

**HORSES FOR COURSES**  
**TEN YEARS OF ENTERPRISE BARGAINING**

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## **1. Introduction**

The advent of enterprise bargaining created major challenges for the Construction, Forestry, Mining and Energy Union, Construction and General Division, (the CFMEU).

The first challenge was obvious, the enterprise model implied in the legislation was based on a fixed, single employer workplace such as a factory or a shop or an office. The model didn't contemplate the people who built the factory or the shop or the office. These people, CFMEU members, work on sites where there could be up to 100 different employers. Individual employers, such as steel-fixers, may have employees on various projects simultaneously, with the workforce being juggled between sites to meet fluctuating needs.

The second major challenge was political. Where was the bargain for building workers? The CFMEU's analysis quickly showed that there was no bargain. Building workers were being asked to abandon the core industrial tactics that had seen dramatic improvements in wages and conditions over the previous decades. In campaigning on issues such as sick leave, long service leave, payment for wet weather, site allowances and accident pay, unionists participated in industry-wide actions designed to benefit all building workers.

Construction industry employers often lament the fact that the workers identified as unionists or building workers first, before any allegiance to an individual employer. The Master Builders Australia (MBA) described this in 1999 as the "... lack of commitment to an individual employer."<sup>1</sup>

As will be discussed below, negotiating separate conditions with each sub-contractor in the construction industry would lower productivity and increase disputation. It would also encourage a race to the bottom, where sub-contractors competed on the basis of lowering the wages and conditions of workers.

These were the broad parameters that led to the CFMEU deciding that the Government's model of enterprise bargaining, what Reith has recently called 'genuine' enterprise bargaining, was not appropriate for the union, or for the industry. Rather the union adopted an approach which sought to achieve uniform outcomes and uniform expiry dates, so called 'pattern bargaining'.

The current Coalition Government are in the habit of using the term 'pattern bargaining' in a highly pejorative way. In a recent speech Reith said :

"Pattern bargaining is a manipulation of the legislative right to enterprise bargaining provided for by the WRA 1996 and by the previous Labor Government's industrial legislation. Under pattern bargaining, union officials making backroom deals assume control over multiple outcomes."<sup>2</sup>

The Workplace Relation Amendment Bill 2000 (2000 Bill) sought to define pattern bargaining as:

"... a course of conduct or bargaining, or the making of claims, involving seeking common wages and/or other common employee entitlements, that the Commission is satisfied"

- a) forms part of a campaign that extends beyond a single business; and
- b) is contrary to the objective of encouraging agreements to be genuinely negotiated between parties at the workplace or enterprise level."<sup>3</sup>

However, it is more appropriate to describe pattern bargaining as common claims to promote an industry wide approach to wage fixation. It is an approach that seeks to deliver a measure of comparative wage justice within the current legal framework through registered site and enterprise agreements.

This paper will look at the beginnings of enterprise bargaining, from the Accord Mark VI. The CFMEU's response to these early developments is outlined. The particular nature of the building industry will be explored and analysis of the 1993, 1995, 1997 and 1999 building industry bargaining rounds will be presented.

Finally we will turn to the recent attacks on pattern bargaining and the future of bargaining in the construction industry.

## Enterprise Bargaining - In the Beginning

This account of the beginnings of an enterprise bargaining system is largely based on a 1996 Employment Studies Centre (ESC) Report 'Must it End in Tiers - Problems and Prospects of a Two Tier Wage Structure in the Australian Construction Industry'.<sup>4</sup>

The Report outlines that the business community, in particular the Business Council of Australia (BCA), lobbied the Labor Government to move beyond changes introduced in the Industrial Relations Act 1988 (Cth) (1988 Act). The BCA felt that the Australian Industrial Relations Commission (AIRC) had too much control over certified agreements<sup>5</sup>. In light of this the Australian Council of Trade Unions (ACTU) made a "... strategic decision to embrace enterprise bargaining while it had the chance to influence the principles on which it would operate".<sup>6</sup>

This embracing of enterprise bargaining came in the form of a proposed productivity based system with no wage ceiling, contained in the Accord Mark VI document agreed between the Government and the ACTU. In the April 1991 National Wage Case the ACTU submitted that "fundamental award reform has been completed to the degree that an enterprise focus is now warranted".

The AIRC rejected the submission, stating that the change would "challenge a long established principle of wage fixation in Australia, namely, that the benefits of increased productivity should be distributed on a national, rather than an industry or enterprise basis". The decision prompted a vitriolic attack on the AIRC by ACTU Secretary Kelty, who accused the Commission of being like "a dog returning to its own vomit" and compared the head of the Commission, President Maddern, to Fidel Castro.<sup>7</sup>

"In hindsight, the AIRC decision was a clear warning to the ACTU that the direction they were taking was wrong. Unfortunately, the warning was not heeded. (Interestingly, when the ACTU released their report on enterprise bargaining in 1997 it was entitled 'Not What We Bargained For'<sup>8</sup>) The union movement was already on a slippery slope; the AIRC accepted the ACTU position in the October 1991 National Wage Case decision; amendments to the 1988 Act in 1992 replaced the public interest test with a no disadvantage test; Prime Minister Keating suggested in 1993 that Enterprise Bargaining Agreements (EBA's) should be full substitutes for awards rather than add-ons. While this did not eventuate, the first non-union Enterprise Flexibility Agreements were introduced in the Industrial Relations Reform Act 1993 (Cth) (the Brereton Act)."

These 'reforms' set the scene for Award Simplification and individual agreements. As Reith stated in Parliament recently;

"In fact it was the Keating Labor Government\* and the ACTU that both adopted it [enterprise bargaining] as policy in their Accord Mark VI in 1990, and pursued it vigorously in industrial tribunals, legislatively and publicly."<sup>9</sup>

(\*For the record, the Keating Labor Government didn't begin until 20 December 1991, despite what Reith or Keating may state to the contrary.)

### **3. Construction Workers Go Their Own Way**

Through 1992 and into 1993 the CFMEU came to realise that enterprise bargaining was a risky strategy for the trade union movement. In mid 1993 the CFMEU, the Maritime Union of Australia (MUA) and the Committee for Trade Union Unity produced a discussion paper, 'Future Directions or a Dead End? Enterprise Bargaining and the Deregulation of the Australian Labour Market'.<sup>10</sup>

The paper was designed to provoke debate amongst left unions. It was a critique of the union movement's tacit acceptance of the economic rationalist agenda and a blueprint for a way forward. It claimed that the Keating Government and the Coalition shared many views on labour market policy, while differing on the 'speed and degree of deregulation required'. Importantly, the paper went on to state :

"The most disturbing aspect of this situation however, is the degree to which the union movement has accepted an economic rationalist framework on wage fixation. It is as if unions have become a willing vehicle for the implementation of a fundamentally

conservative micro-economic agenda... It is based on a neo-liberalist philosophy of minimum regulation and minimum government ... It is not uncommon to hear union leaders parrot the language of economic rationalism.”<sup>11</sup>

Two reasons were given to the lack of focus on wages policy by unions in the period following the October 1991 National Wage Case. The first was the threat for workers posed by the Hewson ‘Jobsback’ policy, and secondly, unions had become inward looking, preoccupied by amalgamations and the creation of super-unions. Ironically, the ACTU were calling for industrial unionism while simultaneously abandoning an industry wide approach to the regulation of wages.

In looking forward, the paper called for left unions to push for a wages system that focused not on enterprise bargaining but on industry or sector agreements. It argued that:

Such an environment would provide opportunities for unions to renew an active role for rank and file members in setting wages. It could also provide the ‘bracing wind’ to revitalise union organisation, but in an environment where unions stand at least an even chance of success.<sup>12</sup>

What would be required to allow such a system to work would be a legal mechanism to allow the certification of industry agreements, the maintenance of a relevant Award system and the removal of civil court actions against industrial action.

The debate on enterprise bargaining was carried into the 1993 ACTU Congress where the ACTU leadership and key supporters such as George Campbell from the AMWU supported the enterprise model against John Sutton from the CFMEU arguing for an industry based approach.

In monitoring the progress of bargaining in the construction industry throughout 1993 it became clear that steps would need to be taken to allow the union to implement the preferred industry wide approach. The first challenge was to bring order to the relatively small number of agreements that had been concluded. To this end, the CFMEU Divisional National Executive passed a motion in early 1994 aimed at achieving a uniform expiry date for all agreements.<sup>13</sup>

Later that year the Executive endorsed the establishment of a National Database to monitor EBA’s. These preparations led to a major decision on wages policy in May 1995. A motion passed by the Executive recognised that the union had secured 1,500 agreements up to that point. As stated earlier these agreements contained no real consistency, either in terms of their expiry dates or contents. Three major policy imperatives were identified, requiring a consistent, national approach by the union, they are recounted below.

- (i) We cannot, as a national union, allow building workers in some states to become the recipients of second grade wages and conditions.
- (ii) We cannot allow major discrepancies to grow from state to state otherwise the very basis of our national award will be undermined.
- (iii) We must maintain or develop a pattern at least within states otherwise some building workers will receive inferior wages and conditions, and the employers who meet the best standards will become uncompetitive with the lower wage companies, having the ultimate effect of driving wages down across the board.<sup>14</sup>

To implement an approach consistent with these policies, the Executive launched the 1995 bargaining campaign in the following terms.

“In order to bring some sanity to wages patterns in our industry and with the aim of achieving wage justice for those building and construction workers who have received little or no increases in wages and conditions over the last five years this meeting of the Construction and General Division Executive resolves -

1. We will commence a wage campaign from 1 August, 1995.
2. The aim of the campaign will be to secure agreements, registered or unregistered, but preferably registered, that will run to 1 October, 1997.
3. The quantum that we will be campaigning for will be a 15% increase. This is not an ambit claim.

4. In relation to firms that are due to enter a new round of enterprise agreements before 1 October 1995 our members are encouraged to immediately conclude their agreements but on the basis that their settlement is designed to achieve at least 25% above the 1993 award rate. These agreements should be designed to conclude on 1 October 1997.
5. In relation to firms where an enterprise agreement is currently on foot and designed to conclude after 1 October 1995 but before 1 October 1997 we urge that during our wages campaign commencing 1 August such firms be approached by the union with a view to seeking agreements to extend the EBA in line with our quantum claim (or higher) to expire on the common date of 1 October 1997.”<sup>15</sup>

The 1993 paper 'Future Directions or a Dead End?' had warned of the split that would develop between the wage rates of those workers who had access to bargaining and those who were reliant on the Award.

“The wages report to the BWIU Division National Conference of the CFMEU in 1992, speculated about the evolution of a three-tiered wages system [including] an award wages system which will discourage reliance on award increases (ie awards will over time increasingly resemble the role of legislated adult minimum rates of pay).”<sup>16</sup>

In 1996 the union, in a bold move, sought to address this problem by applying to the AIRC for a significant increase to the wage rates contained in the National Building and Construction Industry Award (NBCIA). The AIRC decided to hear this case in conjunction with the National Wage Case of 1996. The CFMEU application argued for a \$60 increase to NBCIA rates over 2 years, to narrow the gap between those on Award rates and those with EBA's (at that time the gap was \$133.68).

The CFMEU submission to the AIRC included the ESC report 'Must it End in Tiers - Problems and Prospects of a Two Tier Wage Structure in the Australian Construction Industry'. The submission argued that;

The increased priority given to enterprise bargaining threatens to institutionalise a Two-Tier wages system whereby award dependent workers are condemned to a low-pay ghetto. Apart from the obvious inequality of this situation such a development also threatens the structure of consistent minimum rates... and the relevance of the Award system itself.<sup>17</sup>

Employer bodies argued that a two-tier wage structure was implicit in the Act and that '... there was no legislative warrant for a catch-up.'<sup>18</sup> The AIRC expressed concern over growing disparity between wages paid under EBA's and those paid under Awards. The Commission decided to reject the CFMEU claim, stating that there were not sufficient grounds for providing relief on an industry specific basis. The final decision of the AIRC was an incremental \$10 per week increase in the safety net.

Parallel to this process, building unions in Victoria had continued to maintain an industry wide agreement with employers known as the Victorian Building Industry Agreement (VBIA). The VBIA applies on all commercial construction sites in Victoria and covers matters such as site inductions, site allowances, inclement weather procedures, safety and training but does not include wage levels. The latest version of the VBIA was launched in December 2000 and will run until 2005.

#### **4. The Political Case for Pattern Bargaining**

The decision of the CFMEU to seek to retain an industry-wide approach to industrial negotiations was not motivated by conservatism or an inability to embrace change. The decision was based on a philosophical belief that the division of building workers into 160,000 separate workplaces could only dis-empower the membership.

The desire of unionists to pursue common claims in an industry derives from a number of fundamental motives, the first of which is the collectivist culture of unionism itself. At its core, unionism constitutes a rejection by workers of a radical individualist ethos. The act of joining a trade union is an affirmation of the basic notion that an individual worker is in an unequal bargaining position with his or her employer and that they have interests in common with other workers.

Flowing from this basic fact are feelings of group identity and solidarity which in turn, gives rise to the concept of comparative wage justice. Comparative wage justice is, simply put, the idea that similarly

skilled workers doing similar work, should receive similar wages. It is a basic and enduring idea in the Australian workplace. It is reflected in the structure of the award system.

The 1996 ESC report examined the concept of comparative wage justice.

“We are left with the conclusion that there is no rational or civilised substitute in a modern industrial society for the operation of a principle of fairness such as comparative wage justice by a central tribunal on the basis of submissions put to it by the parties.”<sup>19</sup>

Another important impetus for multi-employer bargaining actually derives from employers. Often, it is favourable for employers to pay the ‘going rate for an employee, particularly employers who operate in sectors that are labour intensive but with a low capital base (such as the construction industry). In such a context, the ability to obtain a competitive advantage through investment in technology and plant is very limited. Essentially, the only area in which costs can be significantly decreased is in the area of wages and overall remuneration.

It is entirely understandable that many employers with a skilled and/or unionised workforce would choose not to drive wages down. There is accordingly, a receptive audience amongst many employers to the ‘level playing field’ in relation to wages and conditions. In industries where something more than the legislative minimum will be dictated by market conditions, pattern bargaining is a reasonable and rational option for employers.

Conservative politicians have tried to argue that pattern bargaining is an attempt to overturn ‘genuine’ enterprise bargaining. In effect what they are seeking is a limit on the type of agreements that parties can adopt. It is clearly hypocritical for politicians who rail against third party intervention in bargaining to then turn around and seek to limit the types of agreements available to the parties. But then, these are the same people who seem to be able to reconcile using the powers of the state to prevent workers from withdrawing their own labour, while simultaneously purporting to believe in the inalienable rights of the individual.

These intellectual inconsistencies continue because conservative politicians are not really committed to a particular model of bargaining or to a coherent industrial relations system. The real reason pattern or multi-employer bargaining is being targeted is because it is an effective response by workers to a decentralised wages system. The great ‘sin’ of pattern bargaining is that it has led to increases in real wages for tens of thousands of workers. As the table below demonstrates, building workers have consistently received higher wage outcomes than the all-industry average.

Table 1: Average Annualised Wage Increase (AAWI) for construction and all industries, 1997, 1998 and 1999

Year	1997	1998	1999
Construction Industry	5.6%	6.4%	5.7%
All Industries	4.4%	3.9%	3.6%

<sup>1</sup>Agreement making in Australia under the Workplace Relations Act – 1998 and 1999’ DEWRSB and OEA, page 30.

A further problem for the opponents of the CFMEU is that pattern bargaining is perfectly legal. In a recent case Senior Deputy President (SDP) Williams of the AIRC stated the following:

“As to the question of pattern bargaining, I am well aware from my involvement with the certification of numerous agreements... to which the CFMEU is a party are similar, if not almost identical, in their terms. That does not appear to me to be an uncommon practice within the industry. Whilst there may have been criticisms of the ‘pattern bargaining’ approach as a matter of principle, as far as I am aware, there has been no decision of a Full Bench of this Commission which has declared it to be contrary to the WR Act... There is no evidence before the Commission to suggest that such agreements are not entered into freely by the employers concerned.”<sup>20</sup>

Further, as much as the Government would have the Australian public believe that its opposition to pattern bargaining is simply concerned with maintaining the ‘integrity’ of the enterprise bargaining system, the reality is far different. Through its own actions via the Office of the Employment Advocate (OEA), the Government has clearly shown that its heart-felt opposition to pattern bargaining disappears when there is an advantage in pattern bargaining tactics from anti-union perspective.

The OEA stated in evidence before the Senate Estimates Committee that there were ‘framework’ Australian Workplace Agreements (AWA’s) in use that “...tend to look fairly similar.”<sup>21</sup> The head of the OEA, Mr Hamberger, further stated; “We would see potentially the development of framework agreements that have a fairly high degree of consistency as potentially, if done well, a quite positive development”. Indeed, the OEA devotes considerable resources to developing AWA’s that can be applied uniformly to employers in an industry. Call centres are but one example of this.

At a conference on workplace relations hosted by the MBA, Mr Hamberger insisted that identical or near identical AWA’s developed by the OEA to apply to a range of employers in an industry did not constitute pattern bargaining. In a particularly accomplished example of the art of semantics, Mr Hamberger insisted that the said AWA’s were merely “templates” and therefore not against the spirit of the WRA.<sup>22</sup> Clearly, pattern bargaining is OK where it does not have a union or collectivist basis.

A further compelling reason in support of industry wide bargaining is the need to comply with International Labour Organisation (ILO) Conventions 87 and 98. The conventions have been ratified by Australia and they deal with the right to strike and the right to organise and collectively bargain. The ILO Committee of Experts found in 1998 that the WRA 1996 was in contravention of Convention 98.<sup>23</sup> Specifically the WRA 1996 was found to contravene the principle of voluntary bargaining by favouring single-business agreements over multiple business agreements and individual agreements over collective agreements.

In a 1999 Report the Committee found that the WRA 1996 contravenes Convention 87 by restricting the right to strike for workers seeking a multi-employer or industry agreement.<sup>24</sup>

In 2000, after having received the Australian Government’s response to its previous observations, the Committee of Experts again called upon the Government to take measures to ensure that workers are adequately protected against discrimination based on negotiating a collective agreement at whatever level. Further, the 1996 Act should be amended to ensure that collective bargaining will not only be allowed, but encouraged, at the level determined by the bargaining parties.<sup>25</sup>

It is clear that any further legislative attacks on pattern bargaining would only exacerbate Australia’s current breaches of ILO Conventions. This occurred in New Zealand where the former conservative Government introduced a similar legislative prohibition on pattern bargaining. The ILO report on the Employment Contracts Act in New Zealand concluded that the provisions that removed the right to strike for unions pursuing “multi-employer contracts” were contrary to ILO Conventions.<sup>26</sup>

This is a point that has not been lost on the Australian Democrats with Senator Murray recently stating;

“Whether or not the Act has an object requiring compliance with international conventions, the High Court has clearly established in Brandy’s case that a ratified convention becomes part of our domestic law. If the Government wishes to enact a bill which falls short of its obligations as an exercise of its domestic sovereignty, it should first renounce the international convention. It should not pledge one thing in Geneva and implement the exact opposite in Canberra.”<sup>27</sup>

In seeking to outlaw pattern bargaining the Coalition are signalling that they are prepared to do exactly what Senator Murray has warned them against.

## **5. A Building Site is Not an Enterprise**

“In fact, the absolute last thing anyone in the building industry wants is genuine enterprise bargaining: it might be OK for the mining industry, where the employers are all major corporations with HR departments, but not for most builders and manufacturers.

Alan Kohler.”<sup>28</sup>

The very nature of the construction industry with multiple contractors performing a myriad of inter-related tasks to complete a given project is not conducive to the type of enterprise bargaining that the Government is trying to force upon parties. The system, designed for simple fixed businesses, can not cope with the demands of an industry that is project based, that has a complicated hierarchy of contractors and sub-contractors and that is dependent on maximum cooperation in programming tasks to achieve productivity gains.

This is why both employers and unions support pattern bargaining in the construction industry. Both parties know that it maximises cooperation between multifarious trades on sites and generally has a positive effect on productivity. In evidence to the Senate Committee on Reith’s Second Wave, construction industry employers supported pattern bargaining, saying that project agreements have been “... generally accepted by those in the industry as contributing to improved industrial relations on major projects”.<sup>29</sup>

Even the arch-conservative Productivity Commission (PC) stated that a key finding of a construction industry inquiry<sup>30</sup> was that there are grounds for head contractors having control over site specific arrangements such as;

- opening hours,
- site safety,
- inclement weather procedures, and
- RDO’s.

An electrical contractor made the following point in his submission to the PC.

“A building site is not an enterprise. Pattern agreements ensure employees working side by side on the job for different employers receive the same rates of pay. Employees on different rates of pay are never happy.”<sup>31</sup>

The enterprise bargaining model presumes that wage increases are a redistribution of some of the savings from ‘... the actual implementation of efficiency measures designed to effect real gains in productivity.’<sup>32</sup> This may work in a factory, however, in an industry such as construction, the nature of contract tendering means that such efficiencies are more likely to result in lower tenders. This is particularly so because of the boom-bust nature of the industry. Therefore, the client would capture the benefit rather than the worker and the company.

A further reason why pattern bargaining is appropriate for the construction industry is the predominance of small firms. The Housing Industry Association (HIA) has released data on the number and size of construction firms using unpublished information from the Business Register, an Australian Bureau of Statistics (ABS) database. This data shows clearly that the construction industry is dominated by small businesses, with only 262 firms employing 100 or more people.<sup>33</sup>

Incredibly, the report states that 59% of firms (or almost 100,000) have no employees at all, but rely entirely on sub-contractors. 90% of firms employ less than 5 people.

Table 2: Number and size of Australian construction firms - 1998/99

Size of Firm	Small	Medium	Large	Total
Employment	0-19	20-99	100 +	
Residential Building	39,762	228	10	40,000
Non-Residential Building	5,686	257	57	6,000
Engineering Construction	8,382	508	110	9,000
Specialist Services	107,754	1,061	85	108,900
Total Construction	160,584	2,054	262	162,900

<sup>34</sup>'Housing Australians', HIA, December 2000, page 28

One author has argued that smaller sub-contractors get better outcomes when agreements are negotiated on an industry basis.<sup>34</sup> Many micro-businesses also lack the resources to conduct detailed negotiations and prefer to rely on assistance from their employer organisation<sup>35</sup>.

The AIRC has also recognised the sense of pattern agreements in the construction industry because of the high number of micro-businesses. Looking again at the decision of SDP Williams, he stated;

“From my experience of the building sector, where there is a predominance of small employers and a significant movement by employees between employers, a coordinated approach to negotiations for enterprise agreements is both practical and sensible.”<sup>36</sup>

## **6. Attacks on Pattern Bargaining**

“You should not have a bar of the continuation of the VBIA. I believe your attitude to the VBIA is a real test for this industry. (Peter Reith to building industry employers, 18/3/99)”<sup>37</sup>

Since the launch of Campaign 2000 in the metal industry the conservative Commonwealth Government has made concerted attempts to outlaw pattern bargaining. The first attempt was contained in the Second Wave omnibus Bill (erroneously named the Workplace Relations Legislation Amendment (More Jobs Better Pay) Bill 1999), which was followed by the 2000 Bill mentioned above. In regard to the building industry, in particular, the Government has employed various weapons in its battle against pattern bargaining. The weapons at their disposal include;

- the National Code of Practice for the Construction Industry,
- the Office of Employment Advocate,
- the Australian Competition and Consumer Commission, and
- the Productivity Commission.

In many ways the manic efforts of the Coalition to end pattern bargaining are reminiscent of the anti-combination laws that sought to prevent unions from organising, and which were done away with in the 1870's. The Government wants a system where the only means people will have to impact on what happens in their working lives is through participation in negotiations within the four walls of an enterprise. They will listen to the discussion about what is happening in the global economy safe in the knowledge that they cannot lawfully combine with others to influence the shape of that economy or to determine how it's spoils might be distributed.

The Second Wave legislation was killed in the Senate. In his report to the Senate Inquiry on the Bill, Democrat spokesman Senator Andrew Murray said;

“In terms of the provisions dealing with pattern bargaining, I note that the ACTU and the AIG have made a number of constructive comments in dealing with pattern bargaining which are worth further consideration, although the amendments as they stand go too far.”<sup>38</sup>

Importantly, the Australian Industry Group (AIG) had stated in their submission that they had a 'distinctly different view' from the Government in relation to project agreements. They called for the

legislation to allow for multiple employer agreements on construction projects.<sup>39</sup> The MBA also argued in their submission that the Second Wave proposals would cause difficulties. Pointing to one of the objects of the WRA (to enable parties to choose the most appropriate form of agreement) the MBA said:

“In our submission the Bill contains provisions which are inconsistent with this object in that they are specifically aimed to prohibit or at least inhibit certain types of bargaining; in particular, what are regarded as pattern agreements.”<sup>40</sup>

On 11<sup>th</sup> May 2000 the Minister for Workplace Relations, Employment and Small Business, tabled the 2000 Bill. The contents of the Bill sought to resurrect a significant part of the Second Wave Bill rejected by the Senate. In addition, the Bill introduced new measures that go beyond the Second Wave involving restrictions upon workers seeking to engage in collective bargaining. The Bill is still before the Senate.

However, the Government are not only relying on legislation in their quest against pattern bargaining. As mentioned above, the Productivity Commission (PC) released the report 'Work Arrangements on Large Capital City Projects' in August 1999. The Treasurer had requested this report, as part of a series along with the meat industry, black coal industry and container stevedoring. It was obvious from the Government's brief and from the manner in which the PC conducted the Inquiry, that it was nothing more than a union-bashing exercise. The CFMEU chose not to participate in the Inquiry.

The Government couldn't be too pleased with the outcome. The report made the usual noises from the far right-wing about driving down wages and conditions, framed in terms of the need for employers to compete "on the basis of different work arrangements".<sup>41</sup> On the other hand, the PC recognised the proper role for site agreements, covering multiple employers. On the whole, the report had little impact and sank without a trace. The report's methodology was severely criticised by the ESC report "Constructing the Future".

And of course, Reith's favourite bureaucrats, the OEA, have also been used to obstruct common claims in the industry. For example, in 1998 the OEA sought injunctions against the CFMEU in the District Court of New South Wales, claiming that the union had used coercion in attempts to promote a mobile crane hiring agreement.<sup>42</sup>

In May 1999 the boot was on the other foot when the CFMEU initiated a case against the head of the OEA, Jonathan Hamberger, alleging that he took action with intent to coerce parties not to make, or not to certify, a proposed agreement for the Federation Square Project in Melbourne.<sup>43</sup> This case is still before the courts.

## **7. Bargaining in the Construction Industry**

This section will examine some of the available data on enterprise bargaining in the construction industry. It will then go on to present CFMEU data on the number of agreements reached in each of the four bargaining rounds. The CFMEU numbers will differ from other sources as they include state registered agreements as well as unregistered agreements.

In mid-1998 the CFMEU conducted a search of 'Osiris', the database of all federal Awards, certified agreements and decisions of the AIRC. Federal agreements certified as at the end of 1997 in the 'building, metal or civil construction industries' category were analysed. This category contained 1,909 separate agreements. The CFMEU were party to 1,458 of these agreements.

Table 3: Union parties to Federal Certified Agreements, Osiris category 'building, metal or civil construction industries', 1993-1997

Union Parties	Number of agreements
CFMEU only	1,365 (71.5%)
CFMEU and other unions	93 (4.8%)
Other unions	370 (19.4%)
Non-union	19 (1%)
Other*	62 (3.3%)
Total	1,909

\* Parties could not be determined

A government report, 'Agreement making in Australia under the Workplace Relations Act – 1998 and 1999' by the Department of Employment Workplace Relations and Small Business (DEWRSB) and the OEA identifies 4,730 construction industry agreements for the period, covering 62,433 workers.<sup>44</sup>

Table 4: AIRC registered agreements and employee coverage 1998 and 1999

	Agreements	Employees
Construction Industry	4,730	62,433
All Industries	13,156	1,562,721

'Agreement making in Australia under the Workplace Relations Act – 1998 and 1999' DEWRSB and OEA, page 21.

The report also identifies 34 distinct pattern agreements in the Workplace Agreements Database (WAD). Pattern agreements account for 3,450 agreements, covering an estimated 47,000 employees. This is 27% of all agreements on the database.<sup>45</sup> The most significant pattern identified was the 1997 Victorian Construction pattern, comprising of 1,759 agreements covering 14,700 workers.<sup>46</sup> This agreement expired 30 November 1999.

Table 5: Industry distribution of identified pattern agreements 1998 and 1999, selected industries.

Industry	Number of agreement in identified pattern	% of wage agreements within industry	Number of employees covered	% of employees within industry
Manufacturing	185	6	7,907	3
Construction	2,890	61	26,779	43
Transport & Storage	85	8	2,666	2
all others	290	-	9,788	-
Total	3,450	27	47,140	3

'Agreement making in Australia under the Workplace Relations Act – 1998 and 1999' DEWRSB and OEA, page 65.

The CFMEU were party to 2,194 agreements that were identified in the report as pattern agreements, this constitutes 64% of all pattern agreements. The majority of employees covered by a construction industry pattern agreement for the period received an Average Annualised Wage Increase (AWWI) of 7.5%. The report states that 2,220 agreements linked to the CFMEU expired between September and November 1999.

The DEWRSB report 'Trends in Enterprise Bargaining - June Quarter 2000' presents information on expiring pattern agreements in the construction industry, based on WAD data.

Table 6: Expiring pattern agreements in the construction division

Pattern Title	Number of Agreements	Number of E'ees	Expires	AAWI
CFMEU Vic Construction	1,759	14,600	30/11/99	7.5%
CFMEU Vic Construction	0	0	30/11/02	5%
CFMEU NSW Construction	252	3,400	30/9/99	7.5%
CFMEU NSW Construction	25	850	30/9/02	4.2%
CFMEU NSW Steel fixing	57	1,400	30/9/02	4%
CFMEU Carpet Laying	30	30	31/7/00	7.5%

The report states that between 1 October 1999 and 30 June 2000, 3,767 construction agreements covering 42,900 employees expired.<sup>47</sup> This represented 73% of all construction agreements current at 30 September 1999, demonstrating the effectiveness of the pattern bargaining strategy.

### **8. The 1993 Bargaining Round**

National agreements with major builders were the first to be concluded under the new industrial regime. The Concrete Constructions (Refurbishers) Enterprise Agreement 1993 was certified on 19 March 1993, but its operation was back-dated to 1 January 1992.<sup>48</sup> It was certified by Deputy President McBean under section 134E of the 1988 Act.

The Civil and Civic-Lend Lease Interiors Joint Development Agreement 1992 was certified before the Concrete Constructions agreement on 20 October 1992, but its operation was back-dated to 19 April 1992.<sup>49</sup> This was a 2-year agreement while the Concrete Constructions agreement operated for 3 years.

It is difficult to assess the total number of agreements concluded by the CFMEU in this period. The Labor Information Network reported that up to March 1995 there were 342 agreements certified by the AIRC in the construction industry.<sup>50</sup> This total includes agreements to which the CFMEU may not be a party. On the other hand, it excludes agreements registered in the State jurisdictions or not registered at all.

CFMEU data suggests that the level of agreement making was much higher. However, many of the 738 agreements in Table 7 were unregistered, often because of "... technical shortcomings and other teething problems as the industry learnt how to operate in an enterprise bargaining environment."<sup>51</sup>

Table 7: CFMEU EBAs for Round One (1993 and 1994) by State and Territory

State	Total
ACT	27
NAT	8
NSW	57
QLD	164
SA	9
VIC	467
WA	6
TAS	
Total	738

Source: CFMEU EBA Database and reports of Branch Secretaries

### **9. The 1995 Bargaining Round**

As stated above, the 1995 bargaining round began with a decision of the Divisional National Executive of the CFMEU in May 1995. The Executive position was adopted after a period of extensive consultation on the shop floor, in delegates meetings, general meetings and meetings of Branch Executives. The union sought an increase to wage rates of 15% over 24 months, on the grounds that many workers had received only the \$8 'safety net' increases since 1992.

The CFMEU prepared extensively for the bargaining round, including commissioning research on the economic impact of the wage demand<sup>52</sup>. The report, prepared by ESC, found that pattern bargaining had the potential to 'provide real efficiency savings to the construction industry'. It pointed to construction industry profitability and recent increases in executive remuneration to show that the industry could afford to meet the wage demand and arrest the recent decline in real wages. The ESC concluded that the economic impact of the wage increase would be negligible.

Jennie George, then President elect of the ACTU, released the ESC report on behalf of the CFMEU in early November 1995. One newspaper report of the launch quoted Ms George as saying that; "... the ACTU supported industry-wide claims in any industry where enterprise bargaining might produce uneven outcomes for workers".<sup>53</sup> The same report stated that the Prime Minister, Paul Keating, endorsed the CFMEU's 15% wage campaign on the condition it remained consistent with the Accord.

Table 8: CFMEU EBAs for Round Two (1995 and 1996) by State and Territory\*

STATE	AIRC REGISTRATION	STATE IRC REGISTRATION	NOT REGISTERED	TOTAL
ACT	24	-	60	84
NSW	297	-	133	430
QLD	9	495	89	593
SA	48	23	18	89
TAS	5	1	1	7
VIC	167	-	441	608
TOTAL	556	795	742	2095

ESC 1996 page 52 \*SA and Qld negotiated a 3 year agreement in 1996

### **10. The 1997 Bargaining Round**

In a wages strategy endorsed by the National Divisional Executive in May 1997 the union decided to pursue a minimum increase of 6% per annum. The executive stated that it was imperative for Branches to seek to synchronise expiry dates on 1 September 1999.

Other issues included in the wages round were income protection insurance, recognition for prevailing Award conditions and increases to superannuation and redundancy payments. The executive position

was adopted after a period of extensive consultation on the shop floor, in delegates meetings, general meetings and meetings of Branch Executives.

The CFMEU National Journal reported good progress on the wages campaign in September 1997. In Western Australia, a 27-month agreement for a 13.5% increase had already been achieved. Branches in Victoria and NSW were campaigning for increases above the 12% minimum agreed at the National Executive. Both Queensland and South Australia had concluded 3 year agreements in 1996.

Table 9: CFMEU EBAs for Round Three (1997 and 1998) by State and Territory\*

State	Total
ACT	@@@
NSW	649
QLD	808
SA	130
VIC	2962
WA	250
TAS	@@@
<b>Total</b>	<b>4799</b>

Source: CFMEU EBA Database and reports of Branch Secretaries \*SA and Qld negotiated a 3 year agreement in 1996

## **11. The 1999 Bargaining Round**

The most recent bargaining rounds was also one of the most interesting. Following the same process as the 1995 and 1997 rounds, a claim was developed for a 15% wage increase over 3 years. NSW was the first state to reach agreement, with a 'global' 15% outcome, made up of wage increases plus higher superannuation and other payments. In other states, such as South Australia, a 15% wage increase was achieved with other increases on top.

In an important development, the CFMEU in Tasmania achieved an agreed position with the Master Builders of Tasmania for the first time since the introduction of enterprise bargaining.<sup>55</sup> The agreement provided for a 'global' 15% increase for Tasmanian building workers.

However it was in Victoria that the campaign was at its hottest. A mass meeting in October 1999 of over 5,000 members at the Glasshouse in Melbourne decided on a wages campaign and a push for shorter hours in the industry. Amid intense media scrutiny (the Herald Sun ran a front-page story '36 Hour War' when a CFMEU shop-steward was assaulted<sup>56</sup>) and at least 17 separate legal cases, the Victorian Branch of the CFMEU conducted a 3-month campaign of stoppages and other actions that resulted in a 15% wage increase over 3 years and shorter hours<sup>57</sup>.

Reports from CFMEU Branches suggest that this round will see more agreements concluded than the previous round. By early 2001 there had been 823 agreements concluded in New South Wales, 1,725 in Victoria and 710 in Queensland.

## **12. Bargaining in the Future**

"National Secretary John Sutton said the Victorian collective agreement has set new standards for the construction industry. "I am confident that, in time, the 36-hour week will flow on to other States and building workers across Australia will start to enjoy the kind of hours workers in other industries take for granted."<sup>58</sup>

Clearly, the goal of the CFMEU is to continue with the industry-wide approach to bargaining that has proved so successful over the last decade. There seems to be support for this method amongst industry employers and only the conservative Commonwealth Government seems seriously opposed to pattern bargaining in the construction industry.

Further, we can conclude from research conducted in 1998 that the CFMEU membership approved of the way bargaining was carried out. External research into the attitude of CFMEU members on the performance of the union concluded that the members;

“... have given a very strong endorsement to the union’s performance. Two thirds of members felt the union has its relations with employers ‘about right’ while 23% see the union as too soft on employers. Only 9% saw the union as too tough on employers.”<sup>59</sup>

However, while the membership gave support for the level of service they received and the general approach of the union, they also sent a clear message about what they expected in the future. Over a third of those surveyed felt they were not paid enough. And when asked what the CFMEU had to do to win their approval in the future one in two members mentioned maintaining or improving wages, continuing with current methods or negotiating EBA’s.

Recent developments such as the AMWU embracing industry wide bargaining and uniform expiry dates in Campaign 2000 and 2001 can be seen as a vindication of the CFMEU’s historical position. This trend may also prove to be a double-edged sword as employer opposition to pattern bargaining grows. However, this may be a battle that has to be fought. The principal driving the CFMEU position on pattern bargaining is a principal that applies to all workers.

Perhaps the core lesson for unions from the first ten years of enterprise bargaining is the need to balance the push for the union movement to innovate and continue to evolve with an undiluted commitment to the core values of the movement.

## **Abbreviations**

AAWI - Average Annualised Wage Increase

ABS - Australian Bureau of Statistics

AFR – Australian Financial Review

ACTU - Australian Council of Trade Unions

AIG - Australian Industry Group

AIRC - Australian Industrial Relations Commission

AWA - Australian Workplace Agreement

BCA - Business Council of Australia

CFMEU - Construction, Forestry, Mining and Energy Union, Construction and General Division,

DEWRSB - Department of Employment Workplace Relations and Small Business

EBA - Enterprise Bargaining Agreement

ESC - Employment Studies Centre

HIA - Housing Industry Association

ILO - International Labour Organisation

MBA - Master Builders Australia

MUA - Maritime Union of Australia

NBCIA - National Building and Construction Industry Award

OEA - Office of the Employment Advocate

PC - Productivity Commission

SDP - Senior Deputy President

VBIA - Victorian Building Industry Agreement

WAD - Workplace Agreements Database

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