changed are listed in the table below (3% did not know and 1% refused to say).

Table 8.3: Main reason for changing to a collective agreement

Main reason for changing to a collective agreement (N=47)	% of employees who changed to a CEA
Benefits:	
Thought might improve pay/conditions	10
Strength/strength in numbers	5
Thought unions would offer assistance	4
Union influence:	
On advice of the union/union came and made up a contract	7
Was a member of the union	9
Employer influence:	
Employers supportive of collective agreement	23
Boss decided/told me I had to	10
Fellow employee influence:	
Fellow employees were joining/ supportive of collective	9
Change in job:	
Job/position changed/got this job	15
Went from casual to full-time/permanent employment	4
Other reasons:	
New employment Act/new labour laws	9

SOURCE: Employee survey 2003

Of those who changed (N=87), 27% reported that there were 'major differences' between the terms and conditions of the old and new agreements. Among those switching from an individual to a collective, the level was 43%, but this level was not significantly different due to the small numbers answering.

The case study research had cases where employees had changed from individual to collective agreements. These were all instances where a union had come to the organisation and negotiated a new collective agreement. Employees joined the union and opted for the collective for similar reasons outlined above.

8.5. Observations

Fewer than half of new employees were told they had the right to seek advice about their agreements before signing them, but most new employees were satisfied with the amount of information their employer provided about their employment agreement.

In cases involving employees on IEAs in organisations that used only IEAs, employees typically accepted the terms and conditions they were offered and the form they were offered

in. The employees chose to stay on IEAs for many of the same reasons employees did not become union members. There were examples of employers that had offered to facilitate the creation of a CEA in their organisation but employees declined that offer, as they preferred their IEAs.

The case study research indicated that employees and employers in organisations with CEAs typically saw their choice as whether to join a union or not, rather than a choice of agreement. There was typically little or no difference between the different types of agreement where they were both available. A common refrain from unions in such cases was that the employer undermined the union by offering the same terms and conditions to those on IEAs as those on the CEA. However, employers in these cases reported they were treating staff 'fairly' by offering them the same terms and conditions regardless of the agreement type, or said that it was administratively easier to do so.

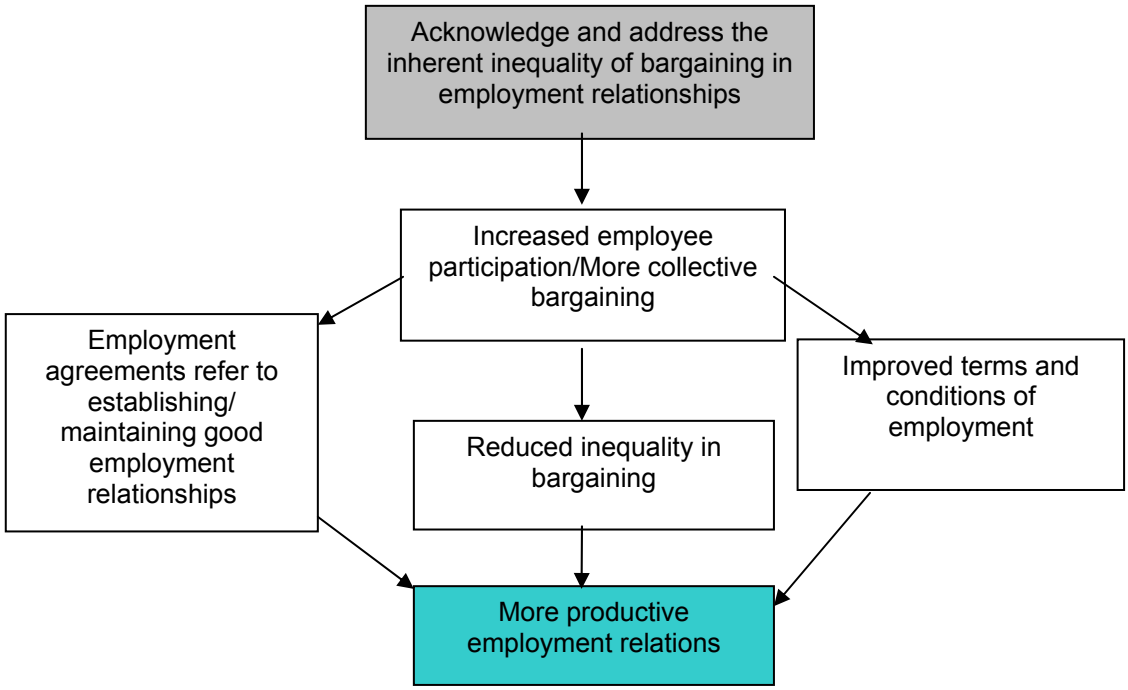
There was low awareness among new employees of the 30-day rule. Unions perceived the 30-day rule as having little impact on union membership numbers.

Fewer new employees were on CEAs compared to existing employees. New employees typically chose the predominant type of agreement at their workplace. Few new employees switched agreements in the first 30 days of employment. Key reasons for employees choosing to be on an individual agreement when there was a collective available were opposition to unions, seeing joining the collective as inappropriate or not an option, and not seeing any benefit in joining.

9. ADDRESSING THE INHERENT INEQUALITY OF BARGAINING POWER

The evaluation policy logic model (see Appendix 1/Project methodology/Programme logic diagram) indicated that in order to address the inherent inequality of bargaining power in employment relationships, there would first have to be increased employee participation in, and more collective bargaining. It was anticipated that greater employee participation in bargaining would also lead to improved terms and conditions and ultimately more productive employment relations.

Figure 9.1: Inequality of bargaining component of the policy logic model



The extent to which the ERA addressed the inherent inequality of bargaining power was explored through two avenues in this section. These were:

- changes in the incidence of collective bargaining and collective coverage
- employer, employee and union perceptions of the equality of bargaining power.

9.1. Collective bargaining since the ERA

Our logic model suggested that an initial step in addressing the inherent inequality of bargaining was an increase in the volume of collective bargaining. An increase in the volume of collective bargaining would be an indicator of increased leverage on employers.

As discussed in chapter 4, levels of collective bargaining and coverage had not increased significantly since the ERA came into effect:

The site survey showed 1% net increase in the proportion of sites with collective arrangements (refer to section 4.4).

The employee survey indicated that just over a third (36%) of employees reported being on a collective agreement (refer to section 4.3.1). Comparison of employee reports of their contract type before October 2000 with their agreement type now shows little overall change in the type of agreements employees were on.

Only 5% of employees (n=57) reported that there had been negotiations about starting a collective agreement that would cover their job. Of these, 26% of employees said that a new collective had been successfully negotiated, 40% said negotiations were under way and 30% said negotiations had ended without agreement.

The site and employee survey data indicated that where collective bargaining did occur, it was most likely to do so in large sites which already had some degree of union involvement (refer to section 4.4).

While the lack of increase in coverage of collective bargaining is apparent, there is evidence of stability and slight increases in use and coverage of collective arrangements. This can be seen as significant in terms of the declines in union membership and collective coverage experienced over the past 10 years.

9.2. Perceptions of equality of bargaining power

9.2.1. Current employer and employee perceptions of bargaining power

Most employers (82%) perceived bargaining power as being equal at their workplace. There were few significant differences between employers. Employers that were more likely to report bargaining power as being equal were those in the wholesale trade industry (90%), the transport and storage industry (91%) and those with 'other' agreement types (90%)[33]. Those employers least likely to report that bargaining power was equal were in government

[33] These three statistics are significant only to <95%.

administration and defence (62%), cultural and recreational services (63%), finance and insurance (69%) and the education industry (74%).

The case studies illustrated that employers in a range of different circumstances were reluctant to say they had more power than employees, or vice versa. Employers in a variety of contexts reported feeling an obligation to treat their staff fairly. For example, an employer at a medium-sized organisation where everyone was on an IEA said:

> *…the organisation is looking to empower staff as much as possible so we want people to be aware of their conditions and the consequences. We want them to be confident that they got the best deal they could … I'd hate to get into a situation where you've diddled someone and got found out.*

The employee survey found that 58% of employees perceived bargaining power as being equal at their workplace. Pacific employees were more likely than employees in other ethnic groups to report that bargaining power was equal (65%). Māori were similar to the main survey group (59%). Others who were more likely to report that bargaining was equal were employees in workplaces with one to three employees (76%) and those working in agriculture, forestry and fishing (75%)[34].

The case study research found that in cases where the organisations were small or medium sized, relationships were often informal and employees were frequently all on IEAs. 'Bargaining' was seen as a slightly distasteful activity they preferred not to have to undertake, and employees typically trusted their employer to treat them fairly. For example, an employee in a small retail store said she didn't look at bargaining as a power relationship:

> *You work for the person who pays you and you do your work. I'm on a good deal.*

There were also examples of employees on IEAs who felt their bargaining power was equal because they had the power to leave if they thought the employer was unfair. These employees were confident of their ability to get other jobs. For example, one young employee said:

> *…all his former bosses except one have been very fair. 'You don't need to work for an arsehole. You just move on.' He could not envisage himself as stuck for work. 'There is always work somewhere. You just have to be flexible.'*

Just over one-quarter of employers (29%) but very few employees (7%) thought employers had more bargaining power than employees. Employees in the following categories were more likely to state that employers had more bargaining power:

- those working with 100-plus employees (36%)

[34] These two statistics are significant only to <95%.

- those in central government (39%)
- those in communication services (47%)
- those in government administration (44%)
- those earning between $40,000 and $50,000 (38%)
- those who had been a union member since before the ERA (37%).

In the case studies, some employers acknowledged that they had more power than employees – even after the ERA. For example, a manager at one large organisation which experienced a significant increase in union density and negotiated a new CEA reported that the employers in his organisation still had more power than employees and that employee power was limited by the fact they were not paid while on strike. The employer at a medium-sized organisation where everyone was on an IEA also acknowledged that he, as the employer, had more bargaining power because employees tended to be less aware of their rights.

The case studies also illustrated that employees in a variety of contexts considered that their employers had greater bargaining power. In some cases, employees reported that in the bargaining process the employer and employees were not equal because the employer always had a final power to agree or not. This was regarded by employees as a fundamental aspect of running a business and entirely legitimate.

9.3. Perceptions of change in the inequality of bargaining power

Most employers perceived that since October 2000 there had been no change in their bargaining power (86%), nor that of their employees (79%). Similarly, more than two-thirds of employees thought there had been no change in their bargaining power (69%) and 74% thought there had been no change in employer bargaining power since the introduction of the ERA.

In cases involving organisations that exclusively used IEAs and where there was little or no union presence, there was no impetus for a change in bargaining power. Employers in these cases reported that they knew about the ERA, but it was unlikely to alter the nature of their employment relationships with employees or alter the relative bargaining power between employer and employee.

Typically, employees in these cases were aware there had been a change in the employment law, but most were unable to identify any material changes in their employment relationship that they could attribute to the effect of the ERA.

In some cases, employees reported that the ERA had given them the right (and therefore the power) to bargain with their employer if they chose to. For example, some employees who previously did not have written agreements now felt they had an object over which they could bargain – even if they chose not to exercise that opportunity[35]. An employee at one such organisation said:

> *…the ERA didn't change bargaining power much here. Most people here have the ability to bargain and are comfortable to. The change is that there is a way to bargain if we needed to…*

In other cases, some employees reported that they had actively chosen to be on an IEA but were aware that if their bargaining power declined at some time in the future, they could rejoin or join a union and negotiate a collective.

In some cases involving single employer collectives, there was no change in bargaining power because union density was high, the bargaining processes and employment relationships were well settled and the parties carried on in their customary manner.

In other cases involving single employer collectives and single employer unions, the interviewees reported no change in bargaining power because the union continued not to exercise its power. For example, a union representative for a single employer union said that at his workplace there had been:

> *…no change in the equality [of bargaining power]. The union is pretty inactive in the [workplace].*

While most employers felt neither they nor their employees had had a change in bargaining power since October 2000, the table below shows that those that did perceive a change tended to see it as favouring the employees – 17%.

[35] There were examples in the case studies of staff who knew they could bargain with their employer but chose not to. Staff observed that they regarded 'bargaining' as a slightly distasteful activity that they preferred not to have to undertake.

Table 9.1: Employer perceptions of change in bargaining power since October 2000

Change in bargaining power since October 2000	All employers with sites pre-ERA (N=1956) (Est=74,093)	
	Employees' bargaining power %	Employers' bargaining power %
Increased	17	4
Decreased	1	8
Stayed same	79	86
Don't know	2	2

SOURCE: Site survey 2003

Note: The first column of data in the table above presents employer perceptions of how employee bargaining power has changed since October 2000, while the second column relates to employer bargaining power.

Only a small proportion of employers (4%) thought bargaining power had increased in favour of employers. Those sites that thought employers currently had more power regarded it much less clearly as related to changes resulting from the ERA. Twelve percent felt employers' bargaining power had increased and 8% felt employees' bargaining power had decreased since October 2000.[36] The only group more likely to mention increased employer bargaining power was local government (14%).

Similarly to employers, 7% of employees perceived that employer bargaining power had decreased since October 2000. However, 9% of employees thought employee bargaining power had decreased, whereas only 1% of employers thought this (Table 9.2).

There were no significant differences among employees, regardless of whether they thought bargaining power had increased or decreased.

[36] It should be noted, however, that these levels were still significantly above the average.

Table 9.2: Employee perceptions of changes in bargaining power since October 2000

Change in bargaining power since October 2000	All employees working for same employer in October 2000 (N=1092) (Est=1,130,567)	
	Employees' bargaining power %	Employers' bargaining power %
Increased	18	13
Decreased	9	7
Stayed same	69	74
Don't know	4	7

SOURCE: Employee survey 2003

The employee survey analysis revealed that the net perceived increase bargaining power was 14% in favour of employees, compared with an 11% increase in favour of employers (Table 9.3). The net perceived changes in bargaining power for Māori employees were similar to employees in the main survey, but Pacific peoples differed – 27% reported employers as having a net increase in bargaining power.

Table 9.3: Net movement in bargaining power

Net movement in bargaining power	Main survey (N=1092) (Est=1,130,567) %	Māori (N=351) (Est=117,403) %	Pacific peoples (N=53) (Est=44,217) %
No net change	66	62	55
Change in favour of employer	11	14	27
Change in favour or employee	14	17	7
Other/don't know	8	7	11

SOURCE: Employee survey 2003

As with the site survey, it has been possible to calculate that 9% of employees[37] reported an increase in employee bargaining power which had resulted in employees having equal or greater bargaining power than employers. The corresponding figures for Māori and Pacific peoples were 10% and 6%. In the main survey, this group showed no significant differences across a range of variables.

The case studies illustrated that perceptions of change in bargaining power may be linked to perceptions of the bargaining process and the outcomes achieved. In some cases where a

[37] Still based on those who were with the same employer before October 2000.

collective was being negotiated for the first time, union members perceived that their bargaining power had increased but was still less than that of their employers. Union members typically held this perception where the process was contentious or they had been unable to achieve what they wanted. For example, in one such case the union and its members interviewed reported being satisfied that they had been able to negotiate a new collective and achieve a small pay increase. However, they reported that the employers still had greater bargaining power because employees had been unable to prevent the collective terms and conditions being passed on to non-union staff or the establishment of non-union structures to rival the union structures.

The case studies also illustrated that perceptions of bargaining power were not fixed and might change over the course of the bargaining process. For example, in one case – the Harvesters – the employer reported that the ERA had given unions greater power to organise and bargain for employees. However, the employer believed that over the course of the most recent bargaining cycle, the union lost power because of actions it took or because the outcomes fell short of member expectations. Employees initially had high expectations of the union, but after the completion of bargaining they concluded there had been no change in the balance of power between employer and employees – the employer still had more power.

9.3.1. Union perceptions of changes in bargaining power

This section looks at how unions perceive their ability to:

- improve members' wages and other terms and conditions
- get new collectives and new types of collectives
- take industrial action.

9.3.2. Union ability to improve members' wages and other terms and conditions

Two-thirds of unions (66%) considered that the ERA had made no difference to their ability to improve members' wages (Table 9.4). One in five reported that the ERA had made it easier and nearly one in 10 thought it was harder.

Table 9.4: Effect of ERA on unions' ability to improve members' wages*

Effect of ERA on ability to improve wages	Type of union				
	Existed as union pre-ERA – large (>8000)	Existed as union pre-ERA – medium (1000-7999)	Existed as union pre-ERA – small (<1000)	Non-union party to collective	Total
Easier/Much easier	4	4	5	7	20
Neither	6	18	20	22	66
Harder/Much harder		1	3	5	9
DK/DNA/DNR		1	1	3	5
Total	10	24	29	37	100

SOURCE: Union survey report 2003

**of those with a collective and that existed pre-ERA*

A very similar pattern existed across unions, regardless of the number of collectives they had negotiated. Two-thirds of unions (66%), regardless of the number of collectives they had, perceived that the ERA made no difference to their ability to improve members' wages.

In comparison to the ability to increase wages, slightly more unions thought the ERA had improved their union's ability to increase terms and conditions other than wages.

Table 9.5: Effect of ERA on unions' ability to improve members' other terms and conditions, (excluding wages)*

Effect of ERA on ability to improve terms and conditions	Type of union				
	Existed as union pre-ERA – large (>8000)	Existed as union pre-ERA – medium (1000-7999)	Existed as union pre-ERA – small (<1000)	Non-union party to collective	Total
Easier/Much easier	4	6	6	10	26
Neither	6	17	20	19	62
Harder/Much harder			2	4	6
DK/DNR/DNA		1	1	4	6
Total	10	24	29	37	100

SOURCE: Union survey report 2003

**of those that had a collective and existed pre-ERA*

Only 12% of unions considered that their ability to get new types of collectives (such as MECAs) had improved. All of these also prioritised getting new types of agreements. Just over a third (38%) thought the ERA had not made any difference to their ability to get new

types of collectives, and only 5% thought it was harder now. However, the greatest proportion of unions did not know or respond (45%).

Of unions that considered it a priority to achieve new types of collectives (47), 12 thought it was easier because of the ERA, 18 thought the ERA made no difference and four thought it was harder now (13 did not know/respond).

Interviews with unions and the case studies suggested a number of reasons why unions face difficulties in engaging in MECA bargaining and reaching a MECA:

- *costs of time and energy that MECA bargaining involves*. The costs of assembling both delegates and employers were seen as particularly prohibitive at this stage
- *lack of employer organisation*: Several unions, both public and private sector, large and medium sized, commented on lack of employer organisation as a key barrier to MECA bargaining. Two unions commented that a weakness of the Act was that it didn't require employers to also have a representative for bargaining and that this made MECA bargaining overly complex:

  …the Act is designed for enterprise bargaining, there is no mechanism to get one central representative for bargaining. May get 30 advocates, one from each employer. There are technical obligations on unions regarding consolidation, but it doesn't run in two directions.

  …the Act should say the employers must agree on a process for effective consideration of claims and how to meet. Need them to form a unit, as do the unions…

- *lack of employer will, especially in highly competitive environments*. The large private sector unions attributed reluctance to bargain with other employers as being due to competitive pressures. Two aspects of MECA bargaining that affect the willingness of employers in a highly competitive labour market are the expectation of sharing commercially sensitive information, and standardisation of terms and conditions which may reduce the attractiveness of particular sites.

The union interviews and case studies illustrated that unions were able to use their bargaining power and obtain MECAs where:

- similar conditions existed
- employers were interested in collectivisation of staff and businesses.

9.4. Observations

The employer survey found that most employers and more than half of employees perceived bargaining power as being equal. The case studies illustrated that some employers perceived bargaining power as being equal because they preferred to think of themselves as 'fair' employers rather than more powerful than their employees.

Just over one-quarter of employers and a small proportion of employees thought employers had more bargaining power than employees. The case study research found that employees were often reluctant to talk about it in terms of a power relationship.

Most employers and over two-thirds of employees perceived there had been no change in the equality of bargaining power since the ERA. Where there had been a change in bargaining power, employers and employees tended to see it as favouring the employees.

For some, perceptions of change in bargaining power may be linked to perceptions of the bargaining process and the outcomes achieved. Where members perceived outcomes of collective bargaining as being poor, they typically reported that bargaining power had not changed. The case studies also illustrated that perceptions of bargaining power were not fixed and might change over the course of the bargaining process, and that understanding what can be achieved by using it was important.

Unions reported little change in bargaining power. Just under a third of unions thought the ERA had improved their union's ability to get new collectives where they previously did not exist. Approximately two-thirds of unions thought the ERA had not helped improve the wages of members or other terms and conditions. A few unions (12%) thought their ability to get new types of collectives (such as MECAs) had improved.

10. EMPLOYMENT RELATIONSHIP PROBLEMS AND MEDIATION

10.1. Changes introduced by the ERA

The ERA aims to promote mediation as the primary problem-solving mechanism. The evaluation's focus in the area of problem resolution was mainly on the use and impact of mediation.

The evaluation policy logic model (Appendix 1/Project methodology/Programme logic diagram) suggested that the availability of mediation and other new problem resolution mechanisms and processes would lead to:

- less formal and more speedy dispute resolution, closer to the workplace
- increased opportunities for employees to discuss issues
- parties learning to resolve disputes themselves.

These would, in turn, lead to mediation being the most commonly used form of problem resolution where a third party was required, and fewer formal disputes requiring judicial intervention.

In the site survey, a 'dispute' was defined as a situation in which an employment 'problem' could not be resolved by discussion with the immediate manager or supervisor, and then a third party was brought in to help resolve the problem.

10.2. Relationship context

The evaluation collected employees' perceptions of how easy or difficult it was to deal with problems, and their preferences for how to deal with problems when they arose.

The majority of employees (78%) felt it was either 'very easy' or 'easy' to discuss employment relationship issues with their employer. Those who found it easiest were more likely to be in smaller organisations (53% of those in organisations with one to nine employees reported 'very easy'), or be legislators/administrators/managers (52%) or agricultural workers (54%).

Both the employee survey and site survey asked participants how they preferred to deal with problems. The majority of employees (77%) said they would prefer to deal directly with their employer in the event of experiencing problems with their employer, while 12% preferred to deal with such problems through a union. Māori employees were slightly less likely to prefer

to deal with their employer (70%) and slightly more likely to prefer to work through a union. The corresponding figures for Pacific Islanders were 66% and 28%. The preference for working through a union was higher among union members.

Similarly, most sites that had union members said their managers preferred to deal directly with employees when dealing with employment relationship issues (78%). Working through the union was the preference for 12% of sites. Of the remaining 10%, some stated that their preferred approach would depend on the issue.

These findings are broadly consistent with a qualitative study conducted by the Employment Relations Service, which found that employers were reluctant to use third parties or outsiders in an advocacy role in attempting to resolve disputes.

10.3. Employee experience of employment relationship problems

The employee survey recorded a low incidence of disputes and very few employees who were qualified to talk about the use and effectiveness of mediation. Data on the incidence of problems overall and processes used to address them is presented below, with comparison to findings of the ERS disputes survey of employees (2000). The two surveys used similar definitions of 'dispute' and collected data about comparable time periods.

10.3.1. Volume of problems

The disputes survey of employees estimated that 15% of employees had experienced a dispute in the 12 months prior to the data being collected. The definition of dispute that was used required the problem to have been brought to the attention of the appropriate manager, but not resolved, with a third party then brought in to help resolve the dispute.

The employee survey for the ERA evaluation asked whether employees had experienced an employment relationship problem needing involvement by someone other than their immediate manager or supervisor since October 2000 (15 months prior to data collection in February 2002), or since joining the company if they had joined more recently. Around 9% had experienced such a problem. Among Māori and Pacific peoples, the levels were 11% and 10% respectively.

Those on collective agreements were more likely to report problems (14%) and those on individual agreements were less likely (5%). Others more likely to report problems were established union members (17%) and those in central government (18%). Those with only one to three employees at their workplace were also less likely to report problems (2%), as were those in agriculture (2%) and business and property services (2%).

10.3.2. Existence of written guidance

Sections 54 (iii) and 65 (vi) of the ERA require that collective and individual employment agreements must contain a plain language explanation of the services available for the resolution of employment relationship problems, including reference to a period of 90 days in which a personal grievance must be raised.

The ERS disputes survey found that an estimated 42% of enterprises had formally documented procedures for resolving disputes, 31% had no procedures and 23% had procedures that weren't formally documented. The disputes survey of employees found that 91% of employees said they knew at least a little bit about the required procedures for pursuing grievances in their workplaces, but only 53% cited their employer as the source of the information. Those less likely to know were more likely to have lower incomes, be new employees, work part-time, not have a formal contract, and not be union members.

The ERA evaluation employee survey used a different approach. The survey found that 61% of those who had experienced a problem were aware of their workplace having something in writing that told them the steps for dealing with such problems. Thirty-two percent were unaware. Established union members were more likely to report availability of written guidance (79% in the main survey). This is consistent with the disputes survey findings that written procedures were more likely to be available in more unionised sectors, and unionised employees were more likely to be aware of them.

10.4. Solving problems

In the main employee survey, 52% of those who reported a problem involved people or services from outside their organisation to try to solve the problem. This was not significantly different for Māori. Translated to all employees, the figures for use of external people or services were 4% for the main survey and 5% for Māori. The use of external people or services was greater among established union members (72%) and central government (75%).

Of those who had used external people or services, the main ones mentioned were unions (47%), private mediators (17%), lawyers (16%), consultancy companies (5%), Employment Relations Authority (4%), Department of Labour mediation service (3%), and Employment Tribunal/Court (3%). Māori showed a similar pattern for the main forms of mediation.

Among those reporting employment problems, the proportions where problems were addressed within the organisation were 67% in the main survey and 53% for Māori. Those who used external mediators reported similar levels of internal attempts to address problems (68% in the main survey).

10.4.1. Assessment of processes used and outcomes

In the employee survey, 57% were dissatisfied with the process used to resolve the problem and 49% dissatisfied with the outcome. Thirty-six percent were satisfied with the process used to address their problems, and 38% with the outcome. The proportion of Māori employees who were satisfied with the process used was 24%, and 32% for the outcome, while the dissatisfaction levels were 72% and 52% respectively. The ERS disputes survey found that 32% of employees were satisfied with actions taken by their employer to resolve their dispute, and 65% were dissatisfied. This comparison suggests that employees' satisfaction with the way problems are resolved may not have changed much over the past two years.

For the ERA evaluation employee survey, there was a strong association between satisfaction with process and outcomes: of those who were satisfied with the outcome, 82% were satisfied with the process; and of those who were dissatisfied with the outcome, 90% were dissatisfied with the process. However, some who were satisfied with the outcome expressed dissatisfaction with the process. Those without written guidance were more likely to be dissatisfied with the process (79%).

10.5. Use of mediation

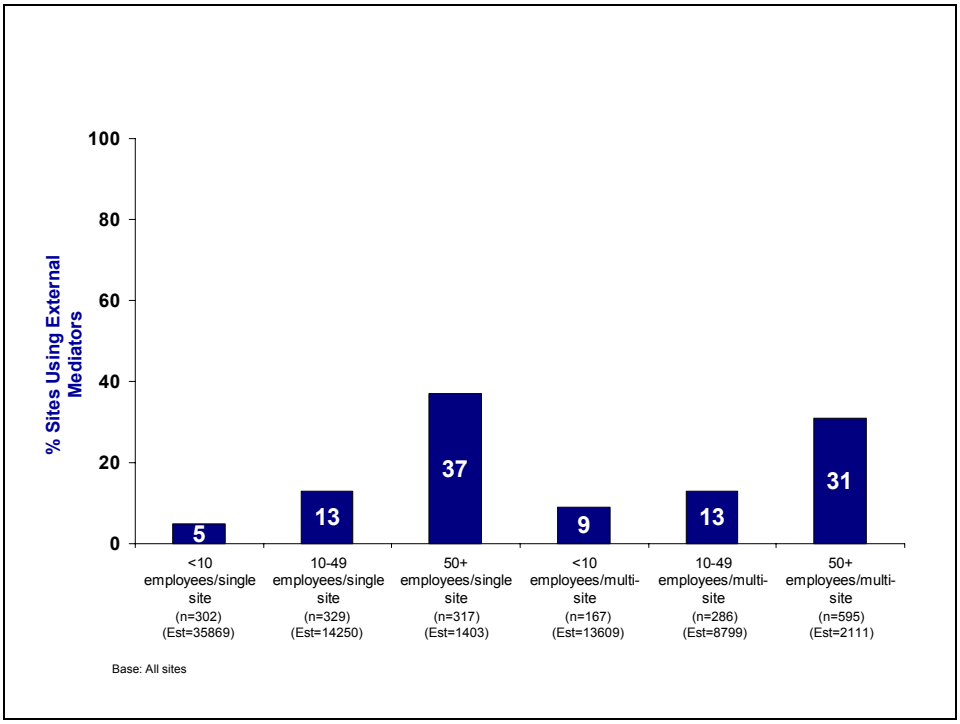
The site survey and union survey focused on the use and perceptions of mediation. In this section, site survey and union survey data on the same issue are presented together.

10.5.1. Volume of use

Ten percent of employer representatives had used an external mediator to resolve problems under the ERA. Forty percent of these had used only Department of Labour mediators, 31% had used only private mediators, and 14% had used both.

The following graph presents data from the site survey showing that use of mediation increased by the employment size of the worksite.

Figure 10.1: Use of external mediators by employment size of worksite



SOURCE: Site survey 2003

Sites with 50% – 74% unionisation made greater use of mediation. Those with higher levels of unionisation reported lower use of mediation. This may be due to those with higher levels of unionisation having better internal systems in place to deal with problems.

Three-fifths of all unions (59%) had been involved in mediation since October 2000. All of the 10 largest unions had used mediation, as had all but one of the 24 established medium-sized unions. The smaller unions were less likely to have used mediation. Half of the unions that had not existed before the ERA had used mediation. The number of mediations unions were involved in is presented in the table below.

Table 10.1: Number of mediations under the ERA

Number of mediations	Existed as union pre-ERA – large (>8000)	Existed as union pre-ERA – medium (1000-7999)	Existed as union pre-ERA – small (<1000)	Non-union party to collective	Did not exist pre-ERA	Total	Grand total
100+	5	1				6	7.3%
50-99		1	1			2	2.4%
10-49	4	14	5			23	28.0%
3-9	1	6	10	4	10	31	37.8%
2			1	4	3	8	9.8%
1			2	4	5	11	13.4%
Did not respond		1				1	1.2%
Total	10	23	19	12	18	82	100.0%

SOURCE: Union research report 2003

10.5.2. Types of problems taken to mediation

The main types of disputes from the site data where an external mediator was involved are listed below:

- Individual employee disputes:
- personal grievance (type unspecified)[38] (32%)
- under-performance (14%)
- dispute with supervisor or manager (2%)
- dispute with fellow workers (2%).

Disputes that could be individual or worksite:

- dismissal or redundancy discussions/decisions (23%)
- agreement negotiations (5%)
- dispute over interpretation of agreement content (terms and conditions) (4%)
- wages/pay (2%)
- health and safety concerns (2%).

The interviews found that larger unions, which interacted primarily with larger employers, expected the problems they took to mediation were likely to be larger than those smaller unions took, due to their ability to resolve smaller issues outside of mediation.

[38] It was considered inappropriate to probe about the nature of personal grievances if the respondent did not volunteer the information, due to the possibly sensitive nature of the topic.

10.5.3. Types of mediators used

Forty percent of sites that had used mediation had used only Department of Labour mediators, 31% only private and 14% both. Another 14% were unsure which they had used.

Department of Labour mediators were more likely to be used by employers that had reported personal grievance disputes (61%)[39]. Private mediators were more likely to be used by those who had reported agreement negotiations (75%), while the use of both types of mediator showed no significant differences by types of dispute.

Department of Labour mediators were also more likely to be used by those in local government (80%) and central government (61%), and by employers in Wellington (73%) and the North Island outside of the main urban areas (70%).

Those reporting taking multiple issues to mediation were more likely to have used Department of Labour mediators (68%). Only 5% of this group reported having used both the Department and private mediators.

Multi-sites with 50-plus employees were more likely to use the Department of Labour for mediation (74%). There were not significant differences for the single sites.

Private mediators were more likely to be used by those where collectives were predominant (53%), and those in North Island main urban areas outside of Auckland and Wellington (50%). There was no clear pattern by level of unionisation or collectivisation.

Of those unions that had used mediation, most had used only Department of Labour mediators (63%). No large or medium-sized unions had used only private mediators.

[39] It is not possible to say that Department of Labour mediators were definitely used for these disputes, as employers could give multiple responses to these questions.

Table 10.2: Type of mediator(s)

Type of mediator	Existed as union pre-ERA – large (>8000)	Existed as union pre-ERA – medium (1000-7999)	Existed as union pre-ERA – small (<1000)	Non-union party to collective	Did not exist pre-ERA	Total	Grand total
DOL	8	18	12	6	8	52	63.4%
Private			1	4	5	10	12.2%
Both	2	5	4	2	2	15	18.3%
Did not respond			2		3	5	6.1%
Total	10	23	19	12	18	82	100.0%

SOURCE: Union research 2003

10.5.4. Initiation of mediation

Site respondents were asked who had initiated mediation on the last occasion on which it was used. Mediation had been initiated almost equally by employer (41%) and employee interests (44%).

Those which had used only private mediators were more likely to report employer-initiated mediation (68%), while those which had used only Department of Labour mediators were more likely to report employee interests as the initiators (70%).

10.5.5. Outcomes of mediation

In the majority of the most recent cases, the mediation resolved the dispute (70%). Another 4% came to an agreement later (out of court). Three percent of cases did go to court, and in another 3% of cases the employee resigned or left. In 2% of cases the employer said the employee was paid, to bring an end to the dispute. For 11% the dispute was still in progress, and 2% said it remained unresolved. Three percent said they achieved resolution without mediation, so they should not really have answered for those cases. Fewer than 1% reported other outcomes, and similar proportions reported don't know and refused to answer.

Where mediation was initiated by employee interests, it was more likely to have been resolved (80%, compared with 64% when initiated by employer interests). Those who had used only Department of Labour mediators were more likely to report resolution (82%) than were those using only private mediators (64%). Those who had used both reported 80% resolution.

Of the unions surveyed that had used mediation, a quarter said the problems they had taken to mediation had always been resolved at that level, and 47% said most of the issues had been resolved in mediation.

A quarter of unions reported that all of the employment relationship problems they had taken to mediation had been resolved in mediation. Almost a third reported that at least three-quarters, but not all of their problems had been resolved in mediation. Just over one-tenth reported that none of their employment relationship problems had been resolved in mediation, while the remaining quarter said that less than three-quarters (but not none) had been resolved.

The union survey indicated a high degree of resolution from mediation. Those unions that reported a higher number of mediations also reported a proportionately higher rate of resolution.

Table 10.3: Proportion of problems resolved in mediation by type of employment relationship problem

	Type of problem				
Proportion resolved	Both	Collective bargaining	Individual	Did not respond	Total
All	5	4	13		22
¾ or more (not all)	19		7		26
Less than three-quarters	9	1	1		11
Less than half	6				6
Less than one-quarter	5				5
None	2	4	3		9
Don't know/Did not respond	1		1	1	3
Total	47	9	25	1	82

SOURCE: Union research report 2003

It appears that resolution rates were slightly higher for employment relationship problems involving individual member representation, compared with collective bargaining employment problems.

In the case studies, all parties expressed the view that the involvement of lawyers in a dispute tended to draw out the process and raised the expense much more than was the case if the employer worked with the relevant union. Employers generally reported unions as moving to resolve disputes more quickly and pragmatically than their lawyers did. Their presumption was that unions did so in order to use their resources efficiently.

10.5.6. Perceptions of mediation

Eighty-four percent of site respondents who had used mediation were satisfied with the mediation process, with 11% dissatisfied.

Of unions that had been involved in mediation, just under three-quarters reported overall satisfaction with the mediation process, and 20% were neither satisfied nor dissatisfied.

Table 10.4: Satisfaction with mediation process

Satisfaction with process	Existed as union pre-ERA – large (>8000)	Existed as union pre-ERA – medium (1000-7999)	Existed as union pre-ERA – small (<1000)	Non-union party to collective	Did not exist pre-ERA	Total	Grand total
Very satisfied	3	4	3	3	9	22	26.8%
Satisfied	7	14	7	6	5	39	47.6%
Neither satisfied or not		3	6	3	3	15	18.3%
Dissatisfied		2	2		1	5	6.1%
Did not respond			1			1	1.2%
Total	10	23	19	12	18	82	100.0%

SOURCE: Union research report 2003

Three-quarters of unions (74%) that had been in mediation were satisfied with the process of mediation, with just over a quarter 'very satisfied' and nearly half 'satisfied'. Five unions were dissatisfied with the mediation process. This appears to have been related to their low resolution rate – two had had no employment relationship problems resolved in mediation, while the remaining three had had less than a quarter resolved. Satisfaction levels did not appear to vary by union size or number of mediations.

Table 10.5: Satisfaction with mediation process by type of mediator

Satisfaction with process	Both	DOL	Private	Did not reply	Total
Very satisfied	3	15	2	2	22
Satisfied	5	29	4	1	39
Neither satisfied or not	4	6	4	1	15
Dissatisfied	3	2			5
Did not respond				1	1
Total	15	52	10	5	82

SOURCE: Union research 2003

Forty-four of the 52 unions that had used only a Department of Labour mediator were satisfied or very satisfied with the mediation process, indicating a high degree of satisfaction with the process used by Department mediators.

Table 10.6: Satisfaction with mediation process by type of employment relationship problem

Satisfaction with process	Both	Individual	Collective bargaining	Did not reply	Total
Very satisfied	12	8	2		22
Satisfied	25	10	4		39
Neither satisfied or not	6	7	2		15
Dissatisfied	4		1		5
Did not respond				1	1
Total	47	25	9	1	82

SOURCE: Union research report 2003

Satisfaction with the mediation process for employment relationship problems involving individual representation appears slightly higher than that involving collective bargaining employment relationship problems. Those who reported dissatisfaction either had experienced collective bargaining employment relationship problems or both.

Over two-thirds of site respondents (69%) were satisfied with the outcome on the last occasion they had used it, and 15% were dissatisfied.

The proportion of unions that reported being satisfied with the mediation outcome was lower than those that reported being satisfied with the process. Nearly two-thirds reported being satisfied or very satisfied with the outcome, while just under a quarter was neither satisfied nor dissatisfied. Nine unions were dissatisfied with the outcomes and all of these were established unions.

Site respondents who had used Department of Labour mediators were above average for satisfaction with the outcome.

Table 10.7: Satisfaction with mediation outcome by type of mediation

Satisfaction with outcome	DOL	Private	Both	Did not reply	Total
Very satisfied	7	2	2	2	13
Satisfied	28	5	6	2	41
Neither satisfied or dissatisfied	13	2	3	1	19
Dissatisfied	4	1	4		9
Total	52	10	15	5	82

SOURCE: Union research report 2003

Thirty-five of the 52 unions that had used only Department mediators reported satisfaction with the mediation outcome. This was seven of the 10 for those that had used only private mediators and was eight of the fifteen who had used both.

Six of the nine unions that had used mediation only in collective bargaining employment relationship problems reported satisfaction with the mediation outcome. This was 17 of the 25 unions that only used private mediators and 30 of the 47 of those that had used both.

Site respondents who were dissatisfied with the outcome of mediation were more likely to also be dissatisfied with the process (42%), although there were still more than half (53%) who were satisfied with the process despite not getting the outcome they wanted.

Almost all site respondents (94%) said they would use mediation again if a similar situation arose[40]. Three percent would not. Where the dispute had been resolved, 98% said they would use mediation again. There was no significant difference by who had initiated the mediation.

Unions were asked how the ERA had affected their ability to resolve disputes effectively. The responses of those that had existed before the ERA (qualification to comment) are presented in the table below.

[40] It should be noted that these satisfaction questions could have been interpreted by participants as relating to either their most recent mediated dispute or to all mediated disputes, as the wording did not make it clear that it should be the most recent. However, the significance of the findings is similar, no matter which way it is interpreted, or whether there is a mix of interpretations.

Table 10.8: Effect of the ERA on unions' ability to resolve employment relationship problems

Effect of ERA on ability to resolve disputes	Existed as union pre-ERA – large (>8000)	Existed as union pre-ERA – medium (1000-7999)	Existed as union pre-ERA – small (<1000)	Non-union party to collective	Total
Easier/Much easier	6	12	10	3	31
Neither	4	9	7	6	26
Harder/Much harder		1	2		3
DK/DNR/DNA		1		3	4
Total	10	23	19	12	64

SOURCE: Union research report 2003

Approximately half of all unions that had existed before the ERA and had been involved in mediation since under the ERA reported that the ERA has improved their union's ability to resolve employment relationship problems effectively.

The majority of union interviewees reported a high rate of settlement of cases at mediation, and held high regard for the mediation process and performance of the Mediation Service.

In some cases, mediators were seen as a useful source of advice and mechanism for momentum:

> *Mediators are giving advice that many employers don't get from anywhere else and it's cheaper than lawyer. Employers Associations only cover 11% of employers…*
>
> *Even the presence of a mediator can get to resolution, regardless of culture…*
>
> *Overall it has been helpful on every occasion because it opens up the conversation…*

In one case, mediation was seen as more inclusive of parties:

> *More friendly, less alien to members and cheaper…*
>
> *Under the old law people took 2 years waiting for a hearing on the same situation. This means resolution at the coal face which satisfies all involved. Employers learnt knee jerk dismissals don't work…*

Some commented directly on how mediation has contributed to resolving disputes at a lower level, less formally and more speedily:

Lower level:

> *Able to reduce frustration before it builds.*

> *Taking lower level things to mediation that wouldn't have before – wouldn't have taken them to the tribunal…*

> *It is absolutely resolving issues that would not have been in past, unless within Court…*

Less formally:

> *The formality has gone. Ground rules are set along the way … Definitely being resolved less formally but not shoddily.*

More speedily:

> *It keeps parties talking and moving … For disputes it's a good way to get everyone together instead of letter swapping, therefore it is faster…*

10.5.7. Factors affecting use of mediation

Interviewees also raised issues that affected their approach to using mediation.

Usefulness of mediation with particular groups

Two private sector unions identified limitations that were particular to the type of employers or employees they worked with:

> *Mediation doesn't help as can't take a hard line with extreme employers…*

> *Mediation is not as comfortable for Māori and Pacific Islanders especially when they don't speak good English … Low paid workers (i.e. brown/female) have less experience of being believed than those with status. Lawyer left because not had one case of black female winning…*

Access to mediation

Some reported delays in access to mediation due to an increasing demand for mediation and backlog of cases in some areas.

Access to mediation was initially good but Auckland is snowed under. If filed today (late October) wouldn't get mediator for December for individual PGs/Breaches.

It's becoming slower over the past two years because of backlogs…

Can't get it quickly enough – backlog in Wellington. Also Dunedin.

Variation between mediators

Most unions interviewed that had experience of using mediation commented that the quality of mediation varied by mediator. Some thought this was because some mediators lacked experience generally or experience of mediation in particular areas or industries:

They have expertise in certain areas e.g. employment relations or collective negotiations…

One union felt that mediators needed experience in particular industries:

In negotiating mediation [there is] fairly complex industry-specific jargon that is difficult for mediators to deal with.

Some highlighted differences in the approach of different mediators:

Some mediators not pro-active enough in seeking resolution and facilitate in a very light way…

In one case, experience was seen to be important to the mediator's approach:

Some mediators with experience in HR or unions are excellent, can bash heads…

Responses to limitations

A common response to perceived variation in access to mediation and perceived variation in approach was to seek involvement of preferred mediators, or look for mediation in particular areas.

We can pick out the ones we want…

You can avoid the bad one (refuse them) and ask for better ones…

If a national problem then we can shop around regions for earliest date offered…

Mediation becoming more legalistic

A number of unions were particularly concerned that mediation may be becoming increasingly legalistic since its introduction under the ERA. This was thought to be inconsistent with the aims of mediation under the ERA.

Still the thought of it being a very legal environment. This is not the intention but it is off-putting for organisers. It doesn't need to be the case because it is quite an informal process. Employers bring in their top guns.

Engagement of lawyers is the fundamental problem that [this union] can't stress enough…

However, there were also comments that mediation had contributed to problem resolution under the ERA being less legalistic when compared with before the ECA:

We now spend less on flash lawyers in Tribunals…

Free and open access increases demand and resolves disputes that under ECA would dissipate or go to litigation…

10.6. Industrial action

10.6.1. Volume of industrial action

Unions are the only bodies that are permitted to take industrial action under the ERA. This was not the case under the ECA.

Just over a quarter (28%) of the unions surveyed had been involved in industrial action under the ERA. The table below shows that the majority of larger established unions had been involved in industrial action, while the smaller and less established unions were much less likely to have been involved in industrial action under the ERA.

Table 10.9: Whether a union has taken industrial action

Whether taken industrial action	Existed as union pre-ERA – large (>8000)	Existed as union pre-ERA – medium (1000-7999)	Existed as union pre-ERA – small (<1000)	Non-union party to collective	Did not exist pre-ERA	Total	Grand total
Yes	8	17	9	2	2	38	27.5%
No	2	7	21	33	33	96	69.6%
Doesn't apply				3	1	4	2.9%
Total	10	24	30	38	36	138	100.0%

SOURCE: Union research report 2003

Eleven of the 38 unions involved in industrial action had members predominantly in the public and community services sector, eight had members mainly in the transport and storage sector, and six in the manufacturing sector.

Table 10.10: Whether unions have taken industrial action by industry

Predominant industry	Yes	No	Doesn't apply	Total
Public & community services	11	38		49
Transport & storage	8	14	1	23
Manufacturing	6	16	1	23
Construction, trade, electricity, gas & water services	2	6		8
Finance, insurance & business services	2	4		6
Wholesale, retail, restaurants & accommodation	1	5		6
Agriculture, forestry & fishing	1	2		3
Communication services		3		3
Multiple industries	3			3
Did not respond	4	8	2	14
Total	38	96	4	138

SOURCE: Union research report 2003

10.6.2. Change in volume of industrial action

The site survey asked respondents whether the ERA had had any effect on the number of disputes that caused loss of at least one day's work, and if so, whether it had caused an increase or decrease. Almost all (97%) reported no change or did not know what change there had been, while 2% reported an increase in the time lost and 1% reported a decrease.

Half of the unions that had existed before the ERA and been involved in industrial action under the ERA (50%) said their involvement in industrial action had neither increased nor decreased, 27% said their involvement had increased, while 24% said their involvement had decreased. This did not vary by size of union.

Two unions commented that their ability to take strike action was limited by the perception that an employer may recoup costs from its members. While this was perceived to be unlawful, the unions felt it was too risky to pursue strike action where the threat existed. One union commented:

> *Under ERA employers' response to (occupation named) strike notice is to say it's faulty but let it go ahead then take it to court and sue every single member. Letters are sent to individuals…*

10.7. Observations

The majority of employees felt that it was either 'very easy' or 'easy' to discuss employment relationship issues with their employer. Just over three-quarters of both employees and managers preferred to deal directly with each other in the event of experiencing problems.

Around 9% of employees had experienced an employment relationship problem since October 2000.

Ten percent of sites had used mediation. Use of mediation increased with the size of site and level of unionisation, but the largest sites (both single and multi-site) did not report the highest levels of use.

Most use of mediation has involved Department of Labour mediators, although there has also been significant use of private mediation services. It appears that Department mediators are more likely to be used where there is a union involved; this could be due to unions' knowledge of the availability of mediation or resource issues. Also, private mediators were more likely to be used in collective disputes than in individual disputes.

The overall satisfaction level with mediation services was high, for both processes and outcomes. There was even evidence to suggest that many were satisfied with the process regardless of the outcome not being in their favour. However, those that weren't satisfied were more likely to be in the private sector, in organisations that are not so large and potentially operating in more difficult circumstances.

Unions in particular felt that mediation was cheaper, faster, less formal and friendlier. Some of the positive issues raised about mediation included:

- the presence of a third party helped keep things moving/to get resolution
- it provided an opportunity for the employee to be heard
- it provided advice for smaller employers, who could not afford a lawyer
- it helped to get at the heart of the dispute
- employers were not generally opposed to it
- it was less alien to members.

Unions expressed some concerns about variation between mediators, access to mediation in some centres and mediation becoming more legalistic. The issue of backlogs was not such a problem for large unions that could access mediation in different centres. The increasingly legalistic nature of mediation was thought to potentially require intervention as it undermined the purpose of mediation.

11. SUMMARY

This section summarises the evaluation results of surveys and other research carried out to date, against the intermediate objectives of the ERA.

11.1. Promotion of collective bargaining

The research showed little overall change in the levels of collective bargaining and coverage from 2000 to 2002. There was some increase in the level of collective bargaining in particular areas, but some decreases in others. Increases tended to be in areas where there was existing union coverage, a history of unionisation and larger workplaces. A large number of these workplaces were in the public sector or in private companies with histories of collective bargaining.

Some new unions have been formed to negotiate collective agreements where established unions did not cover workers. The research showed that, in some areas, collective agreements have apparently been renegotiated without unions.

The analysis indicated that union resources were largely focused on areas of strong existing membership and where there is good potential for expanded coverage. Employees at these workplaces were more likely to have experienced gains in terms and conditions. In these workplaces, there was often a strong desire by employers and unions to work together.

The majority of workplaces, particularly smaller ones, have shown little change in their types of agreements since the introduction of the ERA. There was little incentive to change the way agreements were made in these workplaces. Moreover, less accessible and single site workplaces without a history of a union presence were unlikely to have been the focus of union organising.

The strength of the unions at the introduction of the Act was a key factor in the degree of change in collective bargaining. The case study research and employee survey undertaken indicated that the low levels of change might have been affected by the following:

- lack of union resources to target workplaces
- low demand for unions from employees who had a low awareness of unions
- employees may not have had any experience of or seen any value in unions
- employees may have felt attached to their workplace
- employees would have rather dealt with employment issues directly with their employer.

Other barriers to increased collective bargaining indicated by the research were low demand by employees, employers extending collective terms and conditions to non-union staff following the settlement of a collective agreement, and employers undermining the bargaining process (for example, by offering non-union staff what union members were offered).

Extending the same terms and conditions to those on individual agreements as those on collective agreements lead to what unions referred to as 'free-riding', where non-union members received benefits of union negotiations without the cost of union membership. Unions felt 'free-riding' was a significant issue and in situations where they had negotiated collective agreements, believed the incidence of free-riding to be extensive. Unions felt the ERA facilitated 'free-riding', as there was nothing to specifically prevent it in the Act. Employers, on the other hand, indicated they did this because they wanted to be consistent in their dealings with all employees and that it was administratively simpler. Some, however, stated that they did this because they preferred staff to be on individual agreements.

The ERA promotes collective bargaining and encourages all parties to operate constructively and openly in this process. The research suggested that overall there had been some increase in willingness to enter into collective bargaining when initiated by a union. There were similar findings with respect to other parts of the bargaining processes, such as provision of information. Although most employers involved in bargaining did not receive requests, the volume of information requested and provided increased under the ERA. Some of the barriers perceived by unions to more extensive use of the information provisions was the effort required, doubt over the likelihood of receiving useful information, and reluctance to introduce formality to the process.

11.2. Employment relationships must be built on good faith behaviour

To meet this objective, the evaluation assumed that employers, employees and unions must first be aware of and understand the requirements to act in good faith and then carry out their employment relations in this way. The research found that the ERA's requirement to act in good faith was not the only reason why parties would do so. Many parties had realised, prior to the introduction of the ERA, that working together well was a necessary part of having productive working relationships. The good faith requirements were often consistent with existing relationships in workplaces.

Conducting employment relationships in good faith was characterised in the research by terms such as honesty, fairness, trust, willingness to consult, and by good communication. Surveys and case studies showed that both employers and employees, particularly in smaller workplaces, had little understanding of the formal interpretations of good faith. Instead, they relied on "common sense" interpretations of the term.

Employees in larger workplaces were more likely to be aware of the good faith obligation (especially those workplaces that had existing relationships with unions and employed human relations staff), as well as public sector organisations. The private sector employers making a significant effort to meet this objective were often those whose public image was important to them and those that wished to be seen as 'good' employers or not as 'bad' employers. With the economy reasonably buoyant since the introduction of the ERA, these employers were also arguably in a better financial position to meet the requirements. Some larger workplaces in the case study research were keen to be seen to meet the requirements of good faith because they did not want to become test cases in the courts for breaching good faith.

Although many employers who knew about good faith reported considering whether they needed to make changes to meet good faith requirements, far fewer had made changes. Those that had made changes reported changing their practices by increasing their communications with staff, improving documentation of processes, and changing terms and conditions.

The ERA requires all employment relationships to be built on good faith without providing extensive prescription as to what this means. As many employers believe they are already acting in good faith and do not see themselves as 'bad' employers, they do not feel they have to make any changes. Unions perceive this lack of prescription as a barrier to greater change because there is a lack of enforceability, particularly in the area of collective bargaining where the concepts of good faith have been mostly applied and tested. Unions felt that the good faith requirement positively reinforced good behaviour but had had no effect on more difficult employers. They felt that even though the ERA might bring parties to the table, if there were difficulties there was nothing to enforce good faith behaviour in negotiations.

11.3. Freedom of association

Over the period since the ERA has been introduced, there has been little change in the levels of union membership, with currently 21.9% of wage and salary earners being union members as at 1 March 2003[41]. There have been some very small increases observed, mainly in central government and in workplaces with collective agreements, and also some decreases. Employees who were not union members tended to be in smaller sites with no union presence and with more individual agreements. This finding is not surprising as the research also showed that nearly three-quarters of requests to employers for access from unions were for sites with existing members. Unions largely concentrated their efforts on sites with existing members, with access to new sites made by larger unions who had paid officials and were

[41] Registrar of Unions.

aiming to increase their overall membership levels. The focus overall by unions tended to be on medium to large workplaces.

Many employees felt they had no need for unions or were unaware of their role. These employees may have felt currently well looked after by their employer, or have been new to the labour market and have no experience or knowledge of the relevance of unions; or wished to be responsible for their own employment relationships; or worked in small organisations with a strong sense of 'family' in the employment relationships; or not felt that their terms and conditions would improve under a collective.

The site survey found there was currently low use of employment relations education leave (EREL) by eligible employees. This was supported by the union data, which reported that unions had not used as much of their entitlement as they would have liked. Union interviews and the case studies indicated unions might be facing problems such as administrative difficulties using EREL and, in the education and health sectors, replacing staff who attended courses.

11.4. Protection of the integrity of individual choice

In the research, this objective was considered as being met if employees (on sites where a choice of agreement was possible) were fully informed about their choice of agreement. As employees in organisations with only individual agreements do not currently have a choice of agreement, only those in workplaces where there are both individual and collective agreements effectively have a choice. In these workplaces, there has to be a union on site that is either an existing union or a new one set up since the start of the ERA.

The case study research indicated that where employees could choose between a collective and an individual agreement, employees regarded their choice as being whether to join a union or not, rather than the type of agreement. This was because choice of agreements was typically in name only, with little or no difference evident between the content of the two agreement types. Only a small proportion of new employees chose to be on an individual agreement when a collective was available to them.

Most employer representatives were aware that employment agreements should be written. Even though the employee survey showed that 13% of those without a written agreement had gained one since the introduction of the ERA, a number of employees in small workplaces were either not aware of being on any agreement (17%) or had not seen their current agreement (an additional 28%). Employees were typically unconcerned about this where they trusted their employer. The research also indicated that ERA was having some effect on the content of agreements. A third of employers that used individual agreements said the

requirement for written agreements had led them to make changes to the content of individual agreements.

The ability for new employees to seek advice on their employment agreement and the 30-day rule, where there is a relevant collective agreement, are important in protecting the integrity of employees' choice to join a union and be covered by a collective agreement. The research indicated low awareness of the 30-day rule among employees. Fewer than a third of new employees with a collective in their workplace were aware of the 30-day rule. Fewer than half of new employees reported having been told they had the right to get advice on their agreements, and the length of time given varied. Only a small proportion of employees actually sought advice.

11.5. Acknowledging and addressing the inherent Inequality of bargaining power

The ERA objective to acknowledge and address the inherent inequality of bargaining in employment relationships is assumed to be met through increased participation in collective bargaining. This will lead to a reduction in the inequality of bargaining and to improved terms and conditions. Therefore, the discussion in the previous section on how the promotion of collective bargaining is being met provides the primary basis for reviewing how well this objective has been met.

Although overall levels of collective bargaining and coverage have changed little since the introduction of the ERA, there were indications that there has been some small perception changes over this period.

Most employers (82%) and many employees (58%) perceived bargaining power to be equal at their workplace. Employers who were more likely to report bargaining power as being equal were in the wholesale trade and transport and storage industries. Those least likely were in government administration and defence and cultural and recreational services. Employees who were more likely to report bargaining as being equal were employees in workplaces with one to three employees and those working in agriculture, forestry and fishing.

Where there was a perceived change since the introduction of the ERA, both employers and employees saw it as slightly favouring employees. Alongside this, some unions also reported small, perceived changes in bargaining power. A third of unions, mainly larger ones, felt the ERA had improved unions' ability to introduce a collective where one did not already exist. Around one-third also felt it had had no impact on unions' ability to get new collectives or engage new parties. Twenty percent of unions also felt that the ERA had improved their ability to increase the wages of their members and to improve other terms and conditions (26%).

11.6. Promoting mediation as the primary problem-solving mechanism

The ERA aims to promote mediation as the primary problem-solving mechanism. The evaluation's focus is mainly on the use and impact of mediation. The research indicated that the majority of employees felt it was 'very easy' or 'easy' to discuss employment relationship issues with their employers. Most employers and employees preferred to deal with employment problems directly with each other and there was reluctance by employers and employees to involve a third party.

The site survey found that 10% of sites had used mediation. These tended to be the medium to large sites where there was some union involvement. Union presence may be the trigger for initiation of mediation, providing access to information about mediation and putting pressure on employers to participate. The overall satisfaction level with mediation services was high, for both processes and outcomes. Commonly raised issues about mediation were that it was cheaper, faster, less formal and friendlier.

Union interviewees identified factors that affected their approach to using mediation as including: access to mediation due to increasing demand, lack of mediators' experience in their particular work area, variation between mediators, and mediation becoming more 'legalistic'. One union also felt that the mediation process was not comfortable for some Māori and Pacific Island people who may also have English language difficulties. Low-paid workers in these groups often had less than positive employment experiences that would impact on their willingness and ability to participate well in mediation.

The case study research highlighted the ways in which problems were resolved in smaller workplaces, if not by mediation. In these smaller workplaces, with a small number of staff and greater reliance on informal processes, employees frequently reported that they would leave if there were issues rather than raise them. Moreover, it was easier in smaller workplaces for employers to delay dealing with the issue. There were also a number of examples of larger organisations where employees had little access to information about mediation and the processes available to them for problem resolution. These employees were often on either loose employment relationships, shift work, or all on individual agreements.

11.7. Discussion

The summary has highlighted where the ERA has had more effect on employers and employees by considering whether the intermediate objectives of the ERA have been met. It is also useful to consider the findings in terms of overall change from employers, employees and unions while keeping in mind the reasons why little overall change may be expected in the short term.

The large majority of workplaces have been largely unaffected by the ERA and there is little in the ERA to compel them to make changes. Many of these workplaces are small or medium-sized and have not been targeted by unions. The workplaces where there has been little change and workplace relationships are not necessarily good may have some of the following characteristics: they may be smaller, with all employees on individual agreements; private sector; have no union coverage or not be targeted by unions; have staff working shifts; have employees with low labour market power; have high staff turnover; or have a young, mobile workforce. Many employees in these workplaces are unaware of the role of unions and have low demand for union services, which is a further reason for the ERA having little effect.

Also contained in the large majority of workplaces which have been largely unaffected by the ERA are those whose employment relationships are already good. These good workplace relationships have not necessarily been achieved through the ERA's intermediate objectives. Many of these employers have realised that having good relationships with their employees has a positive effect for their business and have worked to achieve this. These workplaces may have some of the following characteristics: mainly small to medium-sized but not always; private sector; have employees largely on individual agreements; have employers who tend to offer better terms and conditions than average; have highly skilled employees, or employers who wish to be viewed as 'good' employers. Employees at these workplaces are generally happy to deal with their employer directly, and have very low demand for union services.

A small number of workplaces have made changes because of the ERA to meet the objectives of the ERA. These have tended to be larger workplaces that are more easily accessed by unions, have a history of collective agreements in the workplace, and have an established union presence. Many of them are public sector workplaces. If they are in the private sector, they may have formed their own worksite union if there was not a history of union-based collectivisation in the workplace. The workplaces that had made changes often had some form of collective organisation prior to the Act, but were not always unionised. These types of workplaces often have employees who feel positively about their workplace relationships and employers who wish to be and are seen as 'good' employers. The focus by unions has increased union membership, awareness and collective bargaining in these sites, which is likely to continue over time.

Unions are an important part of the discussion, to understand the outcomes observed since the introduction of the ERA. It is assumed that under the ERA, unions are key agents of change in enabling the objectives of the Act to be met. The research indicates that some unions have not been able to effect as much change as they would have liked or had envisaged prior to the ERA coming into force.

A number of different reasons for this have emerged from the evaluation research:

- Many unions rely heavily on union levies to run their organisations. With large declines in union membership, particularly over the period of the ECA, many unions may not have been sufficiently prepared or resourced for their expected role under the ERA. Many unions have therefore initially focused on workplaces with existing coverage, a history of unionisation, non-problematic access, urban location and a history of collective bargaining.
- The decline in union coverage, particularly over the period of the ECA, has meant some unions have had a small and narrow base from which to develop momentum. Some unions are dealing with a potential membership pool that has had no experience or exposure to unions at all. Consequently, maintaining coverage has been as much of an issue as increasing coverage in some cases.
- There have been changes in workplace attitudes and culture. Increasing the number of collectives and collective coverage may require more than time and resource for unions to access more workplaces. Many employees do not currently see why they should join a union and what they would get out of it. These are employees who work with good employers, mobile employees, shift workers, and those who work where there is no union presence. Others are in highly skilled industries where individuals perceive themselves as being able to bargain effectively. There are also many new 'workers' who are not aware of unions' role.

Unions perceive 'free-riding' (when terms and conditions in the collective are extended to those on individual agreements) as one of the major issues that needs to be dealt with to ensure their long-term survival. They feel that currently under the ERA, there is little incentive for employees to join a union if terms and conditions are the same.

New worksite unions have emerged. In the short term, the gains from belonging to a worksite union have been perceived as good by employees (tend to be better terms and conditions and there are no illustrations of new unions not going well). In the longer term, it would be useful to explore whether employees' needs are being met by worksite unions.

The research with employers, employees and unions through surveys and case studies over the past three years has provided a picture of the short-term impacts of the ERA legislation against its intended intermediate objectives. Over time, overall rates of unionisation and the numbers of employees on collective agreements will provide further indications of how well the objectives of the ERA are being met. While overall levels of change have been small,

there are some indications that where unions have been active, there are some increases in levels of unionisation and numbers of collective agreements.

There has been some ‘tidying’ up of employment relationships through specification of collective and individual agreements, together with more employees having written agreements. The extent to which collective bargaining and coverage will increase seems highly dependent on the ability of unions to both adapt to workforce changes since the introduction of the ECA and having adequate resources and strategies to work with workplaces and industries.

It is also apparent from the research that there are a significant number of workplaces/firms who have good workplace relationships within the context of a highly individualised work culture.

Of concern are the small group of workplaces that could not be characterised as having ‘productive’ working relationships between employers and employees and have not made significant changes since the introduction of the ERA. Good faith, a cornerstone of the ERA, is not perceived to be enforceable or prescribed, so there is little for unions to use to effect change. Employees at these workplaces are often on individual agreements but may also be unaware of their ‘freedom of choice’ to belong to a union and not know of mediation as an accessible means of dispute resolution with their employer. Employees in this situation can be described by some or all of the following characteristics: they work in small workplaces; have low labour market power; do not have access to unions in the workplace; are engaged in shift or more casualised work. These employees are less likely to experience the quality of relationships and related security and involvement that the ERA aims to promote. There is little in the research to suggest that, for this group, this will change in the short term.

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APPENDIX 1 PROJECT METHODOLOGY

The following activities, completed by the Department of Labour, were used in stage one of the evaluation to build the stage two research programme:

Eight **exploratory case** studies, focusing on individual firms, were undertaken within six weeks of the Act coming into effect. These investigated a) preparedness for the transition from ECA to ERA, b) early and expected impacts of the ERA, and c) questions and data collection issues for further research.

Two rounds of **consultations with stakeholders** to identify their interests in the impacts of the ERA. Key stakeholders include the Minister of Labour, Department of Labour, NZEF and CTU. Further stakeholders include government departments, researchers and academics who have an ongoing interest in the impacts of employment relations legislation.

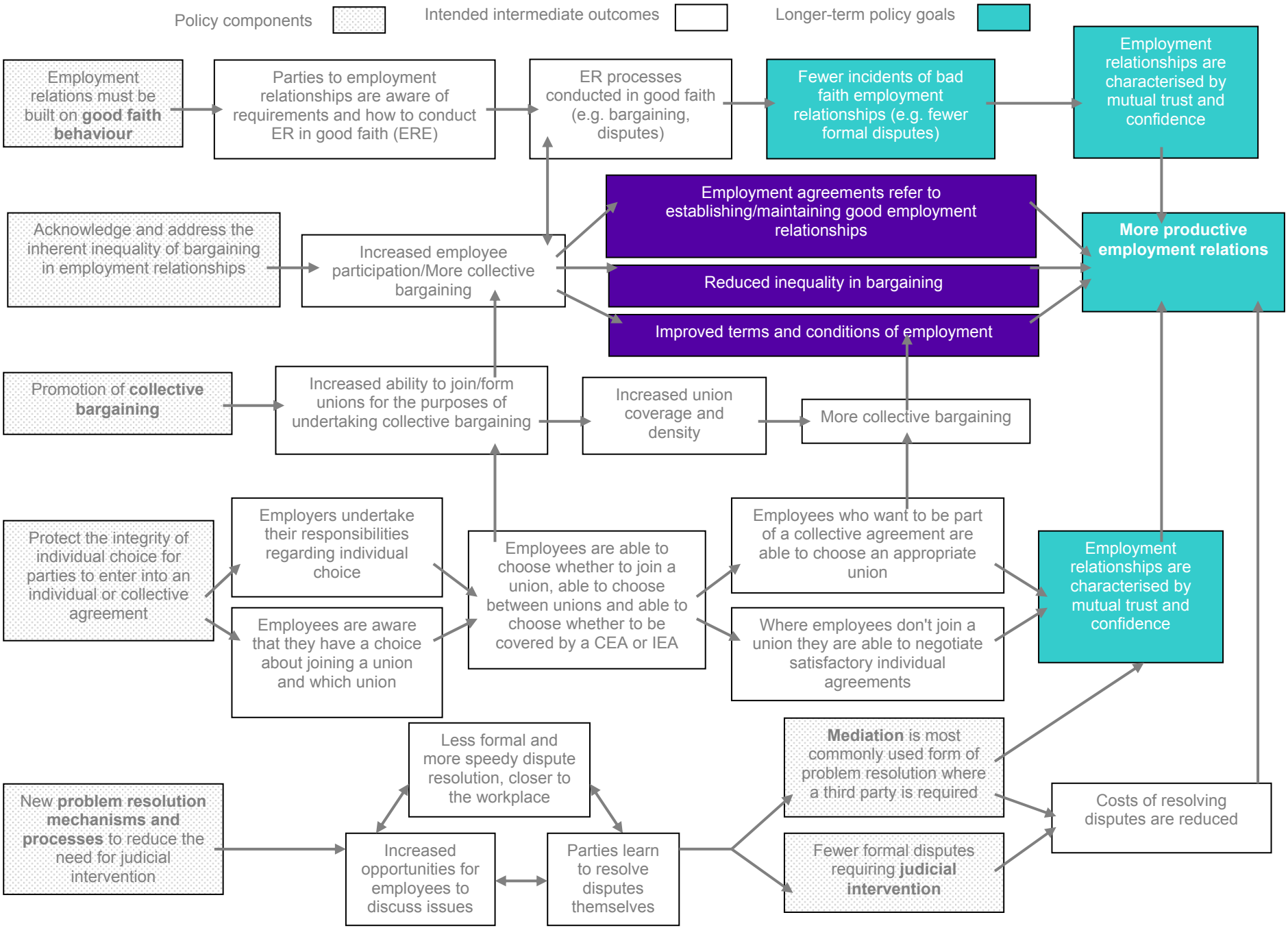
An **environmental scan** was undertaken to identify previous and ongoing potential sources of information for the evaluation. For example, the scan considered surveys that could potentially be replicated or added to, databases that monitor the performance of ERA institutions, and employment agreement databases.

An **economic analysis workshop** brought together a range of labour economists and researchers to consider how to analyse the economic impacts of the ERA. Participants considered previous analyses, data and models. There was general agreement that short-term work needs to focus on the sub-objectives (employment relations impacts) of the Act and that this work may signal areas for analysis of changes in productivity and other economic impacts in the longer term.

An **objectives paper** identified research priorities, objectives, questions and sources of information to guide the stage two data collection and analysis. The focus of each stage is based on our theory about intended outcomes of the Act, and awareness of potential availability of information about ERA impacts from a range of internal and external sources.

The project team used the findings of the above to develop a mixed methodology approach for data collection and analysis in stage two of the evaluation.

Figure A1 Policy logic diagram



Methods of data collection

Site survey

The site survey aimed to examine the extent to which the ERA had impacted on employment relations practice at worksites. The unit of analysis was worksites rather than organisations, as this was the context in which the Act's intermediate objectives were expected to have a more immediate effect. Respondents provided a management level perspective of the impacts of the ERA.

The Department contracted a research company, with a university academic who had expertise in employment relations, to undertake the site survey. A computer-assisted telephone interviewing methodology was used to survey a national randomised sample of New Zealand worksites.

The sample was selected from the Universal Business Directory (UBD) and stratified by ANZSIC industry codes, regional council regions and number of employees. The data was weighted to Statistics New Zealand business demography data to be representative of New Zealand workplaces by industry, location, sector and employment size. Weighted data for the main sample of 2004 respondents is presented in this report.

Data collection occurred between February and May 2002. In total, 2004 respondents completed a full telephone interview. In some cases, site interviews were completed by head office or branch office staff on advice that all employment relations issues were dealt with at this level. The provisional response rate for the main sample was 71%. An additional 223 shortened and fax-back surveys were also completed.

Employee survey

The employee survey sought to assess the impact of the ERA on employees' experiences of employment relations. The survey sample was stratified by age, gender and location, with an additional sample of 500 Māori employees. The employee survey is not linked to the site survey. he Department contracted a research company, with a university academic who had expertise in employment relations, to undertake the survey of employees. A computer-assisted telephone interviewing methodology was used to survey a nationally representative sample of employees.

Telecom directory listings were used to generate the sample. In addition, a Māori sample was constructed using Māori samples from the main survey and separate samples from electoral role data. The main and Māori samples were weighted to Statistics New Zealand data to be representative by age, occupation and gender.

Data collection occurred between February and May 2002. The main sample was 1565 employees and the Māori sample was 513 employees. A Pacific peoples sample of 85 individuals was also obtained; of these, 33 were part of the main sample and 52 gained from a supplementary sample.

Survey of unions

The Department of Labour undertook a postal survey census of the 170 unions registered under the ERA at 1 July 2002. The survey was completed by union secretaries and/or other senior union officials.

The union survey examines union experience of working with the ERA. Information was collected about the roles and functions of unions, with focus on their ability to promote the objectives of the Act.

Data collection was undertaken between October and December 2002 and 138 unions completed surveys, representing a response rate of 81.1%.

The total union membership at 1 March 2002 for all unions in the sample was 331,425 (13 unions did not provide membership data or had not yet registered as a union). A total 328,608 union members are represented by the survey respondents (excluding the members of the five unions for whom we do not have membership data). Therefore, our survey respondents represent 99.2% of all known union membership within our total sample.

Due to variation in the size of unions, from more than 50,000 to fewer than 50 members, some data is reported by membership level or by the number of collective agreements unions are party to in this report.

The number of members represented by respondent unions is outlined in Table A1. The majority of unions that responded (71%) had well under 1000 members; this is consistent with national distribution of union members.

Table A1: Number of members represented by unions surveyed

Number of members	Number of unions	Percent of unions
<100	60	43.5%
100–999	38	27.5%
1000–9999	27	19.6%
10,000 +	8	5.7%
No 2002 data	5	3.6%
Total	138	100.0%

SOURCE: Union Research Report 2003

A variable was created which takes into account 2002 membership data and the form in which unions existed before the introduction of the ERA. The categories are:

- existed as union pre-ERA – large (>8000) (the 10 largest unions in New Zealand)
- existed as union pre-ERA – medium (1000-7999)
- existed as union pre-ERA – small (<1000)
- non-union party to collective
- did not exist pre-ERA.

Table A2: Number of union members by type of union

	Type of union					
Number of members	Existed as union pre-ERA – large (>8000)	Existed as union pre-ERA – medium (1000-7999)	Existed as union pre-ERA – small (<1000)	Non-union party to collective	Did not exist pre-ERA	Total
<100			10	26	24	60
100–999			20	9	9	38
1000–9999	2	24			1	27
10,000 +	8					8
No 2002 data				3	2	5
Total (number)	10	24	30	38	36	138
Total (percent)	7.25%	17.39%	21.74%	27.54%	26.09%	100.00%

SOURCE: Union Research Report 2003

Thirty unions with fewer than 1000 members in 2002 also reported that they had existed as a union under the Employment Contracts Act. These unions may have had a reduction in membership, may have considered themselves to be or were operating as a union without the required membership, or may have answered question 1 inaccurately. With regards to the latter, all but five of the unions were an incorporated society well before 2000.

Almost three-quarters (72%) of respondent unions existed before the Act came into effect. Ninety-two percent of respondent unions were party to a collective agreement at the time of writing.

Union interviews

Department of Labour staff conducted face-to-face semi-structured interviews with the secretaries and/or other senior officials of a selection of unions. The purpose of the interviews was to gain understanding of how the ERA had impacted on union ability to promote the objectives of the ERA.

Interviews were completed with 20 unions. Those interviewed were 9 larger unions (10,000+ members), 3 medium sized (1,000-9,999) members, and 8 smaller unions (<1000 members). Five of the smaller unions were also less established or 'new unions' which had become incorporated societies and registered as unions within approximately a year of the ERA coming into effect.

The data these unions provided assisted researchers to interpret the union survey responses and to gain a more in-depth understanding of union experience across occupational groups, industries and sectors.

Case study research

A research team, made up of Department evaluators, researchers contracted from a research company, and two university academics with expertise in employment relations, undertook the case study research.

Twenty-one organisations were involved in the case study research. The definition of a 'case' was a single bargaining arrangement of focus within a workplace. In some organisations, several cases were studied. Each case helped to gain understanding of whether, why and how parties had, or had not, responded to the introduction of the ERA.

The cases fall into three broad categories:

- an employer with staff employed on individual employment agreements (IEAs) only (Group 1)
- an employer with staff employed on one or more collective employment agreements (CEAs) represented by one or more national unions, and possibly some staff employed on IEAs (Group 2)
- multiple employers and employees covered by one CEA and one union representing employees. Some staff who could be on the CEA might be on IEAs (Group 3).

The cases covered a range of industries, locations (rural, provincial and urban), firm sizes (ranging from fewer than 10 staff to several hundred staff), and occupational groups. The bargaining

arrangements varied in formality and complexity. Each case involved interviews with representatives of key parties to a bargaining arrangement (such as employers/management, employees and, where relevant, union delegates and union officials).

Analysis

When the individual research projects had been completed, a process of analysing the data across the projects began. This involved analysis design, and discussion of preliminary data with key stakeholders. This process is outlined in Figure A2.

Figure A2: Process for synthesising findings