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Executive Summary

Part 1.
Overview and Industry Trends

Part 2.
Innovations in Agreements

Part 3.
Termination and Redundancy

ADAM Services
Part 1: Key Features and Industry Trends

Wage increases and duration
The average annual wage increase contained in agreements on ADAM is 3.8 per cent. The most popular duration for agreements is twelve months, with just under half (42%) operating for this period.

Divergent trends at industry level
It is apparent that enterprise agreements are performing different roles in different parts of the economy. Not only are agreements more common in some industries but agreements are dealing with different issues according to their industry.

Mining and Construction
Overall 17% of workplaces in this industry were covered by an agreement. Distinctive features of these agreements were:
• the highest average annual wage increase (4.6%)
• more likely to deal with consultation procedures, team work and skills related issues
• rarely reduce penalty rates or other employee entitlements

Manufacturing
On average 12% of workplaces in this sector were covered by an agreement. Distinctive features of these agreements were:
• average annual wage increases were higher than the economy-wide average, especially in food, beverage and tobacco (4.4%) and metal manufacturing (4.3%)
• more likely to deal with flexibility in the way labour is used, production and skill formation
• rarely reduced penalty rates or other employee entitlements.

Public administration and utilities
Just over one in ten workplaces (10.5%) from this sector had an enterprise agreement. Distinctive features of these agreements were:
• average annual wage increases were higher for public utilities (3.9%) and lower for public administration (2.3%)
• were more likely to have provisions linking wage increases to achieved productivity gains, although they often lacked detailed provisions outlining how this was to be measured
• rarely reduced penalty rates or other employee entitlements.

Private services industries
Only around 7% of workplaces in this sector had an agreement. Distinctive features of these agreements were:
• average annual wage increase of 3.2% (below the national average) but there were differences within the sector. For example wage rises in Financial services were 4.3% while in community services
Summary

they were 2.3%
- agreements from this sector were more likely to annulise salaries and average standard hours worked over fortnightly or monthly cycles
- these agreements rarely dealt with skills formation, work organisation and consultation issues.

It apparent that while some segments of the economy are experimenting with agreements to enhance productivity through a broad agenda of changes, others are addressing a narrow range of industrial issues such as rationalising penalties and varying working time arrangements.

Part 2: Innovations: Coordinated Flexibility
Although agreements do not generally replace awards many contain novel and innovative changes to the employment relationship. Subjects that are finding their way into agreements are as diverse as severing the links between hours worked and earnings, elaborate performance indicators and work and family matters.

It appears that those involved in negotiating agreements are developing a unique approach to labour market reform that combines flexibility through agreements and coordination with awards. The emerging system of 'coordinated flexibility' may be more effective than one that primarily relies on arbitration or one that is predominantly market based.

Part 3: Termination and Redundancy
Recent changes to the Industrial Relations Act have generated considerable controversy about retrenching and dismissing employees. One of the consequences of the Act is that employers must comply with procedures and minimum standards when terminating the employment of their workers.

To date the parties have shown little interest in outlining procedures for handling terminations in registered agreements. Where the issue of redundancy has been addressed it has generally reflected established award or legislative requirements concerning consultation and notification rights, severance payments and job search entitlements. A very limited number of agreements have outlined alternatives to redundancy such as reduced hours of operation, redeployment and job sharing. Procedures concerning dismissals are even less common in agreements perhaps because these procedures are already in use in the majority of Australian workplaces.

It appears that award and legislative minima remain the major source for determining redundancy rights and obligations for workplaces with or without agreements. Moreover, the extent of disciplinary procedures already in enterprises revealed in workplace surveys indicates that future agreements may not so much develop new procedures, but rather formalise existing practices and procedures.
Part 1

Key Features and

Introduction
Enterprise bargaining continues to gain momentum in Australia. Reforms to the Federal Industrial Relations Act and developments at State level mean that enterprise agreements are one of the major vehicles for labour market reform in Australia.

By June 1994 a total of 3,201 enterprise agreements had been registered in the jurisdictions covered in this report: 2,135 Federally, 240 in Queensland and 646 under the NSW Act. This ADAM REPORT is based on a representative sample of 615 of these agreements, comprising 272 Federal, 269 NSW and 72 Queensland agreements. It is estimated that the number of employees covered by these agreements are as follows: Federal 1,092,000, NSW approximately 58,000 and Queensland approximately 55,000. Details of the number and employee coverage of agreements from other states are as follows: Victoria 230 agreements covering an unknown number of employees, Western Australia 143 agreements covering approximately 21,000 employees, South Australia 142 agreements covering an unknown number of employees and Tasmania 47 agreements covering 750 employees.1

Key Features of Registered Enterprise Agreements

Wages
The average annual wage increase contained in agreements on ADAM is 3.8 per cent. Average annual increases varied by jurisdiction: in Federal agreements it was 3.6 per cent, in NSW 3.5 per cent and in Queensland 4.5 per cent. This average wage rise figure is derived by adding initial and subsequent wage increases and averaging them over the period of the agreement.

Just over one agreement in six (16%) provide for subsequent wage increases linked to productivity improvements which may or may not be met. This is particularly evident in Federal agreements where 25 per cent of wage rises are linked to achieved productivity improvements. In contrast only 8 per cent of NSW agreements linked wage increases to achieve productivity gains.

Duration of Agreements
The most popular duration for agreements is twelve months, with 42 per cent of agreements operating for this period. Agreements run longest in NSW with just under a quarter (24%) of NSW agreements operating for over two years. Only 4 per cent of Queensland and 9 per cent of Federal agreements operate for over two years.

Divergent Industry Trends in Enterprise Agreements
Industrial relations structures, practices and outcomes vary dramatically between industries. This section examines how these differences are manifest-

1
Industry Trends

ing themselves in registered enterprise agreements.

The agreements on ADAM were divided into four industry groups which have traditionally been recognised as having similar industrial relations characteristics. These were (a) mining and construction, (b) manufacturing, (c) public utilities and administration and (d) private services, which covers wholesale and retail trade, finance and recreation and recreation, personal services and hospitality.

Considered in this way it is apparent that agreements are performing different roles in different parts of the economy. First, agreements are far more prominent in some sectors than others. For example, while around 17 per cent of construction workplaces are covered by an agreement, only 3 per cent of workplaces in recreation and personal services are so covered. What is more interesting, however, is that not only are fewer workplaces in the private services industries covered by agreements, but those few agreements that do exist primarily deal with a narrow range of traditional issues such as hours of work and wages. The experiences that different industries have had with enterprise agreements are summarised below.

Mining and Construction
These industries have well established traditions of workplace bargaining and overaword agreements that predate recent changes in industrial relations policy. It is therefore not surprising that, on average, there are more agreements per workplace in this sector of the economy than the other three industry groupings considered (ie. 17% of mining and construction workplaces are covered by an agreement as opposed to the economy wide rate of agreement coverage of 8%).

Agreements from these industries also have the highest average annual wage increases: 4.6 per cent compared to an all industry average of 3.7 per cent. While the rates of increase have been higher than average, changes in the form payments take are less likely to be part of agreements in these industries. For example, only 2 per cent of mining and construction agreements introduce annulised salaries compared to the economy-wide average of 10 per cent.

Training related issues have been a major concern in many mining and construction agreements. For example 36 per cent of agreements state that a training program is to be developed, a higher rate than the 27 per cent of agreements in other industries with similar clauses. Training in occupational health and safety is a popular training provision with 23 per cent of mining and construction agreements having such provisions, compared to 7 per cent in other industries. The mining and construction industries are also more likely to have clauses dealing with the assessment of employees skills: 21 per cent compared to 4 per cent. They are also more likely to refer to the of use TAFE as a training provider (13% compared to 3%).

Mining and construction agreements are also more likely to contain consultative provisions. For example, 30 per cent of agreements in these indus-
tries list the composition of a joint consultative committee (JCC) compared to 19 per cent in other industries. This would indicate that a fairly prescriptive approach is being taken to workplace consultation. One in six (15%) of all agreements provided for JCC members to be trained, compared to the all industry average of 6 per cent, and 21 per cent of agreements state that the JCC is to meet regularly compared to 14 per cent in other industries.

The introduction of teamwork is associated with giving more responsibility to employees and is linked with developing increased trust and employee commitment. The development of teamwork in mining and construction agreements has been relatively high with 26 per cent of them making reference to semi-autonomous work groups compared to 10 per cent of agreements in other industries.

**Manufacturing**
Manufacturing industry covers a diverse range of economic activity. On average, 12 per cent of workplaces from this industry are covered by an enterprise agreement. Generally speaking the most common provisions in these agreements concern training, the organisation of work and the flexible deployment of labour on the job.

While agreements covering manufacturing establishments display many features in common, it is also useful to consider some of the differences between three broad manufacturing groups: food, beverage and tobacco processing, metal manufacturing and other manufacturing.

Average annual wage increases in manufacturing agreements, whilst slightly below those in mining and construction, were above the all industry average of 3.8 per cent. Annual increases in pay provided for in agreements ranged from an average to 4.3 per cent in metal manufacturing and 4.4 per cent in food, beverage and tobacco, down to 4.0 per cent per annum in the remainder of manufacturing. A feature of many manufacturing agreements is the inclusion of clauses specifying that during the life of the agreement additional increases should only come from national or state wage cases. This was particularly evident in metal manufacturing where 58 per cent of agreements had such clauses, but this provision was also popular in food beverage and tobacco (38% of agreements) and other manufacturing (34%).

Increasing the flexibility with which labour is used in production has been a matter of major concern in many manufacturing agreements. The initiatives outlined in enterprise agreements on this matter cover a diverse range of issues such as increasing the range of tasks employees are expected to undertake, through to increased flexibility in the time at which meal breaks are taken. Some of the most tangible initiatives concern the removal of demarcation barriers. On average only 15 per cent of all registered agreements deal with these matters, in contrast in metal manufacturing over a third (35%) of agreements explicitly dealt with this matter while just a fifth of agreements in food (19%) and other manufacturing (18%) contained provisions eliminating demarcation barriers.
Industry Trends

An issue closely associated with the organisation of work is skill formation. It is therefore not surprising that manufacturing agreements, on average, are more likely to have more provisions on this issue than agreements from other industries. Just over a quarter of all agreements (27%) have a provision concerning the development of a training program, while 42 per cent of metal manufacturing, 35 per cent of food, beverage and tobacco and 38% of other manufacturing agreements contain such clauses. Multiskilling is also a more prevalent in manufacturing agreements. On average 20 per cent of all agreements make some provision for this, the comparable figures for manufacturing were: 37 per cent in metals, 28 per cent in other manufacturing and 23 per cent in food beverage and tobacco.

Public Administration and Utilities
Just over one in ten (10.5%) of public administration and utilities workplaces had an enterprise agreement. This industry grouping includes agreements coming from public service agencies as well as organisations involved in postal and telecommunications, and/or providing electricity, gas and water services.

There appear to be significant differences between agreements from public administration and those from other parts of the public sector. This is particularly evident when comparing average annual wage increase for the two sub-groups. Public utility employees received an average annual wage increase of 3.9 per cent which is above the all industry average. Public administration, however, only received 2.3 per cent which is 1.5 per cent below the all industry average.

This difference may be partly related to other wages issues contained in these agreements. For example, public utilities agreements were four times more likely than public administration agreements to refer to performance pay. On the other hand, over a third (35%) of public administration agreements contained clauses that limited future wage agreements to National or State Wage Cases, whereas only 19 per cent of public utility agreements contained such provisions.

A major feature of public administration and public utility agreements was that just under a third (30%) had clauses linking wage increases to productivity increases. While 11 per cent of public utility agreements contained clauses specifying how productivity was to measured, few agreements from public administration had such provisions. This is in comparison with agreements economy-wide: 16 per cent of which linked wages to achieve productivity and 5 per cent of which contained formulae for measuring gains.

The public sector is often considered a leader in terms of training initiatives for its employees. While 39 per cent of public administration agreements contain provisions concerning the need to develop a training program in the future, only 4 per cent have substantive clauses specifying how new training is to be done. The differences between planning and specifying actual training programs has been less pronounced in public utilities where 19 per cent
Key Features and
discuss the need for training plans in the future and 14 per cent contain actual
details.

Private service industries
Private service industries cover a wide range of economic activity including
wholesale and retail trade, finance and business services, community serv-
ices and recreation and hospitality. Collectively these industries account for
about two-thirds of all employment. Despite its size, however, this sector has
generated relatively few enterprise agreements, with only around 7 per cent
of such workplaces being covered by a registered agreement. Moreover, many
of the agreements coming from this sector focus on narrow range of hours
and wages issues which are often set at levels below those prevailing in
agreements coming from other parts of the economy.

Average annual wage increases in the service sector agreements were 3.2
per cent, slightly below the all industry average of 3.8 per cent. The average
trend disguises differences between industries within this sector. Financial
services with average annual increases of 4.3 per cent and wholesale and
retail trade with 4.1 per cent on average were well above the average. Trans-
port and storage (3.4%), recreation services (2.9%) and community services
(2.3%) were all below the economy-wide average.

While the level of wage increases was often below average, changes in the
form wages take have changed more dramatically than most industries. This
is particularly evident with the incidence of annualised salaries. Across all
industries, only 10 per cent agreements had such provisions. In services 15
per cent of agreements contained provisions which annualised salaries. They
were especially popular in recreational services where 29 per cent of agree-
ments contained such provisions.

Agreements in the private services sector have a higher incidence of ‘pen-
alty-free’ weekend work. Five per cent of all agreements have provisions
which allow management to request an extension of hours [that can be worked
at ordinary rates], but provisions of this nature are far more prominent in the
private services sector. They are particularly popular in financial services
where 15 of per cent of agreements contain such clauses.

Many agreements seek to average the hours an employee is required to
work over a period of time. For example, 38 hours may only need to be
worked on average over the period of a fortnight, month or year. Clauses of
this nature are more popular in the service industries than in any other part of
the economy. While 9 per cent all agreements contain a provision which
allows hours worked to be averaged over a four week period, 23 per cent of
finance, 15 per cent of community services and 15 per cent of recreational
services agreements contained such provisions.

Clauses dealing with training and related issues are sparse in agreements
from the private service industries. Even less substantive training provisions
such as a commitment to developing an unspecified training program during
the life of an agreement are less frequent in agreements from this sector.
Industry Trends

While over a quarter (27%) of all agreements had a clause of this nature only 21 per cent of service agreement contained them. Clauses dealing with skills analyses are also rare in the service sector, with only 2 per cent of agreements from this sector making any reference to them as opposed to 6 per cent of agreements economy-wide.

The lack of training provisions appears to reflect a low level of formal workplace training practices. The ABS comprehensive Training Expenditure Survey reveals that these industries are amongst the lowest in providing training for their workers.

Private service agreements are less likely to have provisions concerning consultative committees. Moreover, of those agreements that do provide for them, private service agreements are less likely to train members, provide for the committees to meet regularly or to list the composition of the committees members.

Conclusion
This analysis has revealed that enterprise agreements are playing different roles in different segments of the economy. On the one hand are the experiences from mining, construction and some parts of manufacturing. Here a significant number of workplaces are covered by agreements, wage increases contained in them are higher than average and the provisions concern improving preformance through reforms to work organisation, skill formation and new approaches to consultation. On the other hand are agreements in the private services sector. In this sector the overwhelming majority of workplaces are not covered by agreements. Moreover, even where agreements have been settled they involve below average wage increases and have a greater tendency to deal with issues such as working hours which often involve 'rationalisation' of penalty rates. Experiences in the public services sector sit between these two extremes.

As time passes it is likely these trends will develop further. While some sectors are obviously experimenting with using enterprise agreements to enhance productivity through a broad agenda of changes, others address only a narrow range of traditional industrial issues such as reducing or rationalising penalty rates and varying associated working time arrangements.

Endnotes
1 Federal Minister for Industrial Relations (L Brereton), 'Brereton calls on States to lift their IR game', News Release 20 May 1994 Attachment 1.
2 Mark Short, Alison Preston and David Peetz, The Spread and Impact of Workplace Bargaining: Evidence from the Workplace Bargaining Research Project, Australian Government Publishing Service, Canberra, 1993, p 43. It should be noted that the information on coverage of agreements is taken from a survey of over 700 randomly selected workplaces in late 1992 and early 1993. The incidence of such agreements has probably increased since that time. It should also be noted that the estimates refer to numbers of workplaces and not number of employees affected by agreements.
3 Short et al, The Spread and Impact of Workplace Bargaining... p43 and comments provided in the previous footnote concerning this data.
4 Short et al, The Spread and Impact of Workplace Bargaining ....p43

Figure 11
Commitment to developing a training programme

<table>
<thead>
<tr>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Private service industries</td>
</tr>
<tr>
<td>All industries</td>
</tr>
</tbody>
</table>

Based on 615 agreements in ADAM
Part 2

Innovations in

Introduction

Enterprise agreements are not (yet) comprehensive documents codifying all aspects of wages and employment conditions, but rather they continue to complement awards. On average, only 15 per cent of agreements completely replace awards. This is higher amongst NSW agreements (22%) and agreements in Agriculture (29%), Recreational Services (25%) and Wholesale/Retail Trade (22%).

Some commentators have argued that because most agreements are not completely replacing awards they are not genuinely innovative, assuming that it is only the all encompassing agreements that are innovative. But this view fails to understand the circumstances that give rise to enterprise agreements. Most agreements are not replacing agreements for a variety of reasons. First, management often has no problems with the majority of award conditions that regulate employment conditions, however there may be a limited number of issues that the parties may wish to change and it is these that are being addressed through enterprise agreements. Second, agreements may also cover issues that have never been dealt with in awards and some of the innovative clauses reported on below provide examples of these. Finally the limited range of issues that are covered in many agreements may simply represent the parties cautious approach to enterprise bargaining. Tearing up the award and starting with a blank sheet of paper is not necessarily the best way to approach enterprise bargaining. The more successful agreements are not seen as the end of the bargaining process but part of an ongoing process that will allow the parties to introduce change in an effective manner. It may well be that in time agreements may completely replace awards, but there is no evidence that the parties are anxious for this to occur. It is the quality of an agreement that is important, not its length.

This section examines just some of the ways in which Federal, NSW and Queensland enterprise agreements have introduced innovation in the regulation of employment in Australian workplaces. While relatively few agreements contain provisions of the types considered below they do highlight what is possible within the current system.

Innovation in Traditional Industrial Issues: Hours and Earnings Arrangements

Despite the possibility for a broad agenda of issues to be covered in enterprise agreements many deal with traditional industrial issues such as earnings and hours of work. One of the more common remuneration clauses concerns the rationalisation of penalties. A recent agreement in the recreation industry does this in the following way:

"Averaged Penalties for Weekly Employees
In addition to weekly rates..., a further loading of 15% shall be
Agreements

paid to all weekly employees. Such loadings shall compensate for ordinary hours worked on Saturdays, Sundays and Public Holidays, as well as compensating for annual leave loading."

Some agreements now also include profit sharing schemes. Examples of a clause dealing with this issue comes from a recently registered NSW agreement.

"Profit Sharing Scheme
We shall base payment on 5% of the net profit each month... The only expenses not deducted are for entertainment so it can never be thought that management ‘extravaganzas’ are reducing the profit available for sharing... it may reasonably be expected that each member of the profit share scheme will receive about $380, increasing as we grow and improve our efficiency."

Some agreements, however, have begun to change the links between actual hours worked and payments received. Such arrangement can take quite diverse forms. For example:

"The parties recognise that maximum production flexibility will be obtained by allowing employees to work at their optimum pace. In order to ensure that high productivity is maintained, it is agreed that a minimum production quantity shall be set for each days work. Once that is achieved (including ancillary work and house keeping), employees shall be able to cease work for the day without loss of pay."

A recent local Government agreement approaches the issue in a slightly different way:

"Hours of work
All Camping Out employees shall work 150 hours per four week period as per the following:
(a)50 ordinary hours per week ...
(b)Such 50 hours shall be worked in three consecutive weeks to be described as ‘working weeks’ and the Camping Out Employees shall not be required in the fourth week; such fourth week to be described as a ‘rostered week off.’"

The link between employees working in permanent, part-time and casual capacity is also being recast in some agreements with significant implications for remuneration. For example, a recently registered Queensland Hospitality agreement states:

"Multihiring
(1) Permanent and part-time employees may also be engaged on a casual basis for duties in a separate engagement in a
Innovations in separate section of the resort to facilitate multi-skilling and general skill formation. Such employees shall receive payment of 50% in addition to their ordinary hourly rate for time so worked.”

New issues on the Bargaining Table: Performance Indicators and Family Issues
In addition to recasting of established conditions and rights, recent enterprise agreements are also extending the range of issues being negotiated.

Monitoring and improving performance have been perennial concerns for managers. What is interesting is that some issues which previously operated solely on the basis of management prerogative are now regulated by agreements. A good example of this is provided by a 1994 NSW agreement which states:

“Employees shall not impose any restriction or limitations on the measurement and/or review of work methods or standard work times, provided that appropriate consultation between the company and employees has taken place.”

Clauses that detail the actual systems for monitoring performance can also be quite detailed. Such schemes often refer to overall production processes and are not confined to traditional employment and industrial issues. Some appreciation for how detailed these can be is evident in just two clauses of a recently registered Federal agreement covering catering workers.

“The performance indicators which will be considered in determining the payment to be made in respect of a quarter have been given point values as set out [in this agreement]. All employees will share in a common result...

Employees still employed at the end of each quarter will be entitled to [a bonus] on a quarterly basis calculated by reference to the facility’s performance for that quarter in accordance with the following scale:

- Minimum payment 3.5%
- 5-9 points 4.0%
- 10-14 points 4.5%
- 15-19 points 5.0%
- 20-24 points 5.5%
- 25 points 6.0%”

The extension of the bargaining agenda has not just concerned a narrow range of efficiency issues. A small number of agreements also deal with matters relating to the quality of working life and more specifically competing work and family commitments. For example, a recent Federal agreement adopts a broad definition of a worker’s family member:
Agreements

"Definitions
... 'Spouse' means a husband or wife and shall include a putative spouse as defined pursuant to the provisions of the Family Relationships Act 1975, as amended, and a person cohabiting with another person of the same sex or the opposite sex as a spouse."

Other agreements have begun to address the issue of family leave, an issue which is currently the subject of a Test Case before the AIRC. An example is contained in a Federally registered Agreement in the insurance industry:

"An employee is entitled to special family leave for absences relating to a family emergency. Such an emergency shall include the illness of an immediate family member, absence of the child's carer, a school requirement or the closure of a child's school, provided the employee has had more than one month's continuous employment.

... leave will be paid and will be for a period of no more than 3 days. It will not be cumulative from year to year. Periods of unpaid leave may be considered based on particular circumstances."

A limited number of other agreements have also begun to address the issue of working from home. A 1994 NSW public sector agreement notes in this regard.

"Working at home
Circumstances may arise where an officer is required or requests to work from home rather than attend at the normal place of work and if it is convenient for the Department to grant such approval it will be given.

[officers with such an entitlement] will be able to work at home for a total of 10 days in any single year."

Co-ordinated Flexibility: Enterprise Bargaining the Australian Way
While most agreements do not replace awards, it is evident that enterprise agreements can, and do, often contain provisions that are innovative. These can take the form of novel approaches to dealing with traditional issues such as hours and earnings or to dealing with subjects that have not previously been the subject of negotiations and regulation.
In considering the relationship between awards and agreements it is important to keep in mind the modernisation of awards that occurred in the second half of the 1980s. This resulted in more flexible and relevant methods of regulation. In many ways it has reduced the number of issues that need to be varied by a formal enterprise agreement. An example concerning working hours is instructive in this regard. While the shift to annualised hours has been heralded as one of the major achievements in a number of enterprise agreements, dramatic changes of this nature have been introduced under a number of awards. For example, clause 18 of the Federal Vehicle Industry Repair, Services and Retail Award states:

"... ordinary hours of work for an employee shall be an average of 38 hours per week ... to be worked on not more than five days in any week, on the following basis:
(i) 38 hours within a work cycle not exceeding seven consecutive days; or
(ii) 76 hours within a work cycle not exceeding fourteen consecutive days; or
(iii) 114 hours with a work cycle not exceeding twenty-one consecutive days; or
(iv) 152 hours within a work cycle not exceeding twenty-eight consecutive days; or
(v) any other work cycle during which a weekly 38 ordinary hours (as the case may be) are worked or may be determined in consultation with employees and where no agreement is reached, with the union and/or industrial tribunal]"

The fact that many enterprise agreements are not completely replacing awards is not a sign that the parties lack "imagination" or negotiations have failed. More likely it reflects a rational choice by the parties to negotiate changes to the parts of awards which currently do not quite fit their requirements and to rely on the award for most other matters. It is perhaps true to conclude that most workplaces do not have the time, resources or more importantly the need to change many award matters.

By linking agreements to awards Australian employers, unions and employees are pioneering a unique approach to labour market reform. This approach is increasing flexibility at workplace level while preserving the significant efficiency and equity benefits associated with the maintenance of basic labour standards. Overseas research has highlighted the importance of achieving such a balance. Reflecting on the negative consequence of labour market deregulation in the OECD in the 1980s researchers have warned of the problems associated with what they describe as "fragmented flexibility." They argue more attention needs to be devoted to devising labour market arrangements based on "coordinated flexibility." Australia's distinctive approach to enterprise bargaining appears to be avoiding many of the problems experienced overseas and contributing new ideas and practices that could have wider significance to the on-going debate about labour market reform and regulation.
Endnotes


Termination of

Introduction
In the last decade a minimum of 315,000 employees were retrenched each year from Australian workplaces, in some years the number of people retrenched has numbered over 500,000 employees (or 6.4% of the labour force). ABS figures indicate that labourers and tradespersons have been the big losers in terms of retrenchments.

In addition to retrenchments the other major form of involuntary job loss is through dismissal where employees have had their employment terminated by employers as a result of poor work performance, misconduct or breach of rules or procedures. The average rate of dismissals at workplaces with 20 or more employees was 4.4 per cent according to figures from the Australian Workplace Industrial Relations Survey (AWIRS). Only 45 per cent of workplaces employing 20 or more employees claimed not to have dismissed any employees in the previous year.

Termination of employment initiated by an employer as opposed to employee initiated resignation or retirement has been regulated by a mix of legislation and determinations of Federal and State industrial tribunals. More recently some aspects of termination of employment procedures have also become the subject of enterprise agreements.

This section of the ADAM Report examines in some detail how termination of employment is being dealt with in enterprise agreements. The section begins with a consideration of the legal background to redundancy provisions in Australia and then goes on to consider the extent and form of these provisions in agreements. This is followed by a consideration of how the issue of dismissals is handled in enterprise agreements.

Retrenchments
Voluntary and compulsory retrenchments are only two methods that organisations can use to reduce their workforce when they wish to downsize. As the table illustrates there are a range of other strategies that are used and there are some significant differences between the methods used by private and public sector workplaces in Australia.

The 1984 Technology Change and Redundancy (TCR) decision of the then Australian Conciliation and Arbitration Commission¹ and the NSW Employment Protection Act 1982 were part of the push which saw the introduction of award and legislative based rights and minima when termination took place for reasons of change or technology. The TCR decision of 1984 has proved to be the most significant intervention in relation to establishing standards for the provision of information, consultation and severance pay but with no right of reinstatement. More recently in NSW the Industrial Relations Commission of NSW in June 1994 increased the standard redundancy payment to 16 weeks for workers employed for
Employment

Figure 1
Methods Used by Management to Reduce the Workforce

<table>
<thead>
<tr>
<th>Methods Used</th>
<th>Private</th>
<th>Public</th>
<th>All</th>
</tr>
</thead>
<tbody>
<tr>
<td>Natural wastage</td>
<td>56</td>
<td>68</td>
<td>60</td>
</tr>
<tr>
<td>Redeployment to another workplace in the organisation</td>
<td>20</td>
<td>48</td>
<td>29</td>
</tr>
<tr>
<td>Early retirement</td>
<td>9</td>
<td>17</td>
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<tr>
<td>Voluntary redundancy</td>
<td>15</td>
<td>29</td>
<td>20</td>
</tr>
<tr>
<td>Compulsory redundancy/retrenchment</td>
<td>45</td>
<td>3</td>
<td>5</td>
</tr>
<tr>
<td>Other</td>
<td>6</td>
<td>4</td>
<td>5</td>
</tr>
</tbody>
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six years or more more and provided workers over 45 years of age with a 25 per cent loading.

With the continued decentralisation of the industrial relations system and the growth in enterprise agreements the Commonwealth, by way of the *Industrial Relations Reform Act* 1993, sought to introduce a range of minimum conditions that seek to ensure that a floor is established to protect and extend workers severance entitlements, guarantee limited rights to information and consultation and place an obligation of employers to notify the CES of expected employment terminations. The Commonwealth legislation seeks to ensure that decentralised bargaining is not used as a mechanism to erode basic employment rights. The requirement to notify the CES only applies in relation to redundancies that involve 15 or more employees. The *AWIRS* data indicates that less than a quarter of workplaces that downsized in the year prior to the survey retrenched more than 15 employees at any one time.

Pragnell and Ronfeldt² in discussing the literature on enterprise bargaining and redundancies/retrenchments conclude: “While presenting numerous challenges many see enterprise bargaining as an opportunity rather than a threat.” They argue that "enterprise bargaining provides the parties with new opportunities to develop innovative and appropriate redundancy policies and practices." According to Campbell and Rimmer,³ enterprise bargaining has the potential to be a “better tool” for redundancy management than mere adherence to the prescriptive TCR principles. They, like many others, are critical of the TCR principles for being too reliant on issues occurring after retrenchments have occurred such as
Termination of severance payments with little consideration for issues that minimise disruption or job losses. Direct bargaining on the other hand allows the parties to fashion their own customised arrangements and has the potential to foster better "preventative" redundancy practices, which have been missing in the Australian experience. While Campbell and Rimmer acknowledge that the "practice" of enterprise based redundancy provisions has yet to live up to the "potential", they remain confident that enterprise bargaining will eventually bring about the "best practice" redundancy management arrangements at the enterprise level.

An analysis of agreements on our data base suggests that, to date, redundancy is not being addressed in many agreements, with only 18 per cent of agreements making any substantive reference to redundancy. Only 2 per cent of agreements make a commitment to "no redundancies" during the life of the agreement. With the proclamation of the Industrial Relations Reform Act 1993 we may expect that agreements may be in the future more likely to deal with the issue of redundancy.

Federally registered agreements are most likely to include redundancy (26%), with only 12 per cent of NSW registered agreements and 13 per cent of Queensland registered agreements making any substantive reference to redundancy.

Industries vary in the extent to which agreements deal with redundancy provisions. For instance, the issue is dealt with in around a quarter of agreements in Public Administration (26%), Recreational, Personal and Other Services (24%), Public Utilities (24%) and Manufacturing (25%). On the other hand, Financial Services (13%) Commercial Services (12%) and Wholesale & Retail Trade (10%) agreements are less likely to deal with this issue.

Severance Pay Provisions
Severance pay entitlements to retrenched employees have been an important part of redundancy policy over the past decade. While enterprise agreements provide flexibility in this area, it would appear that the parties are sticking very closely to award and legislative minima.

Overall only 10 per cent of all of the agreements on the ADAM database make a reference to severance pay. These agreements are more likely to be federally registered and to be in industries such as Recreational & Other Services (20%) and Other Manufacturing (16%). Agreements reached in Wholesale & Retail Trade (3%) and Financial Services (2%) rarely have any reference to severance pay entitlements.

Interestingly, even where severance pay entitlements are dealt with in agreements, the pay entitlements closely resemble those available within awards and legislation. The majority of agreements with severance pay
Employment

entitlements, most of which are Federally registered, provide for 4 weeks minimum pay (after 12 months continuous employment), 8 weeks maximum pay and between 2 to 3 weeks pay for every year of service.

Consultation and Notification Provisions

An expression of an employers' willingness to notify employees of change, discuss change or supply all relevant information of change when redundancy may occur is evident in 8 per cent of enterprise agreements in ADAM. Federal agreements are more likely to contain such provisions (13%) than agreements from NSW (3%) or Queensland (6%).

An example of such notification provisions can be found in a Federal manufacturing agreement which states:

"in the event that circumstances require employees to be made redundant for any reason whatsoever, the company shall provide notice of its intention at the earliest possible time. Such notice shall be provided to both the officials of the union and site employees..."

Job Search Leave Provisions

A provision allowing for time off during the notice period to search for work appears in 5 per cent of agreements on the ADAM data-base. Once again, such provisions are more common in some industries; Mining/Construction (11%), and Recreational & Other Services (13%). As with many of the other termination provisions, there appears to be a gradual increase in the incidence of this Job Search provision in the past 6 months.

An example can be found from another Federal manufacturing agreement:

"the company shall provide employees with reasonable paid time off from work for the purpose of attending interviews or other legitimate job search activities. Employees shall advise the company of the need to attend interviews or other job search activities prior to any absences, ...in addition, the company shall provide all reasonable advice, guidance and assistance to employees facing retrenchment to ensure that they are able to maximise opportunities available to them..."

Some Innovative Redundancy Provisions in Agreements

Despite the relative scarcity of redundancy provisions there are some innovative provisions being negotiated. An example of this is a Federally registered agreement which covers thirteen workplaces spread across every state. In terms of substantive provisions the agreement provides
severance pay equal to three weeks for every year of service with no cap on entitlements (except to prevent double-dipping with pension payments), plus a top-up for those older than 50 or with more than 20 years service. As well, the agreement outlines the entitlements to untaken sick leave, annual leave and long service leave, as well as superannuation entitlements.

The agreement provides for the establishment of a “Hardship Committee,” relocation assistance of up to $2000, and an Employment Assistance Program which provides counselling and post-employment assistance. As well the agreement makes provisions for job transfers, including obliging the employer “to make every practical effort... to transfer an employee into an alternative position which will allow the dignity of the employee to be maintained.”

A number of Project Agreements in the Construction Industry also provide for a weekly redundancy allowance for the duration of the agreement, to compensate for the possible termination at the end of a project.

*Figure 2*

<table>
<thead>
<tr>
<th>Provision</th>
<th>% of Agreements</th>
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<tbody>
<tr>
<td>Some form of redundancy clause in agreement</td>
<td>18</td>
</tr>
<tr>
<td>No redundancy during the life of the agreement</td>
<td>2.1</td>
</tr>
<tr>
<td>Redundancy may occur in certain circumstances</td>
<td>6.8</td>
</tr>
<tr>
<td>Employer to discuss redundancy with employee/union</td>
<td>7.6</td>
</tr>
<tr>
<td>Last on first off rule for redundancies</td>
<td>1.5</td>
</tr>
<tr>
<td>Time off work for job search</td>
<td>5</td>
</tr>
<tr>
<td>Accumulated sick pay on redundancy</td>
<td>2.4</td>
</tr>
<tr>
<td>Superannuation pay on redundancy</td>
<td>2.3</td>
</tr>
</tbody>
</table>

**Severance Pay**

- 6 months service or less to qualify: 1.3
- 12 months service to qualify: 4.2
- Over 12 months service to qualify: 0.5

**Level of payment**

- Minimum number of weeks of severance pay
  - Less than 4: 2.1
  - 4 weeks: 4.3
  - More than 4 weeks pay: 1.6

- Maximum number of weeks pay specified
  - 8 weeks: 2.4
  - 10 to 40 weeks: 1.9
  - 40 to 80 weeks: 2.6

Based on 615 agreements in ADAM
Alternatives to Redundancy
The 1992 report Facing Retrenchments: Strategies and Alternatives for Enterprises by Buchanan, Campbell, Callus & Rimmer for the office of Labour Market Adjustment (OLMA) in DEET proposes a code of practice of short run and long run initiatives for enterprises that need to make labour adjustments. A summary of the code is presented in Attachment 1.

Some of the initiatives addressed in this proposed code have been taken up in recent enterprise agreements and these are examined below:

Reduced Hours
Only one agreement on our data base mentions reduced hours as an alternative to redundancy. That agreement is in public administration.

Redeployment Provisions
Redeployment provisions rarely appear in agreements with only 6 per cent of agreements having a redeployment provision. However, ADAM shows that redeployment as an alternative to redundancy is becoming increasingly popular. Given past practice it is not surprising that the industry where redeployment was the most likely to occur in agreements is Public Administration. In this industry, 13 per cent of the agreements made a reference to redeployment.

An innovative example of redeployment occurs in a Federal public sector agreement where the agreement states:

"Redeployment continues to be the first consideration in an excess staff situation, recognising that there is merit in redeployment where this is practicable, compared with redundancy and associated costs. Costs of redundancy on the one hand and training of new staff on the other can be significantly reduced by effective deployment... The Staff Placements Task Force (SPTF) will have (1) a service wide role (2) provide assistance in redeployment matters... (3) assist excess officers in the preparation of curricula vitae, (4) collect information on and monitor vacancies advertised in the Gazette and elsewhere; supply relevant information on a regular basis to excess officers, (5) act as an "honest broker" in seeking to place excess officers in suitable positions and (6) brief agencies on their redeployment responsibilities and the role of the SPTF."

Job Sharing
Only 8 agreements on the data-base (1.3%) provide for job-sharing.

Dismissals
To date issues concerning an employers ability to dismiss have mainly concerned the minimum period of notice required to dismiss an employee
as a result of poor work performance, misconduct or breach of rules or procedures. Courts and tribunals have long held that severe misconduct allows employers the right to dismiss individual employees without notice. However, dismissal without cause most often requires some notice.

Currently 19 per cent of agreements provide for a period of notice before termination of employment. NSW agreements are more likely to specify the period of notice (26%) than Federal (10%) or Queensland (17%) agreements. As NSW Agreements are more likely to completely replace an Award, the greater incidence of clauses that specify a period of notice is to be expected in the NSW jurisdiction as Award provisions often provide for the period of notice. In addition the reasons for an employee’s dismissal have been the subject of cases in state industrial tribunals and now such issues will also be a matter for the Federal jurisdiction.

Figure 3 indicates that the most common period of notice specified in agreements is 5 working days. Only 3.4 per cent of agreements allow for extra notice for employees aged 45 or more.

The new Industrial Relations Reform Act is likely to impact on current practices in the area of dismissals with unfair dismissal provisions covering award employees and non award employees that have salaries up to $60,000. For award employees compensation can be up to a maximum of 6 months salary, while for non award employees covered by the Act the maximum compensation payable is $30,000. The Act requires employers to establish valid reasons for a dismissal and the termination cannot be “harsh, unjust or unreasonable.” Where a termination is because of an employee’s performance or conduct the employee must be given the opportunity to respond to these allegations.

The presence of disciplinary procedures is quite common in Australian workplaces. The AWIRS study by the Commonwealth Department of Industrial Relations show that 68 per cent of private sector workplaces and 84 per cent of public sector with 20 or more employees, had disciplinary procedures in place. Perhaps for this reason disciplinary procedures are relatively uncommon in enterprise agreements with only 13 per cent of agreements containing any provisions relating to disciplinary procedures. Only 5 per cent of agreements had what we would call a detailed disciplinary procedure. One such detailed clause was in a NSW agreement in the food manufacturing industry:

“Disciplinary Procedure - Relating to Poor Work Performance or Unsatisfactory Conduct
Without limiting the scope of application of this procedure “poor work performance or unsatisfactory conduct” shall include the following:-
Employment

- Unacceptable work quality
- Unsafe work practices
- Wilfully failing to abide by reasonable and lawful directions
- Excessive absenteeism
- Abuse of sick leave entitlement

Where it is alleged an employee's work performance is of a poor or unsatisfactory standard the following procedure may be adopted:

1. **Interview Process**
   An interview of the employee should be conducted by the Company's representative. It is appropriate for another member of management to be present as well as a nominated or responsible employee acceptable to the employee being disciplined if requested by the employee or the Company... At the time of the interview the employee should be informed or the nature of the problem and be given the opportunity to explain his/her actions.

   It is suggested that certain details of the interview should be recorded, such as:-
   1. The nature of alleged poor work performance or unsatisfactory conduct and the specific details.
   2. Date/s of alleged poor work performance or unsatisfactory conduct.
   3. Date and time of the interview.
   4. Signature of the parties present at the interview.

   A copy of this record should be supplied to the employee concerned.

2. **Discipline**
   If the warning resulting from the initial interview is unsuccessful a further interview similarly constituted should then take place.

   At that time management should produce further evidence of the continued poor work performance or unsatisfactory conduct and the employee should be given the opportunity to explain his/her continued poor work performance or unsatisfactory conduct.

   If the explanation is deemed unsatisfactory management may take disciplinary steps in relation to the employee.

   Such disciplinary action may result in dismissal, however in some circumstances it would be appropriate that a further warning be given.
Part 3

Termination of

However in some less serious situations appropriate disciplinary measures may include:-

- Relocation in the work place;
- Reclassification to a lower grade of work;
- Restriction of Privileges;
- Admonishments recorded on the employee's personal file.

The employee may nonetheless be dismissed if any of these alternative disciplinary measures are found not to be a satisfactory solution.

(3) Instant Dismissal

Dismissal Following Disciplinary Procedures

The employee should be notified in writing of the dismissal and the reasons for same. The Union delegate (if the employee be a member of a Union) should be notified as soon as practicable if this course of action is to be taken.

More innovative clauses such as the provision for counselling of inefficient employees were also rare (3%). Written warnings and counselling was present in 11 per cent of agreements and 6 per cent provided for employees to have their choice of person at the counselling session.

With respect to unfair dismissals in particular only 6 per cent of agreements provide that termination is "not to be harsh, unjust or unreasonable" or for a dispute settlement procedure for unfair dismissals (4%). Federal agreements (10%) where more likely to have provisions of this nature. Only 5 per cent of NSW and 4 per cent of Queensland agreements have unfair dismissal provisions. It should be kept in mind that like many other provisions these issues may be dealt with by the award that complements the enterprise agreement. The presence of a clause in an agreement is most likely to indicate a variation of a pre-existing award provision or the inclusion of issues on which the award is silent.

Implications

The general picture is that unions and employers are generally not using enterprise agreements to deal with downsizing or employee discipline and dismissals. Our evidence suggests that current award and legislative minima remain the major source for determining redundancy rights and obligations, for workplaces with and without agreements. The extent of disciplinary procedures already operating at workplace levels suggest that future agreements may not so much develop new procedures, but rather formalise existing practices and procedures. This may be a safeguard for organisations that wish to ensure that action is not taken against them for unfair dismissal under the new Industrial Relations Reform Act.
As such, award and legislative principles are not “straight jackets” out of which the parties are attempting to bargain above. The parties are continuing to either rely upon established legal minima or ad hoc arrangements based on unregistered agreements, company rules and procedures or custom and practice to develop the most appropriate arrangements for their circumstances.

Endnotes
1 Termination, Change and Redundancy Case (1984) 26 AILR para 256
## Proposed Code of Practice
### Short run initiatives

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<thead>
<tr>
<th>Labour Adjustment Practice</th>
<th>Employers at workplace</th>
<th>Employers beyond workplace</th>
<th>Unions at workplace</th>
<th>Unions beyond workplace</th>
<th>Governments</th>
<th>Industrial tribunals</th>
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<tbody>
<tr>
<td>(a) Procedural Options</td>
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<tr>
<td>• Develop enterprise agreement to handle drop in demand</td>
<td>Establish with union</td>
<td>Employer Associations to publicise</td>
<td>Establish with Employer</td>
<td>Participate in</td>
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<tr>
<td>• Seek the views of the workforce</td>
<td>Initiate</td>
<td>Provide resources</td>
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<td>• Establish consultative committee to oversee</td>
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<tr>
<td>(b) Labour Retention Option</td>
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<tr>
<td>• Publicise benefits of labour retention</td>
<td>Consider in consultation with workforce and union</td>
<td>Employer Associations to publicise</td>
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<tr>
<td>• Staffing freeze</td>
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<td>• Early use of recreation leave</td>
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<td>• Retraining</td>
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<td>• Job sharing</td>
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<td>• Layoff rotation</td>
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<td>• Short time work (compensated and un-compensated)</td>
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<td>• Pooling excess labour (Employer Association as having hall)</td>
<td>Consider options with other employers in locality or industry</td>
<td>Employer Associations to help organise</td>
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<td>(c) Labour Shedding Options</td>
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<tr>
<td>• Provide as much notice as possible, at least amount agreed to between local managers &amp; union reps</td>
<td>Negotiate with union or workforce on period of notice</td>
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<tr>
<td>• Provide counselling as to employment and personal financial options available to staff</td>
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<tr>
<td>• Contact other employers in the region or industry to see if there are jobs available for the employees losing work</td>
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<td>• Criteria to be agreed as to which employees are retrenched eg severity and skills</td>
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<td>• Maximize skill loss</td>
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<td>• Respect the rights of NESB workers</td>
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### Longer run initiatives

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<tr>
<th>Labour Adjustment Practice</th>
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<td>(a) Procedural options</td>
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<tr>
<td>• Develop an enterprise agreement on how to promote employment security</td>
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<td>• Seek the views of the workplace on how workplace performance can be improved</td>
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<td>• Establish a consultative mechanism to oversee improvement process on an ongoing basis</td>
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<tr>
<td>(b) Initiatives that can enhance employment security</td>
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<tr>
<td>• Multiskil the workforce to enhance re-deployability</td>
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<tr>
<td>• Diversity product range and market operations</td>
<td></td>
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<td>• Improve firm performance through productivity improvement programs</td>
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<tr>
<td>• Increase language competency of NESB workers</td>
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<tr>
<td>• Create a plan for labour displacement including TCR packages &amp; other measures</td>
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<tr>
<td>• Establish employer labour sharing arrangements</td>
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<tr>
<td>• Establish strategic alliance among firms to enhance each enterprise's capacity to compete in export markets</td>
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</table>

### Governments
- Govt to publicise through Employer Ass'n & Trade Association (DLMA awareness campaign)
- Develop standard award clauses, possibly based on enterprise flexibility clauses

### Industrial Tribunals
- Develop standard award clauses, possibly based on enterprise flexibility clauses

- Support with appropriate training in local educational establishments

- Support through NES and AUSTTRADE

- Vary awards as requested by the parties

- Co-ordinate initiatives between unions, employers and government agencies (moral, state and federal)

- Provide information on employer obligations (especially concerning TCR state by state)

- Provide information to referees about entitlements
ADAM Services

Customised reports
Subscribers may wish to obtain additional information quickly on issues of immediate concern. This information can be provided by commissioning customised reports prepared by ACIRRT. These reports will indicate the extent to which particular issues have been dealt with in
- Federal, NSW and Queensland agreements
- Particular industries

These reports include
- tables brief descriptive commentary
- sample clauses of the issues examined
- qualitative analysis of clauses

The Breadth of ADAM
ADAM has information on over 800 different issues covered in enterprise agreements. These are grouped under the following headings:
- fundamental features such as
  - jurisdiction of registration
  - negotiating parties
  - industry of agreement
  - period of operation
- agreement objectives
- methods to achieve objectives
- flexibility arrangements: functional and numerical
- training and skills formation
- productivity and efficiency improvement measures
- quality and performance indicators
- termination, dispute settling and grievance procedures
- hours and flexible work arrangements
- shift work
- overtime
- wages
- juniors, traineeships and apprenticeships
- allowances
- leave entitlements
- change, redundancy and severance pay
- employee representation and consultative arrangements
- superannuation
- equal employment opportunity

Further Information
To discuss your requirements and for an obligation free quote contact Shannon O'Keeffe on (02) 519 9400 or fax (02) 519 9263.