ENTERPRISE BARGAINING AND ITS CONSEQUENCES

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The contemporary era of national wage determination commenced with the decision in the National Wage Case September 1983[1]; that decision marked the culmination of an eventful year, which began in December 1982, when the Conciliation and Arbitration Commission imposed a wages pause[2] after considering the submissions of the Commonwealth and State governments and the government of Northern Territory. The first Accord between the Labor Party and the Australian Council of Trade Unions was settled in February 1983 and in the following month the Labor Party entered office; in April 1983 the new government convened the National Economic Summit Conference.

At that time, the Australian economy was in deep recession and the communique issued at the conclusion of the Summit recognised this. At the same time, the communique expressed a strong desire for the re-establishment of a structured, centralised system of wage fixation. This was also a theme of the Accord, and was the general view of participants in the National Wage Case which began later in the year. The Commission was persuaded that it would be in the public interest to establish a centralised system; this, the Commission expected, would lead to a more stable industrial environment and would provide for a more rapid economic recovery than would occur in any alternative system[3].

The principles published by the Commission in 1983 were applied in National Wage decisions in 1984 and 1985; in the National Wage Case leading to the decision of 26 June 1986[4], a review was undertaken and it was decided to continue a structured centralised system of the kind that had operated since September 1983. Only minor changes were made to the principles, which were to operate for a further two years. Adjustments to award wages had been made since 1983 by reference to movements in the Consumer Price Index and it was intended that this would continue for two years from mid-1986.

These intentions had to be reviewed as the seriousness of Australia's economic situation became apparent during 1986. Early in 1987 another National Wage Case began and there were no essential differences between the views of the parties and interveners on the nature and magnitude of Australia's economic difficulties. As well, the most notable feature of the submissions put by the major parties to deal with this situation was the common ground that they shared. They supported the introduction of a two tier system of national wage determination in which provision for a general wage increase would not be

the only outcome, but would be only part of the mechanism for wage adjustment. In March 1987 the Commission adopted these proposals: the first tier was a flat increase of $10.00 per week and the second, known as the Restructuring and Efficiency Principle, provided for increases up to a ceiling of 4% in two instalments, the first to be followed by the second after an interval of ten months.

This dual concept was published in the decision in the National Wage Case March 1987[5]. It is a milestone in the history of wage determination in Australia. The Restructuring and Efficiency Principle reflected the general consensus of parties and interveners that steps had to be taken to encourage improved efficiency in industry; more significantly, the consensus acknowledged that the workers and the way they were remunerated was a major consideration in pursuing this objective. For the first time, increases in rates of pay or improvements in conditions of employment were related directly to measures introduced at the workplace to improve efficiency and productivity, and to reduce costs. Since 1987, the Commission has continued to develop this policy, and the Structural Efficiency Principle, which is presently the vehicle for the policy, was confirmed in the 1991 decisions.

Against this background, the Commission has introduced enterprise bargaining as a formal part of the national wage fixing principles, but the decisions of April and October 1991 leave little doubt that the step was taken with considerable reluctance. There are substantial questions to be addressed. Employers and employees, and their organisations, have the task of reviewing their policies relating to three matters of fundamental importance:

(1) It has long been established that the fruits of increased productivity should be distributed on a national, rather than an enterprise basis. Should this continue?

(2) Should the centralised, structured wage fixing system be continued, or should it be abandoned?

(3) Is there a risk that independent negotiations resulting in independent wage increases will lead to economically unsustainable national wage levels?

Although these are inter-related matters, consideration of them separately permits a clearer picture to emerge of the possible consequences of the movement to enterprise bargaining.

How should the benefits of increased productivity be distributed?

Until the question was raised in the debates that took place in the 1991 National Wage Cases, it had long been accepted that fairness and equity require that the benefits of increased productivity should be distributed on a national, rather than an industry or enterprise basis. The Full Bench had no doubt about the "inevitable consequence" of departing from this long established principle—if employee contributions to productivity are recognised on an enterprise basis, wage increases will vary from enterprise to enterprise[6]. The potential inequities of such an outcome have been recognised since they were debated in 1966 in

the Commonwealth Conciliation and Arbitration Commission (as the Tribunal was then called) in the General Motors-Holdens Case[7]. In that case, the unions with members employed by the company made claims for wage increases on behalf of the whole workforce, based on the levels of production, productivity and profits. It was put on behalf of the unions that the company had failed to share with its workers the affluence that the company enjoyed as a result of increases in productivity in its operations. The unions' argument rested essentially on the fact of "high profitability through increased productivity", which, it was said, justified the workers' claim to a share of the fruits of improved productivity.

The Commission concluded that the claims must fail. It pointed out that trends in national productivity were relevant to the fixation of national wage standards and an outcome in which the whole workforce shared was fairer than to attempt individual assessments embracing separate employers, or even separate industries. It was considered by the Bench ". . . impossible and unjust for the Commission to attempt to mix the two concepts—national and individual."

In 1970, the relevance of the capacity or profitability of an enterprise as a factor in determining wages was raised again, this time in the oil industry. The Engineering Oil Industry Case[8] concerned wage rates of metal trade workers who were employed by oil companies and it was claimed on their behalf that there should be increases awarded in rates of pay based on several factors, including the profitability or capacity of the oil companies. The Full Bench declined this submission and affirmed the decision in the General Motors-Holdens Case. In the course of the decision of the majority, the following statement appears[9]:

> "The major concept upon which the GMH Case and subsequent National Wage cases rested was that increased prosperity should be shared amongst employees generally and not be confined to employees in the more prosperous industries. This is not a new concept in arbitration in this country which is and always has been based, broadly speaking on egalitarianism."

As the Commission pointed out in the April 1991 decision, enterprise bargaining challenges this principle, which has been a major influence in national wage fixation. In the context of a discussion of this principle, the Full Bench set out at length the complications that may develop from the co-existence of the centralised system and enterprise bargaining, and called on the parties and interveners to consider the issues that would inevitably arise[10].

Apart from the matter of fairness and equity that has been held to be a feature of an orderly centralised system, there is the wider question—does the devolution of wage negotiations to the workplace mean that national wage cases are now obsolescent?

And this brings the discussion to the second matter.

The future role of national wage cases

It is being said that logic now demands the abandonment of national wage cases. Indeed, such a submission was made in the October 1991 National Wage Case proceedings, but was rejected by the Commission, which announced that

a conference would be called on 1 May 1992 to review the operation of the decision to introduce enterprise bargaining. Questions still remain: for example, if a national wage case occurs this year, and a general wage increase is the outcome, will the increase be awarded only to those workers who have not had the benefit of an enterprise bargain?

However, there is another development that must be noted. After the wages pause of 1983, as I have mentioned earlier, it seemed that almost all participants shared the view that Australia needed a centralised structured system; by 1991, that view had undergone radical change, and most of the participants were just as certain that the country had to set about devolving its wage and productivity negotiations to the workplace. A significant indication of the extent of this groundswell of opinion is found in the policy of the Confederation of Australian Industry, published under the title "A New Industrial Relations System for Australia"[11], in which CAI has put forward six broad policy objectives for industrial relations:

- Labour market flexibility;
- Productivity oriented wages policy;
- Decentralisation;
- Freedom of choice;
- Enterprise emphasis;
- Individualised approaches.

This policy statement is a comprehensive blueprint for reform; CAI noted the important attitudinal changes which had already taken place and the general understanding that greater attention should be paid to the development of improved understanding and co-operation at the level of the workplace. The policy adopted by the Confederation will be a major consideration for the future.

There is no room in this picture of the future for national wage cases of the kind that have occurred during the past decade. CAI says flatly that they "would no longer take place".

The role of national wage cases has come under scrutiny in other ways, one being the consideration given to the matter by the Constitutional Commission. The Commission expressed a forthright opinion in 1988 in its Final Report, when it found the situation created by Australia's arbitration systems "highly unsatisfactory" and recommended major constitutional change. The Commission discussed the "legitimate concerns" of the Commonwealth in matters that affect the costs and efficiency of industry and commerce and pointed out that the Federal industrial tribunal has great social and economic influence. In the context of a discussion of the "frustration of federal policy" the Constitutional Commission had this to say[12]:

> "In arbitrating national cases, (the Federal industrial tribunal) is the focus of attention of Governments, business and national and international financiers and investors. In other words, it is, at times, seen as in reality an economic legislator. The Commonwealth and the States are powerless to override and alter its decisions. The Federal Government is, therefore, in the bizarre position of being forced to argue before a body created by the Parliament that the Government's views on national economic policy should be accepted by the Commission."

For the present, although much has been said of the benefits that will accompany enterprise bargaining, it will take time for employers and their organisations, and employees and their unions, to assess the relevance of the new principle to their particular circumstances. If it is found that the negotiation of agreements in individual enterprises becomes as popular as its proponents believe it will be, the future of national wages cases may well be in doubt, but by then there may be a much more urgent question to be faced: what may be the aggregate effect of independent enterprise by enterprise wage agreements?

The possibility of economically unsustainable wages growth

The Commission has often said that it has no vested interest in any particular system of wage fixation. If it appears that it is less than enthusiastic about enterprise bargaining, it is because of long experience of administering national wage policy and an awareness of the complexities involved. Not the least of those complexities arises from the need to ensure that wages growth does not damage the economy. Since the resumption of centralised wage fixing in 1983, there has been general agreement that the aim of reasonable wage security must be balanced against that risk. In its submission in the National Wage Case September 1983, in support of a centralised, structured system, the Federal Government made this point in these terms[13]:

> ". . . with a piecemeal approach to wage settlements it is difficult to assess the cumulative economic effects of such settlements. The case-by-case approach simply does not enable a thorough investigation of national or international economic conditions and their ramifications for the overall capacity of the economy to afford wage increases."

"Enterprise bargaining" is a more elegant title than "a piecemeal approach to wage settlements" but the concepts have much in common, and the point clearly stated by the Commonwealth in 1983 was just as relevant in 1991. During the proceedings leading to the April 1991 decision, the Full Bench asked all parties and interveners whether there was a danger that wage increases identified by employers and employees as being "best" for their enterprises may aggregate across the economy to damaging amounts; the replies seemed to indicate faith in the Commission's capacity to structure a frame of principles compliance with which would obviate the danger, but there was disagreement on the need to fix a defined limit on available wage increases; most parties and interveners did not consider this a desirable safeguard[14].

The most forceful exception to this general view came from Metal Trades Industry Association which found it difficult to understand how a scheme in which there would be no limit on wage increases could even be contemplated. Following the April 1991 decision, the Association further developed its strong views; in a pamphlet titled "A Risky Business"[15], the Association warned that

> "The insidious thing about the effects flowing from the mishandling of industrial and economic affairs is that the damage can be done before the nation realises the disastrous course it has embarked on."

The Association emphasised that wage increases were sustainable only if they were offset by genuine productivity increases; it believed that this goal could

be achieved provided that the Commission examined each enterprise agreement to ensure that the agreement would improve efficiency and enhance productivity within the enterprise. MTIA affirmed the view it had put in the April national wage hearing—that the absence of a limit or ceiling on outcomes of negotiations at individual enterprises may result in aggregate real wage growth beyond the capacity of the economy.

It was expected that once the Commission gave its approval to enterprise bargaining, employers and unions would move quickly to seek the advantages which were said to be available under the new addition to the national wage fixing principles. This has not happened on the scale that was anticipated. Making allowance for the falling-off in decision-making that occurs in Australia as Christmas approaches, and for the R and R approach to January that many industries adopt, comparatively few agreements have been brought to the Commission.

It is too early to conclude that employers and unions have less enthusiasm for the concept than their peak councils, the employer organisations and the Australian Council of Trade Unions; it may be that in most establishments, neither management nor the unions have had to consider the responsibilities involved in negotiating about workplace conditions, productivity enhancement, restrictive practices and the wide range of other subjects that should make up the agenda. Many of the people who must carry these responsibilities have been required for all their working lives to abide by prescriptive awards, which provide the answers to most questions and have relieved management and workforce of the need to consider the possibilities of change at their particular workplace. And, of course, agreement does not happen over a week or two of light discussion. It is not unusual to find that agreements from which substantial change has emerged, accompanied by genuine productivity enhancement programmes, have been six to nine months in the making.

It will be some time before the volume of agreements reaches a level which will permit assessment of its significance, but the problem underlined by the Federal government in the September 1983 National Wage Case exists now—with a piecemeal approach to wage settlements it is difficult to assess cumulative economic effects. In the meantime, those employers and unions who share a genuine desire to pursue the objectives of workplace reform are required to conform with the terms of the new Enterprise Bargaining Principle.

The rules and the objective

Four general guidelines should be borne in mind:

- The Commission will not approve agreements which lack substance.
- The Commission will not arbitrate upon matters which are the subject of negotiation.
- No ceiling for wage increases has been fixed.
- Unions are no longer required to give a commitment to refrain from further claims.

As to the first-mentioned matter, the conditions which the Commission requires to be fulfilled as a prerequisite to giving its approval to enterprise bargains

make very plain the Commission's interest in ensuring that mere cosmetic change does not masquerade as substance. This is not a new standard, but has been a consistent feature of the wages policy which has been in place since the National Wage Case March 1987. In the decision at that time, the Full Bench stressed that changes must be genuine, be designed to improve efficiency and enhance productivity and generally be consistent with the needs and requirements of the industry or enterprise concerned[16]. This theme has been continued in the development of the policy in the National Wage Cases since that time: the Commission will guard against contrived agreements which would circumvent the national wage fixing principles and their aims.

In relation to the second matter, since October 1991 a further general rule applies: the Commission decided that the nature of the Enterprise Bargaining Principle meant that arbitration had no role to play in the parties' negotiations, although the Commission would be available for conciliation.

Employers and their workers are required to negotiate in these circumstances to high standards of integrity, and in the knowledge that they must call upon their own resources in resolving the problems that lie in the path to agreement. Employers have their associations and employees have their unions, and both may invoke the aid of the Industrial Relations Commission to bring conciliation into their discussions, but the two basic policy conditions are clear—outcomes must be genuine, and primary responsibility rests with the parties.

All of this effort is directed to enhancing productivity, increasing efficiency and reducing costs, the objectives which have been the feature of national wage policy since 1987. When the Commission decided in March of that year to introduce a principle linking wage movements to productivity, an important factor was the parties' own policy: on 24 September 1986, the ACTU, the Confederation of Australian Industry and the Business Council of Australia in a joint statement identified Australia's economic problems and went on to say[17]:

> "The parties also acknowledge that to achieve the necessary adjustments to take advantage of the situation requires the co-operation of the workforce and management. The question is not the need for change, but the process by which we achieve that change. The objective is to achieve change through co-operation and consultation, not confrontation, and to increase the prospect of meaningful and satisfying work and the fuller realisation of human potential."

The ACTU's own views in that case were put without equivocation; according to the ACTU, it was essential

> ". . . that wage fixing arrangements recognise and accommodate industry efforts to improve productivity and efficiency at the enterprise or industry level in order to improve our productive base and our competitive performance"[18].

The process that began with the decision of March 1987 was continued and developed in later cases, and the national wage decisions of April and October 1991 are further steps on the same path. Where once participants in the great national debates were concerned with questions relating to whether or not wages should be adjusted for prices, the centre of attention now is the matter of mechanisms in which enhancement of productivity, increased efficiency and cost reduction are linked to wage movements.

It is a matter for employers and their workforces to decide the many questions that arise when productivity is discussed, but perhaps it should not be thought of simply as an economic concept. In essence, a truly productive culture will develop from accepting that productivity is a state of mind. More than thirty years ago this concept was put by the European Productivity Agency, which stated:

> "Productivity is, above all, an attitude of mind. It seeks to continually improve what already exists. It is based on a conviction that one can do things better today than yesterday, and better tomorrow than today. Further, it requires never-ending efforts to adapt economic activities to changing conditions and apply new theories and methods. It is a firm belief in the progress of human beings"[19].

Finally, what of the longer term?

During the proceedings leading to the decision in the National Wage Case October 1991, the ACTU stated that "during the present financial year" it would seek a general wage increase for all workers; the purpose would be "to achieve at least real wage maintenance by National Wage Case decision"[20]. If such an application is made, the Commission will, of course consider it, and the proceedings would then become the forum for examination of the matters discussed earlier—the conflict concerning the distribution of productivity gains, the role of national wage cases and the possibility of economically unsustainable wages growth. And, inevitably, the Government's and the ACTU's reaction to the April 1991 decision will be to the fore in the thinking of many participants.

Wide publicity has been given to the criticism which followed the decision of April 1991. In fact, the bitterness of the criticism, including attacks of a personal nature on members of the Industrial Relations Commission, was unprecedented.

Reasoned and constructive criticism of the system and its constitutional source is one thing; this is the nature of the view expressed by the Constitutional Commission, to which reference has been made. It is quite another matter for the Government of the Commonwealth to repudiate the decision of the tribunal after its submissions had failed to attract approval. Those submissions had been made in support of the claims by the ACTU.

The Commission's rejection of the Accord should not have come as a surprise; in the decision in the National Wage Case June 1986, the Commission commented on the ACTU/Commonwealth Agreement then in force and which had figured prominently in the proceedings. The Full Bench at that time pointed out[21] that while the Agreement expressed the parties' attitude to wage fixation and the Commonwealth's approach to economic policy, it had limited significance as an "agreement" because the employers were not part of it. The Full Bench in the decision in the April 1991 National Wage Case found this comment of direct relevance to the issues to be determined.

The Commonwealth statute under which the Industrial Relations Commission operates obliges the Commission, in the performance of its functions, to take into account the public interest. In so doing, the Commission must have regard to the objects of the Industrial Relations Act and the state of the national economy: s.90. It has not been suggested by any of its critics that the Commission failed

to discharge its statutory duty, but it is not possible to ignore the significance of the events that followed the decision of April 1991.

On one view, bluntly put by the Confederation of Australian Industry in the August 1991 statement of policy, what followed the decision constitutes "a turning point". The CAI believes that:

> ". . . the refusal by the Federal Government (as well as the trade unions) to accept this decision makes inevitable a reconsideration of the fundamental premises of the Australian approach.
>
> It is obvious that no system of industrial relations can survive without a substantial degree of support from the participants"[22].

Reference has been made earlier to the substantial change that has occurred in the industrial relations policy of the Confederation. To describe it as "change" does not do it justice; the General Council of the CAI adopted a policy which followed a total re-appraisal of industrial relations in Australia. Among the several fundamental premises of the policy is the objective of directing the focus of industrial relations to the individual enterprise. This involves a corresponding reduction in the role of the industrial tribunals. In discussing the limited responsibilities which the CAI believes should now be assigned to the tribunals, the Policy states:

> "In particular there should be far less emphasis on centralised and arbitrated approaches and more emphasis on decentralised and agreed approaches."

and

> "In future the element of compulsion should be largely removed from the system. With few exceptions, parties to disputes should not be required to notify them, should not be required to engage in formal conciliation, and should not be required to submit to arbitration"[23].

The other prominent employer body, the Business Council of Australia, also has published firm views on the future development of industrial relationships in Australia. In a series of Reports[24], the Council has surveyed the past and present conditions which have contributed to the development and maintenance of Australia's systems of compulsory conciliation and arbitration. The Council believes that now that this country is on course towards an outward looking, international economy the compulsory arbitration systems will increasingly come under pressure; the Council argues that the trend to enterprise based relationships will be accompanied by reduction in the level of state intervention.

The intention to reduce the role of the Federal industrial tribunal is also part of the Industrial Relations Policy of the Liberal and National Parties. Clause 2—Voluntary Agreements of the Policy is a detailed exposition of a proposal for the encouragement of enterprise-level agreements as an alternative to the award system. In paragraph 2.13, it is stated that regulations will be made under the Industrial Relations Act which will set out private dispute settling procedures and further:

> "Parties may have access to the services of members of the [Industrial Relations] Commission on a fee for service basis as part of their dispute settling procedures."

This Policy also provides in paragraph 2.19 that the Federal Commission will not have jurisdiction over industrial matters covered by a voluntary agreement.

It is apparent that it is intended that employers and employees are to be encouraged to regard the industrial tribunal as only one of the institutions to which they should turn for assistance in resolving industrial disputes. This approach conforms with the overall intention of the Policy—the establishment of a more flexible, less centralised system with the focus at enterprise level. This purpose may be seen again in Chapter 5—Limits on Industrial Action, where the Policy states support for grievance procedures in voluntary agreements. It is usual for procedures of this nature to contain provisions for reference to a third party for conciliation or arbitration, and it is to be expected that references to persons other than tribunal members will be encouraged.

Finally, it is not suggested that there will be a reduction in the number of industrial disputes should these policies become effective at some time in the future. There will continue to be a need for third party reference to deal with the great number of disputes that occur each year. In the twelve months to 30 June 1991, 3,685 industrial disputes were notified to Registries of the Australian Industrial Relations Commission and this is approximately the same number as were notified in the previous year.

Clearly, if access to the Commission is to be curtailed or discouraged, there will continue to be a need for conciliators and arbitrators.

REFERENCES

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[4] (1986) 301 CAR 611
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[7] (1966) 115 CAR 931
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[9] (1970) 134 CAR 159 at 166
[10] Print J7400; page 40
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[21] (1986) 301 CAR 611 at 613
[22] "A New Industrial Relations System for Australia" p 13
[23] Ibid
[24] "Enterprise Based Bargaining Units" and "Avoiding Industrial Action"