# The 1991 National Wage Case: An Industrial Relations Perspective

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## Abstract

*The recent National Wage Decision has the capacity to continue the structural efficiency thrust of recent National Wage Cases. It also has the potential to mark a major discontinuity in wage determination. The paper examines the major post-war discontinuities, the substance of the Accord Mark VI, the National Wage submissions, and the Commission's attempts to harmonise macro-economic outcomes with enterprise bargaining.*

## 1. Introduction

The National Wage decision promulgated on April 16 1991 has the capacity to continue the incremental devolution of National Wage decisions to the workplace. This devolution was initiated by the two-tiered decision of March 1989 and further developed by the Structural Efficiency decisions of August 1988 and 1989. The decision also has the capacity to usher in a major discontinuity in National Wage regulation. The capacity for discontinuity arises not so much from the decision itself, which was significant in its rejection (or at least postponing) of major elements of Accord VI as from Commonwealth and ACTU reaction. Action by these prominent parties will determine whether the managed decentralism will continue to provide for an orderly devolution to enterprise bargaining or whether a more sectional and less predictable approach will ensue. The

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latter will necessarily reduce the Commission's role and consign it to tendering to the less protected sections of the workforce. Such a discontinuity would add to others which have formed a part of the mosaic of National Wage determination since the abandonment of automatic quarterly-cost-of-living adjustments in 1953. These major discontinuities are outlined in the next section of this paper. Subsequent sections outline the Accord Mark VI and the National Wage Case respectively.

## 2. National Wage Discontinuities

For the last 30 years National Wage determination in Australia has been marked by major discontinuities. The discontinuities reflect a number of factors: the changing economic environment within which National Wage determination has been undertaken; political discontinuities and changes; the loss of authority and mystique on the part of the federal tribunal in the mid-1960s; the greater consolidation of union power within the ACTU which over the period has subsumed the two other peak union bodies; changes in protection and other regulatory policies; and the rise of a new generation of union leaders imbued with a Keynesian full-employment rather than depression-prone mentality.

In brief, the major contours of National Wage discontinuities can be summarised thus. In 1953, after more than thirty years of basic wage automatic quarterly cost-of-living adjustments, that system was abandoned. This change was in response to the Korean war which resulted in an inflation of Australian wool prices and, as a consequence, general prices.

The tribunal removed cost-of-living-adjustments on the grounds that they did not accurately measure the economy's capacity to pay wage increase. A system of wage reviews based upon seven economic indicators - employment, investment, production and productivity, overseas trade, overseas balance of payments, the competitive position of the secondary industry and retail trade indicators - was supposed to afford a better assessment of capacity to pay.

In 1956 the Commission moved to annual reviews of the basic wage based upon these indicators but in 1961 accepted the 'prices plus productivity' formula. The latter, a disguised form of indexation, reduced industrial unrest about a wages system which unions argued continued to be determined on a needs basis. The productivity element was, in essence, a surrogate for capacity to pay. Also in 1961 the Consume Price Index was accepted by the Commission as the appropriate index for national wage determination. Subject to minor adjustments (in particular its encompass-

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ing of all State and Territory capital cities) it has remained as the longest serving price index used for wage determination in Australia.

The next major discontinuity was in 1967 when the Commission accepted employer arguments, made since 1960, for the abandonment of the bifurcated wages system consisting of the basic wage and secondary wages. The Total Wage was introduced. The Minimum Wage replaced the basic wage but was not a foundation wage. Thus, upward adjustments of the Minimum Wage do not result in all employees receiving wage increases. Rather, only those not receiving the Minimum Wage level would receive further remuneration.

Following the Total Wage decision the Commission was embroiled in two major disputes - the Metal Trades Work Value Case of 1967-8 and the O'Shea Dispute of 1969. The cumulative effect of these disputes was to reduce the Commission's authority. Whatever capacity the Commission may have had to order wage settlements prior to 1967, after 1969 that was no longer the case. Wages policy since that time has relied, not the Commission's capacity to coerce, but rather by its ability to entice.

Following its loss of authority the Commission suffered something of an identity crisis. Its National Wage decisions between 1968 and 1975 prevaricated between trying to entice unions back to the National Wage fold by generous wage increases, and threatening to withhold National Wage increases because of unions' success in the field. The wage-cost inflation and industrial mayhem of the early 1970s led to ACTU and Labor Government requests for the introduction of wage indexation. In 1974 the Commission refused to do so on the grounds that these parties had not demonstrated why indexation would not simply add another floor from which unions would seek further wage increases. In 1975 the government included a range of 'supporting mechanisms' in its submission and the ACTU accepted the notion of 'substantial compliance'.

Indexation was tentatively introduced on a trial basis in 1975 and confirmed in the following year. By 1979 the Commission was questioning the viability of the system. In the absence of any agreement on a better approach the system limped on until July 1981 when the Commission finally abandoned it in favour of a case-by-case approach to claims. In practice this led to an ACTU-imposed centralised system in which the Metal Industry Agreement of December 1981 became a community standard. Though the ACTU got short shrift from the Commission in having the Agreement declared a standard in the National Wage case of May 1982, the evidence suggests that the Agreement did flow throughout the economy with a high degree of uniformity.

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Faced with the possibility of a second metal industry round in December 1982 the Fraser Government sought to introduce a wages freeze. It imposed a 12-month wage freeze on its own employees and was successful in enticing state governments to impose a freeze on their own employees' pay. At the National Wage case of December 1982 the Commission introduced a six month 'wages pause' for the private sector. This 'pause' was to be reviewed in June 1983.

By the time of the June review Labor had won office. Its Accord with the ACTU committed it to a system of full wage indexation. It was successful in having the Commission re-introduce indexation in September 1983. The two marked variations to the earlier versions of indexation were the requirement for individual unions to give a commitment not to seek wage increases outside the indexation guidelines and the stronger presumption that full indexation would be the order of the day.

The deteriorating balance of payments and the overseas component of price increases increasingly made indexation an unviable approach. Different versions of the Accord sought to accommodate the needs of the ACTU with the economic imperatives resulting from deregulation of the financial markets (including greater capacity for Australians to invest abroad), the floating of exchange rates and concomitant drastic devaluation of the Australian dollar, and the reduction in tariff protection. The latter increased the vulnerability of domestic manufacturing to imports.

The institutional approach to the new order was to seek a system of 'managed decentralism' or 'administered decentralism'. The March 1987 National Wage case introduced the two-tiered wages system. This marked a watershed in centralised wage determination in a number of ways. Firstly, through its attempts to induce greater productivity and labour flexibility, National Wage determination became as concerned with income generation as with its historical role of income distribution. Secondly, unions were required to transform their traditional supplicant role into one of active involvement in the income generating process. Thirdly, National Wage cases were gradually transformed from mechanisms for the dispensing of uniform and untied wage increases into mechanisms for establishing wage ceilings which had to be 'earned' at the industry or enterprise level.

The Structural and Efficiency Principle adopted in August 1988 continued the thrust of the 1987 case and directed greater attention to the modernisation and reformulation of awards as vehicles for greater efficiency and productivity. The latter involved some devolution of award implementation to the enterprise level.

At the 1991 National Wage case the Accord partners sought the further devolution to enterprise bargaining. Their approach included a major

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change from previous wage guidelines: the abandonment of the no further claims provisions. The Commission chose to continue the structural efficiency thrust to its logical conclusion. A ceiling (to a maximum of 2.5 per cent) was placed on wage increases. Unlike previous decisions none of the permitted increase was to result from generalised untied wage rises. Rather, all of the increases were to result from structural efficiency adjustments.

National Wage determination is thus at a cross roads. If the Commission is successful in having its new wage guidelines adopted the orderly transition to a more devolved and managed system of enterprise/industry bargaining will ensue. If, however, the Commonwealth and ACTU continue their campaign to impose their own blueprint a less orderly and more unpredictable approach will develop.

## 3. The Accord Mark VI

The Accord Mark VI was negotiated between the ACTU and the Labor Government on 21 February 1990, the month before the elections of that year. It was modified in 20 November 1990 as the result of the CPI increase for the September Quarter 1990 being only 0.7 per cent. The major provisions of Accord VI are:

(a) a wage increase of 1.5 per cent during the December 1990 quarter followed by a flat $12 a week increase six months later. The 1.5 per cent increase was abandoned in favour of increased tax cuts to offset the 0.7 per cent CPI increase for the September Quarter;

(b) a tax cut from January 1991 resulting in a saving of $7.50 per week (subsequently increased by $2.95 per week) for those on average weekly earnings;

(c) provision for agreements at the enterprise level for overaward payments based on improvements in productivity and profitability;

(d) a target rate of growth in earnings of 7 per cent (subsequently reduced to 6.25 per cent) for the 1990-91 financial year;

(e) a further three per cent increase in occupational superannuation, to be phased in between May 1991 and May 1993.

In his Economic Statement of February 1990 announcing Accord VI Treasurer Keating claimed:

> The Government and the ACTU have agreed to put jointly to the Industrial Relations Commission a proposal to provide for agreements that share future proceeds from actual improvement in productivity and profitability. In essence, this flexibility will be accommodated within guidelines set by the Industrial Relations

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> Commission and operated by unions under peak council guidance within the overall ceiling on wages growth agreed with the government. ... As before, this agreement is conditional on both its endorsement by the ACTU's member unions and the final development of a wage system by the Industrial Relations Commission.

The intent that the proposed system operate within guidelines established by the Commission has been blurred by time. This may not be surprising since the Accord VI turned its back on recent National Wage developments in a number of ways. In the first place, the 1.5 wage increase for the December quarter was based upon the expected rate of inflation for that quarter. The attempt to revitalise indexation contrasts with public policy since 1987. This claim was abandoned as the result of an inflation rate of less than one per cent for the relevant quarter.

Secondly, the flat wage increase of $12 per week, on the grounds of helping lower income earners, was counter to ACTU claims in recent national wage cases of the need to establish 'consistent and coherent award structures', to ensure 'stable relationships between awards' and 'to ensure that classification rates and supplementary payments in an award bear a proper relationship to classification rates and supplementary payments in other... awards' (ACAC, 1988, p. 7). Flat rate increases, and the accompanying depression of relativities, flies in the face of attempts to ensure the establishment of appropriate relativities within and between awards. There are other avenues for helping lower income earners (for example through Minimum Wage adjustments and the taxation system) which do not have the side effect of distorting relativities.

Thirdly, the provision for enterprise-based overaward payments is a radical departure from the no further claims commitments required since 1983.

Fourthly, the agreement, as announced by Keating, suggests that the ACTU (in concert with the government) rather than the Commission should determine the overall wages ceiling. Further the ACTU, and not the Commission, should have responsibility for ensuring that wages growth is kept within that ceiling.

Not surprisingly the ACTU had misgivings about the Commission adopting new wage principles based upon Accord VI. The August 1989 National Wage decision provided for a review of the wage guidelines to commence, on application, in September 1990. Rather than use this route for the adoption of wage principles based on Accord VI as had happened in the case of earlier Accords, the ACTU sought to impose Accord VI on employers by direct action and then and present the Commission with a *fait accompli.*

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In August 1990 the ACTU Executive adopted a resolution endorsing negotiations designed to achieve the implementation of Accord VI. The resolution, *inter alia*, endorsed claims by metal unions and others 'for negotiations with employers designed to achieve implementation of the ACTU/Government agreement including wage increases based on profitability productivity/market adjustments' (AIRC 1991a, p. 4).

In the same month claims were served on employers in the maritime, steel, transport, printing, airlines, timber, textile, clothing and footwear, vehicle building, meat and other industries. The demands were made in terms of the Accord VI. This tactic was described by the Treasurer as the ACTU taking 'carcasses with them' to the Commission (*Adelaide Advertiser* 28/8/90).

According to the Australian Chamber of Manufactures (ACM) 'this union campaign was set in train in parallel with a series of public statements by the ACTU leadership which indicated that the ACTU intended to put Accord Mark VI in place in the field by by-passing, at least for the time being, the jurisdiction of the Commission' (ACM 1990, p. 21) It added: 'The current situation in which the ACTU has launched a campaign to effectively gain in the field the substance of its accord with the government is clearly, in our opinion, an attempt to impose an agreement to which neither the employers nor the Commission is a party' (ibid, p. 23).

The Confederation of Australian Industry (CAI) noted that if successful 'this campaign will tend to pre-empt the Commission's decision and undermine its role'. (CAI 1990, p. 17).

The ACTU's strategy of not seeking a review of the National Wage guidelines was made less effective by the CAI and ACM successfully seeking a re-listing of the case in September 1990. At this case Mr Giudice made the CAI's position clear:

> We wish to make the purpose of our request quite clear so there can be no misunderstanding. The position now adopted by the ACTU . . . raises fundamental questions about the future of the wage-fixing system. In particular, its public position is inconsistent with the continuation of a wage-fixing system in which wage increases are dependent upon increased productivity and efficiency. Whilst we believe that the existing principles should be modified to increase the scope for direct negotiations at the enterprise level, this should not be achieved regardless of cost nor on terms dictated by the ACTU. Whether the ACTU's position and conduct are compatible with the continuation of a sensible and orderly system is now a critical threshold issue. The review of the principles as a whole should not commence until all parties have confidence that a system of the kind

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> which has operated in recent years is still sustainable. In particular provision for generally applicable increases cannot be contemplated whilst the ACTU regards itself and its affiliates as unconstrained by the no-extra-claims commitment. (AIRC 1990, pp. 3-4)

Secretary Kelty presented the ACTU's case, the substance of which was that 'notwithstanding the ACTU/Government agreement which has been in existence since February employers generally continue to oppose any agreement with unions to give effect to that understanding' (ibid, p. 39). Not everyone found this a particularly helpful approach. Other Accords had not been given effect until ratified through National Wage proceedings. Accord VI required such ratification.

In the outcome, the September hearing led to the issuing of a joint statement indicating areas of agreement and disagreement regarding National Wage fixing principles. Two areas of agreement of import to this paper concerned National Wage cases and enterprise flexiblity/award modernisation. On the former the Agreement noted:

> On application but not more frequently than annually, the Commission will consider whether wage increases should be made generally available where award conditions are in the process of change to increase productivity and efficiency. All options should be open to the Commission and there should be no presumption that it will adopt any particular option. (AIRC, 1991, p. 79)

The agreement provides for each award to contain an enterprise/award modernisation clause 'so that agreed variations in award conditions, working practices or arrangements may be implemented'. It also provides for the insertion of flexiblity/award modernisation clauses. The focus of enterpise/workplace negotiations should 'be on the implementation of the structural efficiency principle at the enterprise level' Further,

> The Commission should establish a framework of general guidelines for enterprise/workplace negotiations. Where practicable precise guidelines for each industry, sector, or enterprise may be negotiated between the parties, but should be consistent with the general guidelines. (ibid, p. 8)

The ACTU subsequently moved away from its support for award modernisation clauses.

Five areas of disagreement were recorded. These included whether profitability should be used as a criteria for enterprise claims; whether supplementary payments should vary on the basis of geographical location, industry or individual employer; whether criteria should provide for the consistency of treatment of all employees within an enterprise; whether

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enterprise agreements could 'detract from national standards'; and 'the means by which and manner in which trade union and award coverage and structures can and should be rationalised'. (ibid, p. 81)

Following the proceedings, the Commission issued a statement which said that though the wage fixing principles did not prohibit 'unions from serving claims on employers designed to raise issues about a changed or new system of wage fixation' care should be exercised so as not to raise false expectations. It reminded the parties that the principles (including the obligation to avoid industrial action) continued in operation until reviewed upon application; and of the necessity for the Commission to approve any agreements reached. It added: 'Approval cannot be assumed - any such agreements will be tested against the principles laid down by the National Wage Case decision of August 1989 or whatever principles replace them after a Review' (AIRC 1991a, p. 3).

The agreement, which two organisations (the Australian Wool Selling Brokers Employers' Federation of Australia and the Metal Trades Industry Association (MTIA)) refused to be parties to, may have given the ACTU grounds for hoping that any new principles would accommodate Accord VI. Alternatively, the marked lack of success in the field (some 32 agreements, half of which required ratification by the Commission) and the reluctance of employers to negotiate in the absence of firm guidelines, may have convinced the ACTU for the need of a change in tactics. Whatever the reason, in November it filed formal applications for a review of the wage fixing principles. Its claims were based on Accord VI.

## 4. The National Wage Case and Review of the Principles

On December 3, 1990 the Commission commenced Review proceedings. In a break with tradition it decided that the parties and interveners should put their submissions in writing. It directed that attention be given to seven matters. In summary form these were:

1. The state of the economy and the likely ramifications of Accord VI.
2. The degree to which the structural efficiency principle had been implemented.
3. The implications of adopting Accord VI for the continued implementation of a number of elements arising out of the August 1989 decision, in particular the establishment of relativities across awards; the operation and adjustment of paid rates awards; the overaward approach to minimum rates awards; and the continuation of the special case principle.

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4. The compatibility of the Accord VI approach with the Metal industry agreement (see below).
5. The extent of compliance with superannuation provisions.
6. The impact on wages drift of executive salaries.
7. Comparisons of recent increases in executive salaries with award increases.

Following the receipt of written submissions parties were given the opportunity to give oral outlines of them. The Commission then sent out a number of questions on which it sought further information. Sixty seven questions were directed to all parties and interveners and a further 102 to specific parties or interveners. Final addresses were given on February 21, 1991.

It is not intended to elaborate on each of the seven areas which are clearly interrelated. Attention is directed at the three major ACTU claims. The first of these was for a $12 per week wage increase, or roughly 2.0 per cent for a person on average weekly earnings. The second was for an increase in employers' contribution to occupational superannuation. The third claim revolved around provision for enterprise-based productivity/profitability bargaining.

## 4.1 The Wage Claim

Clearly the Commission's attention to the state of the economy had the ACTU back-peddling. Union applicants always have the distinct disadvantage that any wage increase, at any time, can be seen to aggravate either inflation, unemployment or both. The National Wage system has come to make allowances for employers' pessimism and 'their litany of complaints'. This case, however, was held during a period of recession, the greatest since the Great Depression. This gave greater authority to employers' claims that wage increases would have an adverse influence on the economy. The ACTU argued for a longer term perspective which took account of the loss in real wages already sustained by workers. It also argued that it would be difficult to obtain employee commitment to any further restructuring without some incentive. A number of employer organisations shared this view. The Commission's decision to award 2.5 per cent wage increases based on productivity enhancing structural efficiency adjustments represented a reasonable compromise between the competing claims.

## 4.2 The Superannuation Claim

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As noted the ACTU, supported by the Commonwealth sought a three per cent increase phased in between July 1991 and May 1993. The Commonwealth claimed that 'occupational superannuation is a key element in the Government's retirement income policy ... The key to providing better income for the growing number of old people in the future is to increase savings now. Improved access to superannuation is the best way of achieving this'.

The claim found little support from employers. The CAI claimed that 'given the developments and uncertainties within the Australian and international economies, this is not an appropriate time for the Commission to award further increases in this area'. It further claimed that the superannuation decisions of the 1980s had done little to remove the inequities in occupational superannuation which had previously existed.

Criticism can be directed at the ACTU's approach to superannuation. There are sections of the workforce which do have adequate provisions for occupational superannuation. The ACTU and Commonwealth submissions regarding the need for better retirement incomes have little bearing for these employees. The ACTU's efforts may be better directed at ensuring minimum superannuation provisions for those who do not meet the declared minimum standards, rather than seeking generalised increases for all employees. This would be less costly to employers and more attuned to the ACTU's declared policy of protecting lower income earners who are most disadvantaged by existing arrangements.

The Commission decided to adjourn the union claims, to be resumed on the application of any party. It requested that the Commonwealth convene a national conference on superannuation. It expects that such a conference 'will review and clarify a number of vital issues about superannuation' including non-compliance, the desirability or otherwise of award based superannuation for employees already covered by non-award schemes, the extension of award based superannuation to the state jurisdictions, flexibility in improving award based superannuation, the application of superannuation to casual, part-time and short-term employees, and 'the role of the Commission in the long-term agenda for ensuring appropriate retirement incomes' (AIRC 1991, p. 61-62).

### *4.3 Structural Efficiency and Enterprise Bargaining*

The Structural Efficiency Principle was prescribed in the August 1988 National Wage case. Its purpose was 'to facilitate the type of fundamental review essential to ensure that existing award structures are relevant to modern competitive requirements of industry and are in the best interests of both management and workers' (ACAC 1988, p. 6).

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The results of this principle were reviewed in the first quarter of 1989 over which time the Commission came to adopt, implicitly, the ACTU 'blueprint' approach for award restructuring. This involved raising the minimum rate in minimum rates awards, establishing broadbanded skill levels across industry, and providing for upward mobility through linking skill levels with training. The Principle was again reviewed at the August 1989 National Wage case. At this case it was decided to further review the progress of structural efficiency and minimum rates adjustments in May 1990.

Conferences chaired by the Commission President in May 1990 resulted in a joint agreement which stated, *inter alia*, that

* the parties supported the structural efficiency process and considered it should be continued beyond the projected life of the system of which it was a key element;
* emphasis had been placed on classification restructuring, training and associated issues; other areas had been addressed but with less emphasis;
* actual productivity improvement had been limited, although potential for such improvement existed;
* structural efficiency exercises had focused at the award level but the ultimate effects would have to be assessed at the workplace level; and
* the agenda for change should be broad; and the process of change should be accelerated, particularly at enterprise level (AIRC 1991, p. 21).

After surveying the material before it the Commission concluded:

> It is clear . . . that the results of restructuring to date have been uneven. In some areas substantial progress has been made, at least in terms of the framework at award level. In these areas, the stage is set for implementation of award changes at enterprise level. At the other end of the scale, there are areas where little progress has been made either in providing the appropriate framework at award level or in otherwise implementing the structural efficiency principle. In the case of the former, the efficacy of award variations have, generally, still to be tested properly at workplace level. In the case of the latter, more substantial change seems necessary at the award level before a concentrated effort can be made at the workplace level. (ibid, p. 22)

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The interconnection between structural efficiency and enterprise bargaining is that the former may be considered as a first step and a conduit to the latter. Most of the submissions to the National Wage case supported the continuation of the structural efficiency process, but with a focus on the workplace rather than the award level. This approach was not in keeping with the ACTU view. It claimed that fundamental award reform had been completed to the degree that an enterprise focus was now warranted. This was not a shared view. Employers found themselves in disagreement, not only with the ACTU formula, but also with other employer groups. Four major areas of differences were the role of productivity and profitability for enterprise bargaining; the role of the Commission in monitoring enterprise bargaining outcomes; the role of overaward payments in enterprise bargaining; and the imposition of a ceiling on enterprise-based negotiations.

The ACTU's submission did not fully articulate guidelines which would govern enterprise bargaining. It proposed that wage increases would be available for 'achieved increases in productivity and profitability'. It claimed that there should be no prescribed ceiling on enterprise wage increases. Further, it claimed the Commission should exercise only a conciliatory role and should leave the parties to exercise compliance with any guidelines. It claimed that if its submission was granted in its totality, then unions would enter into no extra claims commitments which would govern their conduct in enterprise agreements.

With minor modifications, the Commonwealth supported the ACTU position, as did state Labor governments. In the case of the Queensland and Tasmanian submissions, however, the need was seen to provide a ceiling to enterprise increases.

The CAI's position was somewhat puzzling. It was not opposed to enterprise bargaining, and did not recommend that any ceiling be placed on such bargaining. It considered that the outcomes of enterprise bargaining might result in paid rates awards, section 115 agreements or 'take the form of overaward payments'. It hoped, however, that 'overaward arrangements would be relatively minor'. It sought 'greater emphasis on self regulation' to ensure that enterprise bargaining did not lead to wage outcomes inconsistent with established parameters. It might be noted that since section 115 agreements and paid rates awards necessarily require Commission consent, the CAI's approach implies a greater role for overaward payments than suggested by its submission. This is an area in which it found itself at odds with the MTIA.

As with the CAI, the ACM was opposed to the use of profitability as a criterion for enterprise bargaining. It favoured the 'managed decentralisation of the industrial relations process towards the industry and the enter-

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prise level with acceptance that wage increases at those levels could, and will over time, replace general wage increases'. It considered overaward bargaining as undesirable but also unpreventable. It considered that the Commission should assess the majority of outcomes and should arbitrate on enterprise claims when necessary. It proposed a system of 'enterprise supplementary payments' as the major vehicle for incorporating enterprise agreements. Such an approach, it considered, would minimise flow-on problems. It considered that there ought not be any ceiling placed on enterprise bargaining, as this would inhibit the potential to achieve change. It also considered that the imposition of a ceiling would create unrealistic expectations on the part of employees.

The Business Council of Australia, while voicing concern that the appropriate institutional infrastructure was not appropriate for the immediate transition to enterprise bargaining, also noted that the most appropriate mechanism was 'a certified agreement which covers an individual workplace to the exclusion of any other award or agreement'. Its variants to this approach did not support overaward bargaining. Nor did it support the imposition of a ceiling, though in its schema all agreement would come before the Commission for monitoring.

Most other submissions - the Australian Road Transport Industrial Organisation, the National Farmers' Federation, the Australian Bankers' Association, and the Australian Chamber of Commerce - provided variations on the above themes. Two notable exceptions were the Australian Federation of Business and Professional Women and the Australian Wool Selling Brokers Employers' Federation of Australia. The former expressed outright opposition to enterprise bargaining on the ground that the position of working women would be worsened. The Wool Brokers considered that 'the Commission has no business attempting to prescribe criteria for bargaining and could not prevent the parties from including any criteria of their chosing nor require the parties to apply any criteria they choose to ignore'. In this organisation's view, enterprise bargaining should occur independently of the Commission.

In its influential submission the MTIA parted company with other employer organisations on most scores. It claimed that the movement to enterprise bargaining was premature since the award restructuring exercise was an incomplete one. 'We are not so naive,' it submitted, 'as to believe that the award restructuring process is complete. Nothing could be further from reality... It is imperative that the principle focus of any future wage fixing system continues to be award restructuring' (MTIA, 1990. p. 73). Having been forced to accommodate to the pressures for enterprise bargaining, it sought to do so in a way which reduced the role of overaward

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payments, which involved Commission scrutiny, and which placed ceilings upon negotiated outcomes. It proposed an 'appendix approach' to enterprise bargaining. The award would be varied to make provision for such bargaining and those enterprises which had done so would be included in a (secret) appendix to the award. At least two interveners questioned the legality of this approach.

As part of its submission the MTIA presented an affidavit from its Chief Executive, Mr Evans, which depicted the history of overaward payments in the metal industry. In the MTIA view the unregulated approach to overaward bargaining proposed by the ACTU, Labor Governments and most employer groups carried the likelihood of a repeat of the disputation, wage leap-frogging and wage anomie outlined in Mr Evans' affidavit.

## 5. Harmonising Macro and Micro Outcomes

In somewhat of an understatement the Commission noted that 'clearly there is a tension between the goal of managing wage developments for macro-economic purposes and the aspiration to devolve wage determination to a lower level'. The four areas of disagreement noted in the preceding section touch on this tension. Enterprise bargaining which does not involve Commission scrutiny, which is in the form of unlimited award payments, and which does not require the imposition of ceilings, has the potential to result in undesirable aggregate wage outcomes. Conversely, Commission scrutiny and the imposition of ceilings have the capacity to reduce the degree of flexibility and inducements to change. Further, the imposition of a ceiling has a general standard attribute which may lead to flow-ons. Paradoxically, the need to prevent (overaward) flow-ons has been the major rationale of such ceilings.

The ACTU's approach to these issues complemented its 'total package' approach. In saw itself, rather than the Commission, as having the capacity to determine and monitor what the aggregate wage outcomes ought be. It noted that 'the trade union movement has given a commitment to a 6.25% aggregate wages outcome for 1990-91, has met similar commitments in the past notwithstanding the doubts of employers, and clearly understands the implications for the trade union movement generally of meeting its responsibility'. Not included in this account is that in previous cases the Commission did require a no further claims commitment and did impose ceilings on wage increases. These assisted the union movement in meeting its responsibilities. The ACTU submitted that the commitment principle 'should be modified to vary the no extra claims commitment in a manner which accommodates greater flexibility at the enterprise level' (ACTU 1990, p. 171). It further claimed that the 'trade union movement is not prepared to

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given an open ended commitment or leave itself in a position where the commitment can be extended in an open ended manner without the implicit agreement of those who are required to give the commitment' (ibid).

The Commonwealth's position was not too different to that of its Accord partner:

> The responsibility for ensuring that enterprise bargaining proceeds consistent with such guidelines will rest largely with the parties themselves ... Unions pursuing claims inconsistent with these guidelines would be in breach of their no extra claims commitments In addition, the ACTU shoulders a collective responsibility for ensuring that agreed aggregate wage outcomes are achieved, as with previous Accords.

With the exception of the MTIA (and possibly the BCA) employer organisations were uncertain or ambivalent as to how a system of unregulated enterprise bargaining would not lead to an adverse aggregate wages outcome The MTIA had no misgivings. It foresaw mayhem and found 'it difficult to understand how such a scheme could even be contemplated let alone endorsed by the Commission'.

The CAI did not agree with this MTIA pessimism. It noted the potential for enterprise negotiations to lead to differing outcomes between establishments. It submitted that these differing outcomes 'simply demonstrate that establishments vary in their industrial history, pattern of union and award coverage and business needs. All parties must therefore accept that wage outcome will differ and for good reasons' (CAI 1990, p. 229). Indeed, it argued that the MTIA approach was a ready-made recipe for flow-ons and a threat to the viability of enterprise bargaining:

> It becomes extremely difficult to quarantine agreements to one industry where an award crosses industry lines, as so many awards do. Increases of general application in such awards have the potential to destroy the enterprise approach ... Where an award crosses industry lines the result is that such a clause is operative in all those industries where the award applies, and many employees in those industries will work side by side with employees who have received the benefit of this clause. It necessarily becomes difficult to explain to those other employees why they should not receive similar benefits and to resist claims for flow-on. (ibid)

A crucial element, in the CAI view, was that enterprise agreements should not be incorporated in minimum rates awards - the very thing the MTIA was proposing.

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The concerns voiced in this exchange led the Commission to ask all parties and interveners a number of questions relating to flow-on control mechanisms, monitoring mechanisms and aggregate wage outcomes. Most respondents merely repeated what they had previously espoused in their submissions. The MTIA met the questions head on:

> It is completely unrealistic to expect that overaward payments arising out of enterprise agreements will not flow. . . . The Commission can only expect that if it endorses overaward payments in this case there is no possibility of controlling flow-ons and hence the aggregate wages outcome. . . . MTIA submits that we do need to retain an institutionalised mechanism for controlling the operation of comparative wage justice. (MTIA 1991)

In its final submission the MTIA attacked the CAI's response to the Commission's concern regarding enterprise bargaining monitoring procedures. While restating its submission that the parties themselves were responsible for outcomes, the CAI added that there could be monthly private conferences before the President 'at which parties were given the opportunity to put submission on developments in enterprise negations'.

'The thing to be said about CAI's proposal', the MTIA submitted, 'is that it is impractical'. It added:

> What will be the Commission's reaction if it is informed at one of the . . . meetings that overaward payment claims are getting out of control and a new wage round is being generated? Cancel the overaward payment increases that have already been conceded? Forbid any further overaward settlements? The questions only have to be asked to provide the answer. (MTIA, 1991a, p. 15)

For its part, the Commission did not endorse an enterprise bargaining approach. It noted that 'the MTIA view, in our opinion reflects current reality. The parties . . . have still to develop the maturity necessary to the further shift in emphasis now proposed'. It added:

> We doubt whether the risk of excessive wage outcomes could be made acceptably low by any principles relevant to the proposals now before us. Unless principles specified a limit or defined a relation between wage increases and achieved increases in productivity and profitability, it would be difficult to foresee the aggregate increases which would flow from them. We note that the notion of a limit is opposed by most parties and interveners. No party or intervener has suggested an rule for relating the amount of enterprise level wage increases to the achieved increased in production or profitability; nor indeed, have the problems of measurement necessary for any such

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> role been resolved. The ACTU's commitments to a 6.25 per cent outcome does not alleviate these difficulties. . . . Moreover, the risk that excessive aggregate outcomes will emerge from enterprise level agreements has to be considered as an enduring one. It is likely to be particularly significant at times of economic expansion. (AIRC 1991, p. 35)

The Commission rejected the proposals for a generalised movement to enterprise bargaining. It gave a number of reasons for doing so: fundamental disagreement between the parties about the nature of the system to be introduced; the incompleteness of the award reform process and its application at the enterprise level; the inadequate development of the environment necessary for the success of enterprise bargaining; and, as noted above, the potential for an excessive wage outcome.

It should be noted, however, that the Commission has not closed the door on enterprise bargaining. The parties may, by application, seek a further review of the guidelines in November 1991. Developments to that time will determine the extent to which the various parties can bridge their differences or whether by their activities they confirm their alleged lack of maturity.

## 6. Conclusion

The Accord Mark VI is qualitatively different to those which preceded it. A discontinuity feature is the inclusion of enterprise bargaining involving the removal of the 'no-further-claims' provisions of wage guidelines since 1983. The ACTU and supporters of enterprise bargaining had difficulty convincing the Commission that the appropriate infrastructure for such bargaining exists. The Commission chose to continue the system of 'managed decentralism'. The ACTU's attempts to overturn this decision will determine whether or not wage determination takes a new course.

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