Enterprise Agreements: Myths and Realities
(A Conference Report)
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Myths and Realities
(A Conference Report)
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Introduction and Summary

It is now three years since the Australian Industrial Relations Commission formally endorsed the historic move towards enterprise bargaining, marking a significant break with the previous arrangements which had prevailed through most of Australia's post-Federation industrial relations history and which had relied predominantly on the centralised award system. In these circumstances, it is timely to assess the impact of the new enterprise bargaining arrangements on our industrial relations system.

This paper provides such an assessment by drawing upon the proceedings and conclusions of a recent conference convened specifically to report on progress with the new arrangements. The conference was titled *Enterprise Agreements: Myths and Reality* and was convened in Canberra by the Australian Centre for Industrial Relations Research and Teaching (ACIRRT) on 13 October 1994. ACIRRT was established as a Key Centre of Teaching and Research in 1989 with assistance from the Department of Employment, Education and Training and is linked to the Department of Industrial Relations at the University of Sydney.

The conference was given six views on Australia's recent experience with enterprise bargaining. It is worth highlighting at the outset that in the eyes of many industrial relations practitioners, labour/management agreements are nothing new for Australia. Indeed, a number of the speakers at the conference referred to the "time-honoured" practice of firms entering into agreements with their workforces and unions; these agreements were often not certified, but simply treated as "over-awards" in cases where additional pay was involved.

The following points summarise the primary conclusions of the speakers at the conference:--

**On the spread of enterprise agreements since the October 1991 decision:**

- All State and Federal jurisdictions now allow for workplace agreements of one variety or another to be registered by an industrial tribunal and become enforceable documents.

- Three thousand registered agreements are now in place although the coverage of these agreements presently extends to less than 20 per cent of the workforce.

**On the types of agreements now prevailing:**

- Two main types of agreement apply; they fall into the category of either having a "negative cost cutting" focus, or are agreements directed to improving the quality of services and putting an organisational focus on staff development.
On the content of agreements:

- While initial claims placed on employers were generally of the order of twelve to 14 per cent pay rises, after negotiation these claims resulted in agreements of between 3 to 5 per cent over about an eighteen month period.

- Enterprise bargaining will continue to take place within the award framework and the role of awards would be significantly downgraded.

The perspective of the Business Council of Australia’s speaker:

- The current state of play does not approach enterprise bargaining; the Government’s view that enterprise bargaining is now in practice is incorrect since many agreements are merely framework agreements and ipso facto, these agreements would amount to genuinely independent agreements.

A Union representative’s observations:

- In the main employers in less organised industrial sectors are not keen on agreements — an example being the reluctance of film project directors to be involved in bargaining.

- Where awards have been inadequate, there will be more inclination on the part of employers to stay with the award than pursue agreements.

The perspective of the NSW Labor Council speaker:

- The process will work well in the organised, industrially stronger workforces. However the majority of workers are not in such a position and for them the award system will continue to be the mainstay of industrial agreements.

- Workers acting without union support have little capacity to negotiate an agreement, and the figures on NSW agreements show that union backed agreements outweigh those negotiated with either works councils or by workers in the particular enterprise.

The conference speakers and the organisations from which they were drawn are listed below:-

Professor Ron Callus: Director, ACIRRT, University of Sydney

John Buchanan: Deputy Director, ACIRRT.

Anthony Powter: Industrial Advocate, NSW Chamber of Manufacturers;
Vernon Winley: Industrial Relations Director, Business Council of Australia;

Anne Britton: Joint Federal Secretary, Media, Entertainment and Arts Alliance, Member ACTU Executive;

Peter Sams: Secretary, NSW Labor Council; Member ACTU Executive.
1. How Widespread is Enterprise Bargaining?

The growth of enterprise bargaining and the different types of agreements now prevailing was reported on by Ron Callus, the Director of ACIRRT. He observed that by July 1994, almost 1.20 million workers were covered by some 3730 registered enterprise agreements of one sort or another\(^1\). Those covered by such agreements account for twenty per cent of the workforce. The number of agreements by jurisdiction and the number of employees covered are summarised below:

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<thead>
<tr>
<th></th>
<th>Nos of Agreements</th>
<th>Nos of Employees Covered</th>
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<tbody>
<tr>
<td>Federal</td>
<td>2 200</td>
<td>1 100 000</td>
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<tr>
<td>Qld</td>
<td>240</td>
<td>55 000</td>
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<tr>
<td>NSW</td>
<td>708</td>
<td>65 000</td>
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<tr>
<td>Vic</td>
<td>240</td>
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<tr>
<td>SA</td>
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<td>WA</td>
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In the Federal jurisdiction, the metal industry accounts for a high proportion of the agreements (about 700 agreements) and the parties in the metal industry have registered these as consent agreements which complied with the formerly rigorous national wage principles even after the more relaxed provisions were introduced in July 1992 (s.134). This provision has been replaced with s.170 MA, \textit{et seq}., effective from April 1994.

\(^1\) Additional information on the spread of enterprise agreements has been provided by the Minister for Industrial Relations to the House of Representatives, \textit{Hansard}, 28 August, 1994. At that time, 2400 enterprise agreements had been registered in the federal jurisdiction covering 1.3 million workers or 55 per cent of Federal award employees. In Queensland 10 per cent of State award employees were covered by State agreements. In New South Wales 7 per cent of State award workers were covered by State agreements, while for Western Australia it was 6 per cent of State award workers and in Tasmania it was 1 per cent of State award workers. South Australia has recently enacted new industrial legislation.

Additional information provided by the Department of Industrial Relations to the Senate’s Estimates Committee B in May 1994 showed that 1460 agreements had been registered under the former s.134 provision of the federal Act, and 748 agreements were registered through the AIRC’s enterprise bargaining principle under s.112 or s.115 prior to their replacement by s.134 in July 1992. This provision has been replaced with s.170 MA from April 1994.
2. What Types of Enterprise Agreements are There?

Ron Callus observed that many agreements have been registered as consent agreements (with both employer and union agreeing on the contents of an agreement negating any need for the AIRC to "arbitrate" the matter) pursuant to the "enterprise bargaining principle" of the October 1991 National Wage Case. Under this principle agreements generally had to comply with public interest and traditional wage fixing principles. Nevertheless it is rare for agreements to import all of the conditions of the parent award such that they can be regarded as stand-alone documents.

After amendments to the Industrial Relations Act 1988 in 1992 and 1993, agreements certified under s.134 or currently under s.170 MC are subject to less scrutiny and contain a wider range of issues than their predecessors.

All States have provisions for the registration of enterprise agreements, but Queensland is the only State to mirror the Federal industrial legislation. New South Wales was the first State to substantially relax regulations prescribing the involvement of unions in enterprise bargaining, other States have followed suite.

In the Federal jurisdiction, enterprise flexibility agreements (EFA) can be made at the initiative of the employer who is covered already by a Federal award under s.170 NC. Thus they have become known as "non-union agreements". Unions must be notified of an employer's application for an EFA and can make a submission on the matter. These agreements become a schedule to the award in respect of the particular workplace and will prevail over the terms of an award. However, the option for a party, usually the employer, to vary its awards to include an enterprise facilitative clause or to reach an enterprise agreement has existed for a number of years. The purpose of the clause or agreement is to permit a local work arrangement, say permitting a wider spread of hours than is specified in the award².

A similar type of non-union agreement has been available in the New South Wales jurisdiction since 1991 and the NSW experience indicates that, of the 700 plus agreements, about 33 per cent have been non-union. The NSW legislation recognises "works committees", unions and the workforce in an enterprise.

Professor Callus noted that the distribution of business units across Australia is another factor retarding the development of non-union agreements since 95 per cent of businesses employ less than twenty employees. It is the norm for workplaces which have less than twenty employees to be non-union; in other

² See Building Enterprise Productivity, a publication of the Metal Trades Industry Association for an explanation of enterprise facilitative clauses and enterprise agreements which could be made under the Metal Industry Award (1991).
words there is a greater tendency for workplaces to become unionised as the number of employees grows. For small workplaces it appears that managers do not see a need for a workplace agreement as they do not feel constrained by any applicable award. They usually pay over-award payments and already exercise flexibility in the management of the operation, so why pursue an agreement? The reason for this sort of response centres on time, cost and the resource requirements involved in framing a document.

3. What Issues are Being Addressed in Enterprise Agreements?

Professor Callus noted that apart from work organisation changes and wage rate aspects, there is a trend towards agreements addressing some of the "quality of life" issues that were not in awards, e.g. the provision of child care facilities or access to such a service not directly provided by the employer.

Professor Callus observed a second area which had not been addressed in awards but which were now appearing in agreements; this is the area of training — e.g. the ways in which training is to be conducted, and the groups of employees it is to be directed to.

Under constraints imposed by the Constitution, for the Australian Industrial Relations Commission (AIRC) to find an interstate dispute as the precondition to an award being made (and prescribed in the Industrial Relations Act 1988 — the Act, at s.101), the contents of awards have had to be confined to "industrial matters". These matters have been traditionally taken to be "wages and conditions" matters making it harder for "quality of life" issues to be considered industrial. So increasingly non-industrial issues are being made provisions of agreements.

It was suggested that the requirement of the AIRC to review awards (inserted as s.150 2 A in the Industrial Relations Act 1988 by the Industrial Relations Reform Act 1993) might be used by unions to argue that because of the prevalence of certain new provisions being contained in agreements, awards should be updated to include these provisions in order to keep them "relevant".

It was acknowledged that the players are in the first generation of agreements and that there is some caution being displayed. This can be expected to diminish as familiarity with the process develops.
4. Are Agreements Changing the Workplace Culture?

Professor Callus suggested that some believe that enterprise agreements are needed to change the culture of a workplace, yet the evidence from the Australian Workplace Industrial Relations Survey (AGPS 1991), is that agreements are not needed to facilitate change.

In part this comes about because management does not feel bound to consult over changes they introduce. Likewise, agreements are likely to avoid precise consultative provisions (other than dispute settling procedures) and productivity targeting, but may express agreement by both sides to try to achieve a range of targets, e.g. minimising waste, minimising re-works. There are exceptions to this rule with certain agreements being extremely specific on productivity targets.

Finally, informal or non-registered agreements were still a feature of industrial relations, and most firms paid wages above the award, meaning that informal arrangements continue despite the option of formal registration (the advantage of which is that registration would attract enforcability).

5. Trends in the Content of Agreements

John Buchanan, Deputy Director of ACIRRT, referred to the Centre’s "Agreements Database And Monitor" in commenting on trends in the spread of agreements. He noted that the database contains 750 Federal, Queensland and New South Wales agreements. These agreements have their provisions analysed and coded according to a framework of standard and non-standard provisions commonly contained in awards and agreements.

He observed the following trends emerging from the ADAM analysis of agreements. Generally, small business avoids the bargaining process because:-

a) they tend to be able extract from the award system the sort of flexibilities needed,

b) the costs of bargaining are high, and

c) there is a learning curve associated with bargaining which can cause frustration and unrealised expectations for both sides.

It was suggested that small business has enough concerns from having to comply with government regulation. "The result is that the largest sector of the economy has the least involvement with enterprise bargaining".
John Buchanan also argued that the award system has not been made irrelevant to the liberalisation of labour markets and that some awards have had massive surgery to make most of their provisions subject to being over-ruled with a simple agreement of the workforce concerned. The Federal award covering the motor trades with thousands of employees in hundreds of establishments was cited as an example of an award which now has this kind of in-built flexibility. In addition, employers covered by this award would have little incentive to pursue a site-specific agreement, whereas they may have been more likely to pursue an agreement in the absence these changes to the award.

The speaker suggested that formal or registered agreements can be grouped into those which focus on traditional cost cutting and those with a broader range of objectives. In the former, penalty rates and shift allowances can be targeted, but also the spread of hours arrangements often introduced can produce wildly erratic duty requirements: seventy hours one week, twenty hours the next at the same rate of pay. The second group of agreements tend to look at qualitative ways of improving performance, client satisfaction, market share and thus profitability. They will focus on staff training matters, quality assurance and consultative mechanisms to get the improved performance. It was perceived that many NSW registered agreements fell into the former category, while the Federal and Queensland agreements were more likely to be in the latter category. (Victorian State industrial agreements are not published and thus cannot be monitored by ADAM). Agreements were most likely to look at production and productivity issues, work arrangements and hours of work.

In summing up his commentary on trends, John Buchanan advised the conference to keep an eye on the operation of the labour market as a key determinant of the contents of agreements. Agreements will reflect the local factors of the labour market in which it operates; where unemployment levels are high agreements are likely to give little away; on the other hand a "broader agenda" embracing staff development issues and training can be expected where the local labour market is tight or there are skills shortages affecting the enterprise. It will be the balance of these forces which will determine the employer’s agenda. In any case one trend can be observed: the traditional interaction between collective bargaining and the award system, such that a gain in one industry or occupation eventually flowed through to the workforce, is now being broken.

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3 Reference was made to "Loss of shunter’s law puts brake on wages", The Australian Financial Review, 11 October 1994.
6. An Employer Association’s Perspective

This section of the conference was addressed by Anthony Powter of the NSW Chamber of Manufacturers. He noted that employers are paying increases of between 4 to 6 per cent and that the life of agreements covers twelve to eighteen months in general. The claims being put on employers are of the order of between 10 per cent and 14 per cent. Agreements are almost always read in conjunction with an award.

In describing a typical bargaining agenda, Mr Powter observed that employees are not only seeking wage increases but also work arrangement flexibilities (such as part time work). Unions are promoting agendas including training and career paths. Employers want better work organisation practices, hours flexibility, work teams, implementing Quality Assurance practices and in some cases, changes to penalty rates. He suggested that there is usually some fat somewhere to be trimmed to facilitate a mutually beneficial outcome.

In commenting on the impact of enterprise bargaining on awards, the speaker said that employers and unions see the need to use awards as a base for agreements. Awards act as a sounding board as to the scope of matters which can be addressed in an enterprise agreement. Federal awards will come under the microscope as a result of the s.150 A review process. Mr Powter could see a situation where the award will contain certain conditions and will set a framework for the "children" agreements in enterprises to follow. He said that there will continue to be a role and use for "non-registered" agreements. These could be a simple memorandum of understanding. Similarly, New South Wales State wage principles make reference to the parties using "enterprise arrangements" as one way of recognising these informal arrangements.

Mr Powter went on to address "Pattern Bargaining". This term refers to the practice of the one style of agreement being copied across a large number of enterprises. The practice is very prevalent in NSW manufacturing. He said that on the positive side, the Federal jurisdiction recognises framework agreements, and these can be a good starting point — they can contain certain messages which the parties need to look at in the workplace. As well, the Federal jurisdiction generally requires agreements to act as a sequel to "finding of a dispute", so some sort of framework arrangement is needed in the first place.

On the negative side, the speaker considered that pattern bargaining was not amenable to delivering real workplace reform. Unions/employees are likely to want to know if the particular employer has a hidden agenda, while employers will want to know what pay-off do employees want in total, comprehending not only a wage claim but compensation for changes contained in the employer’s agenda; in other words, Mr Powter considered that pattern bargaining avoids the "bottom-line" of both sides.
7. The Business Council of Australia’s Perspective

In addressing the Business Council’s perspective, Vernon Winley, Assistant Director of the Council, indicated that his organisation had advanced the benefits of enterprise bargaining as far back as 1987, but this had been received with derision by the Government for promoting the change from centralised wage fixing.

He indicated that the concept of bargaining which the Business Council promoted was one where:-

- the agreement was tailored to reflect the needs of the enterprise
- it was a comprehensive document, not an "add-on" to an award
- the parties entered into the agreement freely and where the role of unions was incidental — it did not matter if they were involved providing employees were committed.

Mr Winley observed that the Business Council rhetoric of the 1980s is now the norm but he considered a myth that the current system is based on enterprise bargaining. He argued that, with the enactment of a less restrictive legal regime at the Federal level in 1992 and with the subsequent availability of State avenues to agreements, there should be more than the few thousand agreements that are shown in the statistics. There are only twelve registered Enterprise Flexibility Agreements, yet 73 per cent of hundreds of thousands of employees are not members of unions, so there should be many more non-union agreements.

The speaker went on to argue that those agreements struck in the metals industry are, in the main, identical. Over-award agreements cannot be considered enterprise agreements using the criteria set out above. There is also a problem about what is and what is not written in enterprise agreements (reference to earlier speakers). The banking industry for example has had both extensive but unwritten consultative procedures. Mr Winley said that it can be argued that these are or are not adequate, but they exist nonetheless. The same applies to the extensive training procedures which are characteristic of the banking industry. Is it any wonder that agreements can be silent on such matters?

Mr Winley considered that there have now been some recent additional set-backs to genuine enterprise bargaining. In particular, he pointed to the ACTU’s attempt to retain award coverage for workers employed by the mining company, CRA Ltd. The ACTU has submitted to the A IRC that CRA awards should not only operate as a minimum standard safety net, but should also express the maximum pay rates simultaneously.
Another example was the recent (21 September 1994) National Wage Case decision which makes available three amounts of $8.00, up to a maximum of $24.00 from November 1991 to June 1996. The speaker said that the decision undermines the incentive of parties to pursue an enterprise agreement, and the refusal of the AIRC to simplify and streamline awards is regrettable.

"Good faith bargaining" was seen as another problem area by the speaker. This refers to the ability of a party (usually a union) to initiate a bargaining process with an employer or numbers of them by also notifying the AIRC despite the union having few or no members in any of these workplaces, and this is provided for in the recent amendments to the Federal Industrial Relations Act. Certain unions have commenced bargaining procedures in non-unionised establishments and the facility for binding the firms into a bargaining process with unions should be withdrawn since it is not clear that the respective workforces seek union representation.

8. A Union Perspective

ACTU Executive member and MEAA National Secretary, Anne Britton took issue at the arguments raised by the Business Council, arguing that enterprise bargaining can be based on different formal or informal structures. She said that in the past there have been award-based agreements, but there have also been agreements based on non-award structures. However, if agreements for certain industries appear to contain similar provisions, this is to be expected since it is often the case that the firms perform similar functions. As an example, the speaker noted the case of Qantas and Ansett Airlines; they are similar corporations, they provide similar services, use similar equipment, run similar services and often share facilities.

Turning to her own union's experience, the speaker observed that the MEAA is regarded as one of the ACTU's "twenty super unions", but the union covers a diverse membership of, in total, less than 40 000. Members are employed in highly organised and profitable industries/occupations — such as journalists in the media industry as well as employees engaged by film crews and engaged for "one-off" film projects.

The speaker observed that enterprise bargaining is a very different operation under s.170 of the Federal Act, compared to the procedures of the NSW or Victorian systems. However there appears no evidence that employers are champing at the bit to strike agreements. In the MEAA's experience, most employers go for a negative cost-cutting agenda. But there is also an onus for unions to go back to basics and make contact with their members. The ACTU often runs the argument that too many unions became overly reliant on the AIRC over the 1970s, and the New Zealand experience suggests that some of these unions will not survive under a less regulated regime. The union needs to operate effectively to get outcomes. In the print industry we are seeing
good agreements with 5 per cent pay increases over usually an eighteen month time period.

Anne Britton observed that "project-based employers" (e.g. on location film projects) do not seek agreements. One determinant is the parent award. The MEAA has inherited some sub-standard awards from its constituent organisations. The union is now noticing that where the award is sub-standard, employers will continue to use it, rather than seeking agreements. The union has been running a five year battle with the Hoyts theatre chain, originally to have the relevant award adhered to. Hoyts is now pursuing enterprise flexibility agreements and is transporting non-union representatives around Australia to garner support for these documents who are also assisted by Hoyts' legal firms. A number of agreements are nothing more than registration of over-award agreements. The slowest sector to pursue agreements has been the poorly organised and non-union areas.

9. A NSW Labor Council Perspective

Representing the Labor Council was its Secretary, Mr Peter Sams. He observed that enterprise bargaining has always been around, but it has gone under other names. The formalities of agreements ranged from a simple handshake with an employer to more complex documents. From the Labor Council's point of view, the format does not matter, whether it be a handshake, an over-award agreement or a formal agreement. Under s.11 of the previous NSW legislation (Industrial Arbitration Act 1940), enterprise agreements were regularly used — the Sydney Harbour Tunnel project for example is seen as a success story for enterprise bargaining and for the employment arrangements associated with the project.

The speaker observed that, interestingly, there used to be more enterprise bargaining in the past. For example in the building industry, unions would make a rule of thumb decision about the value of projects in city areas compared to country building projects. For the city projects a site allowance would be struck usually in return for a commitment to put the project through without industrial action. But the same set of conditions could not be expected from sites in the bush, so that there was a range of site allowances. Now, negotiations are being conducted nationally and a national approach has been taken on this matter so that there is uniformity across Australia, rather than a site by site approach.

Mr Sams considered that the real problem is that now corporations are seeking to dispense with their awards. This is most evident by the CRA move in its Western Australian mining operations. But it is understandable that those workers should respond in that way (to endorse the company offer to go on "staff" work arrangements) and to sign individual employment contracts which
preclude union involvement in return for pay increases of around 12 per cent\textsuperscript{4}. Workers go to places like the Pilbara for the money. They cannot be expected to refuse a wage increase. However, he said that the CRA move is of major concern to the ACTU and it has been resolved to fight CRA’s attempts to remove unions from a role in employment negotiation.

The speaker went on to observe that the bureaucracy tends to build up expectations of the spread of agreements. There have been over 2000 agreements federally, but figures obtained from the National Labour Consultative Council show that possibly 1000 of these have now expired. Looking at New South Wales, there are over 700 agreements, but of those 80 per cent are top-ups to awards. Also, 67 per cent are union agreements, 8 per cent have been negotiated by Works Committees and 24 per cent by employees. Mr Sams said that if this is the best that enterprise bargaining can produce after a number of years, then it should be regarded as a flop.

The speaker argued that while the public is told that small business seeks the flexibility to break out of the award system, in reality, the small business sector is the most consistent adherent to the award system, and the speaker from the Chamber of Manufacturers was right to stress the ongoing role of the award system. Mr Sams emphasised the point that the strong in industrial terms have always had the power to set their own terms, but the award system flows their wins through the rest of the workforce. He noted that in order to cement the role of the system, NSW unions used the 1994 ALP National Conference to put through a motion preventing the Party from allowing the reduction of award provisions to certain core matters. Mr Sams said that, put simply, the Labor movement had a duty to protect those who cannot protect themselves industrially. To this extent he judged the September National Wage decision by the AIRC to be a good one — $24 over four years is not profligacy.

10. Concluding Comments

At the end of the conference, participants were invited to briefly outline those issues which they thought would arise in the next round of enterprise bargaining. These are summarised below:

**Vernon Winley**  
**Business Council of Australia**

- Future agreements will be made in the context of a need to maintain low inflation and high productivity outcomes. They will need to reflect the commitment of both sides. They will stress continuous improvement and provide for wage increases.

Anthony Powter  
NSW Chamber of Manufacturers

- Mr Powter predicts that we will start to see employees initiating agreements in small business. Larger employers will continue to use the award system for a framework. These will focus more on working life matters such as training, work and family issues and part-time work arrangements. On the downside, it seems that we are only seeing the tip of the iceberg in respect of increasing industrial action — increased industrial action would seem to be the corollary of the formal system now being put in place, not to mention the AIRC's recent decision stating that industrial action in a prescribed bargaining period was not counter to the Act.

Peter Sams  
NSW Labor Council

- Those who said that Enterprise Flexibility Agreements would be so restricted as to be almost non-accessible are now being proved wrong. The Optus agreement is the most recent and stark example of what can be achieved under an EFA\(^5\). Unions have passed motions at the ALP National Conference to prevent the decimation of the award system and to prevent discrimination against union involvement in workplaces.

Anne Britton  
Media Entertainment and Arts Alliance

- Ms Britton agreed with Peter Sams, but contended that in the stronger areas we can detect a role for the "non-wage" agenda being pursued by employees — obviously a stronger focus on career paths, child care and training. In the weak areas of the labour market, it is clear that employers will want "roll-backs".

John Buchannan  
ACIRRT

- Enterprise bargaining has so far been conducted in a labour market characterised by contraction. We are now moving into a labour demand phase. The issue for the labour movement will be: what sort of strategies will need to be put in place for the benefits of this growth phase to be most widely distributed? Increased levels of disputes seem to be on the agenda as are the "non-wage" issues.

\(^5\) The telecommunications carrier, Optus, has been successful in securing an Enterprise Flexibility Agreement directly with its staff. The agreement was approved by a majority of workers and was certified on 25 August 1994.