

The Employment Contracts Act: An Interim Assessment

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The Employment Contracts Act, bracketed with the other market-oriented changes of the decade, has changed the nature of economic and social relations in New Zealand. In hindsight it seems that a broad consensus has emerged that some change was necessary. But the debate will continue to rage as to whether the direction, extent and speed of that change was necessary, whether the espoused benefits of that change have been achieved, and whether those benefits have been equitably shared. There will be further ongoing debate as to whether any benefits have outweighed the costs, especially social costs, of the programme of change. This essay is a contribution to that debate focusing on the specific issue of the Employment Contracts Act and the labour market; the impact and outcomes. It is argued that similar or better economic outcomes (with less social divisiveness) could have been achieved by an alternative strategy.

It was the best of times, it was the worst of times, it was the age of wisdom, it was the age of foolishness, it was the epoch of belief, it was the epoch of incredulity, it was the season of Light, it was the season of Darkness, it was the spring of hope, it was the winter of despair, we had everything before us, we have nothing before us . . .

(Charles Dickens, *A Tale of Two Cities*)

Introduction

The Industrial Conciliation and Arbitration Act 1894 was an innovative piece of labour legislation. It was part of a range of legislative and other government action that earned New Zealand a reputation as a progressive social laboratory, attracting interest and visitors from afar. Ninety-seven years later the Employment Contracts Act 1991 was also regarded as an innovative piece of labour legislation. It also was part of a wider range of legislative and government action that earned New Zealand another, albeit different, reputation. There is no doubt it was a major boost to trans-Tasman air traffic, but interest and visitors also came from much further afield. The radical changes in the labour legislation created a boom for industrial and economic analysts, for labour lawyers, and for academic research and writing. The two authors, and the Industrial Relations Centre at Victoria University of Wellington, have participated in that boom.

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The Employment Contracts Act was part of the electoral package accepted at the 1990 election. The National Government was elected with a substantial majority. But, in 1993, the Employment Contracts Act was also a part of the electoral package that the electorate rejected (notwithstanding that the government did not change). Moreover, by voting to make fundamental changes to the country's electoral system, the electorate signalled that the governmental processes that had been utilised to initiate most of the change agenda were no longer acceptable. It is an open question as to whether these electoral rebuffs were a reaction to the impact of the Employment Contracts Act or whether the catalyst for electoral change related more to changes imposed and planned in the education and health sectors. In many ways the Prime Ministerial Task Force on Employment has captured the mood of the country well when stating that "The Employment Contracts Act remains controversial both in terms of its intent and in respect of equity and minimum rights considerations" (Anderson, 1994: 79).

This essay focuses on the Employment Contracts Act and the labour market, tackling four specific questions:

- What has been the impact on collective bargaining?
- What has been the impact on trade unions?
- What has been the impact of the decollectivisation and decentralisation thrusts on labour market outcomes, particularly those related to flexibility, employment and equity?
- Could similar, or even better outcomes, have been achieved by an alternative strategy?

Current research can provide well-argued responses to the first two questions. The authors have presented ongoing reports and assessments addressing these issues based on the databases maintained by the researchers. Reports on specific areas of change have been presented from time to time. The results of this ongoing research are synthesised in the next two sections of the essay. The last two questions require more speculative answers and are discussed in later sections of the essay. As noted, research and debate with respect to these questions will continue for some time. Moreover, there is the notion (Walsh and Ryan, 1993), and further historical research will confirm, that ideology and power were fundamental motivators of the key proponents of the Employment Contracts Act. From such a perspective even substantial economic and social costs would be a price worth paying to create the fundamental shift in employment relationships and labour market power that undoubtedly resulted. In such a case even a well-researched and documented argument is useless in rebuttal.

The Employment Contracts Act and collective bargaining

We have reported on bargaining trends in successive years - trends for the first year (1991-92) being reported in Harbridge and Moulder (1993) and trends for the second year (1992-93) in Harbridge and Hince (1994). The trends reported herein are for the third year (1993-94) of bargaining since the introduction of the Employment Contracts Act. Our review for the 1993-94 year has identified ten key findings.

First, the collapse of collective bargaining seen during the first two years under the Employment Contracts Act has stabilised. Overall coverage of collective bargaining in New Zealand declined from some 721,000 employees to approximately 370,000, a decline of between 40 percent and 50 percent, in the three year period May 1991 to May 1994. This decline was almost exclusively due to the collapse of multi-employer bargaining. By May 1994 only 17 percent of the employees covered by contracts were covered by multi-employer contracts, where previously multi-employer coverage had been the norm for the best part of a century. Enterprise bargaining was created overnight by a legislative act, reinforcing the administrative creation of that form of bargaining in the public sector a few years earlier.

Second, on wages. Few contracts are "wage free" - most employees (91 percent) are covered by contracts which contain wage rates. Two industries differ from this general pattern - construction and transport. In both these sectors, contracts are more likely to be wage-free and determined by individual contract.

Third, on wage movement. Average wage increases were very low in the first two years after the passage of the Act, but a wide variation in settlements emerged with some 10 percent of employees experiencing a decrease to basic rates, whilst other groups gained considerable increases. The traditional relativities and the notion of comparative wage justice disappeared quickly. In the third year basic rates again increased marginally, on average at a rate equalling 1.0 percent per annum, whilst the dispersion was more compressed. The radical adjustment of relativities observed and reported during the 1991-92 and 199-93 years seems to have been completed. By 1993-94, however, expectations of wage increases, encouraged by political rhetoric of growth and economic recovery, were being translated into a wage pattern of two and three percent increases. Also in the latest period a trend of extending contracts to previously de-unionised employees (for example, clerical work in manufacturing establishments) was noted.

Fourth, on clock hours. Clock hours remain in contracts covering 57 percent of the employees in the sample - thus making them eligible for given premium payments for work undertaken after the completion of the 40 hour week. The retail, restaurant and hotel, and community, public services sectors are sectors where contracts are unlikely to specify clock hours. There is only a slight trend towards the further removal of clock hours from contracts.

Fifth, on the working week. Consistent with the trend to remove clock hours in some sectors, there has been a trend to extend the Monday - Saturday working week to a Monday - Sunday working week. Thirty-four percent of employees in our sample are now covered by contracts which provide for ordinary work on every day of the week. Eleven percent are now on a four-day week.

Sixth, on achieving penal rates. Forty-three percent of employees are now covered by contracts which require the employee to work the full hours in the week (generally 40) before being able to attract a premium rate of pay. Conversely, however, 57 percent of employees remain on contracts which do provide for penal and overtime rates of pay for work at night and on weekends.

Seventh, on overtime and penal rate premiums. Where premiums for penal and overtime still apply, they apply at broadly similar rates as they have previously. Time and a half for the first three hours followed by double time is the regular premium for night work within the Monday - Friday week, and for Saturday work. Double time remains common for Sunday work. Notwithstanding this, there has been an observable trend to reduce the premium "double time" to "time and a half" and to reduce "time and a half for the first three hours, followed by double time" to "time and a half throughout".

Eighth, on leave. The fourth weeks annual leave is typically available after six or seven years service with the same employer. In the transport sector, a more generous entitlement applies than in other industries with nearly one quarter of the employees in that sector being entitled to a fourth weeks annual leave after just 12 months service with the employer. Special leave (sick, domestic and bereavement leave) is more generous than the legislative entitlement of five days per annum. Generally 10 days is provided for sick and domestic purposes with additional bereavement leave being given - often on a discretionary basis. Parental leave follows the statutory provision; most employees (80 percent) are employed under contracts that provide for long service leave.

Ninth, on union presence. Traditional unions remain the preferred choice of employees as their bargaining agent with over 85 percent of employees covered by collective contracts choosing a union negotiated contract. Unions have been able to gain "party" status more easily in 1993-94 collective contracts than in the 1991-92 and 1992-93 years with over 50 percent of employees covered by collective contracts being under a contract where the union had "party" status.

Tenth, on the issue of new employees. Many employers continue to use this facility to exclude new employees from the terms and conditions of the existing contract by not providing for the extension of the existing contract to new employees. Ten percent of employees are covered by a contract where there is no provision for the extension of that contract to new employees, while a further 40 percent are covered by contracts in which the extension to new employees is at the discretion of the employer.

The Employment Contracts Act and unionism

The first-named author developed a theoretical model that attempted to explain the historical, and predict the future, pattern of development of trade unionism in New Zealand (Hince, 1993). The model was based on the primacy of government legislative and regulatory action as the determinants of change. Recent legislative changes have provided a basis for an empirical test of the model.

Soon after compulsory unionism was reintroduced in 1984 union membership surged, despite increasing unemployment, to peak at 683,006 in December 1985. The number of unions had been declining gradually over time; the average size and concentration of membership had been changing slowly. However, the impact of the 1,000 member minimum rule for union registration introduced by the Labour Relations Act 1987 was both immediate and dramatic. The number of unions declined from 253 to 80 between December 1986 and May 1991. Average size increased, with membership concentrated in fewer, larger unions. By May 1991 only four unions of less than 1,000 members remained and 72 percent of unionists were organised in the largest (10,000 plus) unions.

The impact of the Employment Contracts Act 1991 was even more dramatic. The Act ended compulsory unionism, abandoned registration of unions, and attacked the traditional rights (and obligations) accorded to unions. Between May 1991 and December 1993 union membership fell from 603,118 to 409,112 members, with the bulk of this fall (to 428,160 members) occurring in the first 17 months of the life of the statute. Whilst the number of unions continued to decrease (to 58 in 1992) this trend has reversed in the most recent data. The pattern of concentration has also begun to reverse, albeit for the moment only marginally, and average size has begun to decline (Harbridge, Hince and Honeybone, 1994).

Behind these aggregate quantitative changes there are some other changes both quantitative and qualitative, that need be noted:

- unionism has declined further and faster in the areas of the so-called "paper or arbitration unions", namely clerical, retail distribution and agriculture.
- the decline has also been more noticeable in areas where (perhaps) the need is greater, that is, employment areas dominated by low-skill, young and female workers.
- an exception to the above points has been the decline of unionism in the construction industry. In this case the nature of work organisation (individual contracting/sub-contracting), the dominance of large construction firms militantly supporting the individualising thrust of the Employment Contracts Act, and a failure of union leadership, are suggested as explanatory factors reinforcing the general nature and intent of the statute.

- the impact on unionism in the private sector has been markedly greater than in the public sector. The absolute decline of union membership in the public service sector has been minimal (8 percent between December 1991 and December 1993). The public sector, (including teachers, nurses, and health workers) is now a dominant sector, and a key source of future innovation and radicalism in the New Zealand trade union movement .
- the energy, transport and manufacturing sectors, some of the historical bases of union strength have, relatively speaking, retained their membership base.
- a pattern of enterprise based, particularly company-sponsored unionism, has not emerged to any noticeable extent despite the philosophic base of the legislation. Some fragmentation has developed but this is almost exclusively a reflection of the expression of specific needs by specific groups of workers.

In the post-Employment Contracts Act era some industry sectors will operate with minimum union involvement and corporate induced change will dominate, especially whilst the labour market (in aggregate or in particular respects such as skills, regions, etc.) remains slack. But in many other areas a challenged, perhaps "bloodied" union movement will operate with a reorganised, re-oriented, rationalised and up-skilled approach to the new realities of the market place. Neither a return to compulsory unionism, nor any real form of legislative feather-bedding of unionism, will be the basis of future action. An interim assessment, to be further tested with the passage of time, is the prediction (Hince, 1993) that a more coherent, cohesive, radical and competitive unionism will emerge in New Zealand as a result of the legislatively enhanced change. Arguably this was not the intent of the proponents of the Employment Contracts Act.

The impact on aggregate outcomes: labour flexibility

A principal objective of the Employment Contracts Act was the creation of an efficient labour market by increased flexibility, decentralisation of labour relations decision making, and minimisation of monopolistic distortions (unions). Enhanced productivity at the micro-level and economic growth at the macro-level were to result. There is no doubt that flexibility through variable wage changes, variation in work practices and work organisations was to be the measure of an efficient labour market. In fact, the theoretical basis of the Act was that variations and flexibility to meet specific and individual organisation needs would be the pervasive result.

There has been change in this direction in some industries (retail, restaurants and hotel, and the distribution sectors) where penal rates of pay for working at non-traditional hours have been largely abolished. Nevertheless, the data is neither overpowering nor unequivocal in support of the nexus postulated. An information gap, narrowed a little by anecdotal evidence, exists in the expanded area of individual contracting. Have significant variations emerged, have these variations led to efficiency gains, or has the dominant model been a uniformity of contract simply

presented to a myriad of individuals as an ideological sop to the notion of management power?

Anecdotal evidence and associated public comment about the general enhancement of flexibility have been commonplace. However, there is the doubt as to whether these public comments are related to the need for self-assurance that the intensity of effort to move to the current management credo of "talking direct to my employees" is producing results, just a rationalisation of the urge to retain the "right to manage", or both. Furthermore, there is an argument that the same, or greater, capacity for flexibility and enhanced productivity existed in the pre-Employment Contracts Act regime. Management, either through incompetence, or for political and ideological reasons, failed to initiate and work through the necessary process of change.

Political pragmatism cannot be discounted as any advantage postulated by the theoretical basis for the Act for a flexibility of youth rates to drop to provide market clearance and reduce youth unemployment was, in practice, short-lived. Minimum youth rates were introduced by regulation soon after the 1993 election reduced the government majority to two votes.

Case studies of change, both at the level of the firm and industry, indicate that a capacity for innovative practices did exist, and innovation did occur, under the Labour Relations Act regime. That regime both encouraged and supported the collectivist approach. The following examples serve as useful indicators of the innovations that were being achieved:

Case: Interlock Industries: A medium sized fabricator of windows, doors and related hardware has incorporated workplace restructuring and employee involvement within an integrated approach towards a total quality management context. Whilst management practices of just-in-time, quality control and quality assurance are explicit in the operation, a change in the approach to people is also pervasive. Managers are coaches, instructors and facilitators, and delegation to and empowerment of employees critical. Team approach to development and work, and the full notion of a learning organisation, are central and critical.

Learning embraces on the job training, training within the broader industry framework, team-leader and team-function learning, as well as personal and professional development. Continuous improvement, elimination of waste and more specific indicators of both labour productivity and cost reduction are identifiable in this case. One example is indicative, namely the maintenance of output with a 55 percent reduction of staff in five years. Expansion, rather than mere survival, in a period of local and international recession is a further hallmark of the success of these approaches. Change began in the mid 1980s.

Case: Fisher and Paykel: Fisher and Paykel, is a major and long established white-ware and electronics manufacturer with a well-deserved reputation for positive and successful approaches to labour relations. By early 1991 Fisher and Paykel had negotiated a single multi-union (nine separate unions) enterprise agreement to replace 14 separate national awards. The agreement encompassed the broad range of issues

standard to awards: wages, hours of work, leave, and disputes procedures. There was also an agreed statement of intent to implement the agreement in order to secure the maintenance and expansion of the industry including the securing and expansion of jobs and job opportunities, improvement of the work environment through job design and training, the development of more effective communication between managers, unions and employees, the improvement of the productivity and efficiency of the industry, and making the most effective use of new technology. The unions accepted a commitment to this mission, and to working to maximise job security through continuous improvement of work, an intention to work in a co-operative, consultative manner and to provide input to decision making processes. Structures for such input were established in the document.

The Fisher and Paykel agreement also provided that employment benefits were extended to encompass an employee share purchase scheme, free life insurance/staff superannuation, a profit sharing bonus, preferential purchase of company products, and payments for those employees willing to participate in a car-pool transport scheme.

When the Employment Contracts Act was proclaimed the Fisher and Paykel view was one of concern that having concluded a composite agreement, after considerable effort and financial outlay by all parties, it could now find that it is subjected to disturbances by one employee or a small group of employees who decide to engage different bargaining agents and pursue a private and possibly unproductive agenda. Fortunately, this has not eventuated; in fact the continued involvement of unions has worked to strengthen the cohesion of employees, and hence the mutual benefit of the relationship. The original composite agreement expired on 30 April 1992. It was successfully renegotiated as a collective employment contract for a further period.

The company has maintained its position holding a dominant share in the domestic market, has increased exports and established offshore manufacturing facilities in Australia to facilitate further expansion in that market.

Case: Nissan: In 1987 Nissan (one of five motor-vehicle assembly plants in New Zealand, a subsidiary of Nissan, Japan) proposed a single site agreement to the unions organising at its South Auckland site. The proposal advanced by the company sought to change the bargaining structure to a site focus, and to establish by consensus a range of changes in work organisation and related matters. Initially one union (numerically the dominant one) supported the notion; all others opposed. The latter group argued that such an agreement would pit worker against worker, intensify the work process and fail to deliver pay-backs to workers. A ten-week strike and bitter inter-union (as well as union-company) struggle ensued.

Ryan (1993) reports that five years on those fears have not eventuated. Workers consider the changes a success and very few want to turn the clock back. Nissan uses a consultative council of worker and union representatives which also handles contract negotiations. An agreement operates to promote training for all staff who, in return, may be transferred to any work. Workers have been reclassified into one of four bands, with movement within each band dependent on annual appraisal by the

team leader, the highest points being awarded for skill. Teamwork and flexibility have delivered practical results for both workers and management. A positive work atmosphere, a marked quality improvement and, significantly, a consensus that the plant would have closed but for the changes, are indications of a successful (albeit difficult) transition.

Case: The Dairy Products Processing Industry: A major industrial dispute in the late 1980s which involved, inter alia, the dumping of \$20 million worth of milk into drains and fields, was a catalyst for the redefinition of approaches and relationships in the dairy product processing industry. One result of substantial negotiations between the New Zealand Dairy Industry Employers and three unions organising in the industry was a memorandum of agreement. This memorandum included an agreed statement of intent, expressing a commitment to increasing international competitiveness, to restructure work classifications, to enhance training and skills including a skills based career path, to establish effective consultation mechanisms and to provide a safe and healthy work environment.

The document incorporates a positive commitment by employers to work with unions, and vice-versa, to achieve these ends. One key paragraph is the acceptance that the process is not a vehicle for job shedding. Of even more importance was that the document, itself a process of consultation with unions representing employees, set in place a similar process to be the basis of continuing and evolving change. Further, it must be noted that the agreement has led to a significant enhancement of industry-based training and the incorporation of such training into the national training and awards scheme.

The impact on aggregate outcomes: employment

The employment creation effects of the Employment Contracts Act will always be difficult to correlate. Considerable public euphoria has been expressed in 1994 at the lowering of the numbers of people "unemployed". A review of the number of persons (excluding superannuitants) receiving social welfare benefits for the period 1990 - 1993 is in Table 1. The data show a growth in the number of persons receiving benefits of all types except widows' benefits.

Table 1: Persons in receipt of selected social welfare benefits (1990 - 1993)

Year	Unemployment	Training	Sickness	Invalids	Domestic Purposes	Widows	Total
1990	139,625	9,453	19,511	27,824	94,823	12,676	303,912
1991	153,259	7,483	20,147	30,746	97,000	10,989	319,624
1992	170,367	7,857	24,093	31,831	96,722	9,873	340,743
1993	170,339	10,897	28,729	34,957	96,335	10,259	351,516

Source: NZ Official Yearbook (various years).

There has always been a degree of inter-changeability between the different benefits, and the system itself encourages some interchange. For example, both the invalids' benefit and sickness benefit are paid at a rate exceeding corresponding rates for the unemployment benefit, encouraging those who may be eligible for the sickness benefit to claim that rather than the unemployment benefit, thereby disguising increases in unemployment (Brosnan, 1987).

Workers with disabilities have an incentive to opt for the more financially attractive option, and therefore not register as unemployed. Further, the extension of the stand down period for the unemployment benefit in particular circumstances also acts as an incentive for individuals to move onto the sickness benefit rather than the unemployment benefit to which they might be more correctly assigned. Brosnan, Wilson and Wong (1989) have also argued that the domestic purposes benefit further works to conceal the true level of unemployment in New Zealand.

It is also worth observing that recent decisions from the judicial system have encouraged dismissed employees to file personal grievance claims against their former employers. The Social Welfare Department has agreed that where a dismissal is being contested by the employee and a personal grievance claim has been filed, no penalty stand-down period for receiving the unemployment benefit will apply.

Long-term unemployment has steadily increased since 1980, both numerically and as a proportion of all those unemployed. These increases have been particularly sizeable in the last six years (from 1988 to 1994). The data in Table 2 shows the extent of this trend. The long-term unemployed, under the OECD definition of 52 weeks continuous unemployment, as a proportion of all those registered as unemployed rose from 11.7 percent in December 1988, to 33.9 percent in April 1994. The proportion of people continuously unemployed for a period of greater than two years rose even more dramatically; from 2.7 percent in 1988, to 20 percent in 1994. The data is in Table 2.

Table 2: Duration profile of registered unemployed : 1988 - 1994

Weeks Unemployed	Percentage of Registered Unemployed			Number
	Dec 1988	Dec 1992	April 1994	April 1994
0-13	45.9	34.6	31.2	58,180
14-25	22.7	14.2	17.7	32,956
26-51	19.7	17.5	17.3	32,246
52-103	9.0	13.7	13.9	25,965
104 or longer	2.7	16.1	20.0	37,282

Source: Anderson (1994)

In brief, the number of people on social welfare benefits and not in employment continues to grow, as does the duration of unemployment. Claims that the Employment Contracts Act has led to a growth in employment would be greeted with scepticism by these authors.

The impact on aggregate outcomes: equity of distribution

The Employment Contracts Act, unlike its preceding industrial relations legislation, contains no pretence that equity should be an outcome of the industrial relations machinery. Efficiency is the sole objective. Accordingly, it comes as little surprise that the uneven effects of labour market deregulation since 1991 have been controversial.

The effects of deregulation with respect to gender have been identified by Hammond and Harbridge (1993). The percentage of women covered by each collective employment contract held in the Industrial Relations Centre's database has been recorded, enabling the data to be weighted by the actual number of women and men covered by each contract, and enabling the grouping of contracts into those that covered "mainly women", "mixed", and "mainly men". The results of the data analysis show a very clear gender effect:

- in the first two years of bargaining under the Employment Contracts Act, women's basic wage rates increased at an overall slower rate than did men's basic wage rates;
- in the third year of bargaining, both women's and men's wages moved at the same rate;
- of those that broke free of traditional wage relativities and experienced large wage increases (over four percent), men were significantly more likely than were women to be the beneficiaries;
- women were significantly more likely to be working under contracts where penal and overtime rates had been removed or reduced with those contracts covering "mainly men" having their penal and overtime rates largely preserved.

Analysis of the contracts data on the basis of gender is on-going and further reports will be available in 1995. The concerns about equity issues and the effects of the labour market deregulation on women have been espoused by a number of researchers. Sayers (1993) hypothesised that the employment contracts legislation would unfairly impact on women, particularly given their place in the labour market. Mulgan (1993) argued the case for a broad minimum code, particularly to protect the employment rights of women workers in the new deregulated environment. Whatman, Armitage and Dunbar (1994) summarise the evidence of Hammond and Harbridge (1993), Pringle (1993) and Hector, Henning and Hubble (1993) who have all identified that there have been differential results for men and women under the

Act with the contrast being likely to be a reflection of the different positions held generally in the labour market by men and women. In particular, women are more likely to be in part time positions, in positions that are not seen as so skilled, and to be in the public sector, a sector additionally constrained by tight fiscal policies.

Not only is a "gender effect" apparent, but also it can be shown that the "rich are getting richer". An official measure of income is the total income for full-time wage and salary earners as reported by the Department of Statistics. To calculate these indexes, gross incomes are first adjusted for income tax liability and then for inflation as measured by the Consumers Price Index. The series therefore measures quarterly changes in the aftertax purchasing power of gross incomes. Only persons working 30 or more hours per week are included in the series.

The data are reported in quintiles and are reproduced in Table 3. The data show that all quintiles of wage and salary earners except the highest 20 percent, the top quintile, have experienced decreases in real income over the period 1980 - 1994. The effects on the lowest quintiles of earners are most dramatic in the post-Employment Contracts Act period, further demonstrating the "poor getting poorer" effect, at least part of which must be attributable to the Employment Contracts Act.

The Department of Statistics plans to discontinue this index, releasing instead a Real Wage Rate Index. This new index will not be reported for the income quintiles and accordingly in the future the disparities between different income groups will not be visible.

Another way?

There is no doubt that management innovators associated with each of the cases referred to earlier would indicate that change could have been easier to accomplish under an Employment Contracts Act regime. However, these cases provide adequate evidence to argue that the fundamental power shift brought about by the Employment Contracts Act was not a condition precedent for change. A series of Australian case studies, and other evidence, can complement the earlier New Zealand experience, to illustrate that the objectives of enhanced flexibility, leading to greater efficiency, productivity and a contribution to growth, can occur under a markedly different approach to the labour market than that of the Employment Contracts Act.

Since 1983 a consensus, reached between the Australian Council of Trade Unions and the Federal Labor Government, known as the Accord, has dominated the operation of labour relations processes. Davis and Lansbury (1993) synthesise this approach. Productivity incentives became a central focus of the wage system as early as the Accord Mark III (1987-88) package. Wage increases and tax cuts linked to restructuring and industrial efficiency *at the enterprise level* (our emphasis) were contained in the 1988-89 package.

Table 3: Real disposable income indexes - full-time wage and salary earners (1980 - 1994) Base: year ended March 1982 (= 1,000)

	Quintile fraction of full time wage and salary earners					All
	First Lowest 20%	Second	Third	Fourth	Fifth Highest 20%	
March 1980	989	992	995	1,003	1,011	1,001
March 1981	1,027	1,029	1,030	1,029	1,028	1,029
March 1982	1,015	1,010	1,006	995	989	1,000
March 1983	971	980	980	1,009	1,077	1,017
March 1984	966	979	977	1,003	1,066	1,010
March 1985	946	924	911	933	984	945
March 1986	940	912	918	947	972	943
March 1987	960	944	952	977	1,019	978
March 1988	940	924	936	953	987	955
March 1989	970	963	978	1,004	1,103	1,020
March 1990	950	947	964	990	1,090	1,005
March 1991	932	932	952	978	1,079	992
March 1992	937	941	964	989	1,094	1,004
March 1993	928	932	953	977	1,084	994
March 1994	925	931	952	976	1,086	993

Source: Department of Statistics, *Income Statistics 1992* Table 3.1 and *Key Statistics September 1994*

Both Mark V (1989-90) and Mark VI (1990-92) Accords focused on a combination of tax cuts, wage change and social objectives (social wage improvement, superannuation, improved social welfare benefits, for example). Access to enterprise bargaining, enhanced structural efficiency and restructuring of industrial and occupational awards, were also central to these agreements. The same objectives continued in the 1993-96 package of agreed reforms, with a stronger emphasis on the enterprise: enterprise bargaining was designated as the *primary path* (our emphasis) to wage increases.

However, this latest package also accepted the need for the retention of an award base to the system to provide a safety net of minimum provisions and selective wage

increases. In 1993, for example, an agreed \$8 per week wage increase was made to safeguard lower paid employees and those in workplaces where no enterprise agreement had been put in place.

Employer organisations have refrained from direct involvement in the establishment of the Accord principles, and the public position of organised employers was to favour the enterprise focus, but not the centralised accords that were providing the developmental framework and impetus in Australia. Nevertheless, most employers and employer organisations have worked with unions, and a government agency (the Australian Industrial Relations Commission), to implement the agreed model. The exception to this employer approach has been a small group collectively identified as the "New Right" that have maintained a strong ideological opposition to centralised accords and to the role of unions in both policy development and implementation.

From 1991 on, key groups of Australian management were to appraise, endorse and ultimately envy the anti-union Employment Contracts Act approach to bargaining reform that emerged in New Zealand. Ideology was a key driving force. In 1993 the Australian electorate rejected the New Zealand approach when presented with an electoral package by the then, and still, Liberal-Country party federal opposition. Whilst this has not removed the "New Right" opposition, the generally more pragmatic response by management has been to further enhance the change process endorsed by a national consensus.

Some specific cases illustrate the type of change at the micro-level:

Case: Joint Development Agreements: Whilst many enterprise agreements are narrow in focus, others have created fundamental reform. The individual enterprise agreements entered into by Civil and Civic (a major construction firm), Carlton and United Breweries (with somewhat more than 50 percent of the Australian beer market) and MLC Insurance (a major player in the insurance market) are examples of the latter. Each of the above organisations have established enterprise agreements that embrace a common approach and set of principles. They have chosen the label, "Joint Development Agreements".

The process of reaching agreement has been joint, involving a union (or multiple unions in the brewery case) and the enterprise. The initial outcome is a document which establishes mutual objectives, internal operational structures and roles, and a basis of future co-operative and productive relationships. These agreements also detail the associated reward systems and conditions of employment. The fundamentals of the workplace reform strategy of these agreements are the introduction of new participative processes, new forms of work organisation, methods of skill formation and remuneration. Generalised, the objectives can be expressed as developing learning based work organisations, developing more effective and adaptable management work practices, providing a career structure for all employees based on skills and competencies, improving educational arrangements, skill formation and access to learning, improving job security, the provision of high standards of occupational health and safety, the elimination of lost time, the introduction of new technology and associated change to enhance the competitive

position of the companies, the improvement of the quality of work and the environmental impact of operations.

The construction agreement also seeks to extend the notion of enterprise agreements and the philosophy, content and application of the core development agreement to sub-contractors.

Consultation and participation are to occur at various levels. In the construction case at the national, business unit and project level. In the brewery example, a Works Organisation Team and several topic (technology, people, etc.) task forces are key components of the consultative/participative process. The role of the Works Organisation Team is to oversee the implementation of agreed work and management practices, whilst that of the topic task forces is to gather information and make recommendations on their specific allocated area, reporting to the Works Team.

Case: Alcoa of Australia: Alcoa of Australia has found that a mainly union-driven reform of work practices at its aluminium works in Point Henry, Victoria, has cut the production cost of aluminium sheet enough to make the works competitive. Alcoa is now investing another \$A25 million in its rolled products division. The expansion has triggered similar-sized investments from local can makers Containers and Gadsden, and will leave \$A50 million of sheet available for export annually. Alcoa also runs alumina mines in Western Australia and an aluminium smelter at Portland, Victoria that are regarded as some of the most efficient in the world.

Alcoa and the main Point Henry union, the Federation of Industrial, Manufacturing and Engineering Employees, started grappling with reform in 1990. Workers who did the job re-designed the jobs, restrictive practices and demarcation lines were abandoned, and a no-strike deal agreed. Workers operate as unsupervised, self-directed teams, determining the make-up of their own teams. Overtime has been abandoned, workers simply "finish the job". Whilst the reforms have cost jobs, the workforce reduction (from 1,300 to 1,000) has been by attrition and voluntary redundancy. The common view is that new investment will now improve job security rather than add permanent jobs.

The Alcoa case is particularly interesting because of the juxtaposition of the alternative policy adopted by Comalco at the aluminium refinery at Tiwai Point in the South Island of New Zealand which strongly encouraged employees to agree to individual employment contracts. The Joint Development Agreement approach at the Carlton and United Breweries is of interest in juxtaposition to the fervent advocacy and application of the Employment Contracts Act approach by the New Zealand based brewer, Lion Nathan.

Interim assessments of the Australian approach do vary. A survey of manufacturing industry in New South Wales in 1991 (Plowman and Favolto, 1992) indicated that 13 percent of respondents had enterprise specific arrangements and a further 19 percent were seeking such arrangements, the proportions increasing as the size of enterprise increased. Sloan (1993), whilst noting that there were cases where award restructuring

changed workplace culture, argues that take-up was slow, most changes were add-on to awards rather than complete enterprise focus documents, concession bargaining outcomes favoured unions, and unions were party to almost all of the new-approach documents.

Harbridge (1993) argues that progress has been substantial (especially given that the drive for change has been primarily from the large employer). As he notes, the award system and centralisation is convenient and has low transactional costs for the small employer in both Australia and New Zealand. But, more importantly, Harbridge also argues that the Australian approach to change at the enterprise level is being achieved with a firmer attempt to ensure that equity considerations feature in the development of enterprise bargaining. This emphasis is similar to the changes in New Zealand under the Labour Relations Act (1987-1991), but in sharp contrast to the thrust emerging under the support of the more libertarian market-based Employer Contracts Act.

Those who seek support from the Sloan position, that the corporatist rather than market focus has been the cause of the slow pace of change, should perhaps note that by mid-1994 only 15 percent of collective contracts in New Zealand contained an efficiency-based productivity clause (Harbridge and Honeybone, 1994). New Zealand has pursued the short-term results of low wage, low cost enhancement of the enterprise performance. The Australian approach does identify that an alternative way did, and continues to, exist.

At the macro-level, the difference between necessary and sufficient conditions for economic growth need be kept in mind. Benefits flowing from the Employment Contracts Act would have been far over-shadowed as a causal impact by successive devaluations (albeit offset by some revaluation) of the New Zealand dollar in the period since 1984, the improved international price of butter-fat resulting from a world-wide commodity price boom, and the exceptionally low base from which 1994 growth is measured. Given the costs of the divisiveness of the statute and associated economic reforms, the net benefit may ultimately be demonstrated to have been even less.

The necessity for decentralising the industrial relations focus (or, putting the point slightly differently, for dismantling a national occupational or industrial based award structure) has also been challenged by a recent Australian based international comparative study. This study (Coelli et al., 1994) undertaken by the Reserve Bank, suggests that even if enterprise bargaining is resulting from the Accord consensus, it may not have been needed if labour market flexibility had been the sole goal. Contrary to much popular perception, Australia's wage setting system, the research argued, had been flexible by international standards.

The study also challenges the accepted view that the award wage system is too rigid for market conditions and that pay determination at the enterprise level will improve economic performance through higher growth, more jobs, lower inflation or increased productivity. A comparison of 14 OECD countries suggests that the Australian labour market may have been relatively more flexible in the 1970s and 1980s than popularly

believed, and that wage flexibility was on a scale to that found in the United States, a country considered to have a flexible labour market.

A similar finding applied in New Zealand. Labour market flexibility within New Zealand was compared with other OECD countries by the Economic Monitoring Group of the New Zealand Planning Council. One method of comparison was the degree of dispersion in average earnings between industries. Against this measure it was found that New Zealand developed from one of the worst performers in 1975, to one that was "above or about the level of most OECD countries" in 1985 (Economic Monitoring Group, 1986: 12). Another method of comparison was to rank industries by the level of wage increments. The degree of flexibility was determined by examining the variability of industry rankings. Using this measure New Zealand outperformed virtually all other OECD countries. The Economic Monitoring Group's conclusion from these, and other less robust measures, was that the New Zealand labour market was not particularly rigid in comparison with other developed countries (Economic Monitoring Group, 1986: 24)

The measurement of aggregate outcomes and the assessment of alternative approaches is both difficult and controversial. But the debate is intense, and will be ongoing. However, it is worth commenting that where the change was imposed, where it was to satisfy the unilateralism of management (the crudest case being the "sign or resign" policy) it is an open question as to whether any short term benefits will be translated into ongoing, continuing gains, or whether negativism, a backlash, or stronger repercussions may eventuate. Behavioural theory does suggest the balance favours the latter as the longer term responses. Evidence is emerging that the Employment Contracts Act regime is creating a low-trust threshold in industry. In 1993 a private polling consultant, Heylen Research, commissioned by the Department of Labour to report on aspects of attitudes to the statute, surveyed 2,000 workers in 1995 enterprises. It reported that 43 percent of employers thought workers trusted them, but only 15 percent actually did; that 66 percent of employers thought staff felt more secure in their jobs but only 14 percent thought they were; and that 51 percent of employers thought staff had gained job satisfaction but only 23 percent of staff thought so. Such data does not augur well for the long-term success of workplace reform and changed bargaining structures that have occurred during this period.

Also, where emphasis has been on low-cost operations, that is reducing unit costs by cutting penal rates or shift premiums for example, these changes do not necessarily ensure quality staff and output. In the short term the quality of the workforce and work may be maintained whilst there is a reserve pool of available labour. A shift in the labour supply pattern may mean a low-cost, low-quality outcome. The converse would occur if productivity gains (and hence unit cost reductions) resulted from enhanced quality working perhaps through an increased quantity of and/or more effective training, or from improved effectiveness in the organisation of labour usage by, for example, increased multi-skilling, or more appropriate skills for required tasks being attained.

Walsh (1994) introduces a further comparative dimension to the debate, referring to the results of the third Workplace Industrial Relations Survey in the United Kingdom.

Commenting on the survey, and analysis by Purcell (1994), Walsh notes that the legislative change of the Thatcher years has facilitated the emergence of a non-union sector firmly focused on the principle of cost-minimisation. The non-union sector reported better employee relations and almost no strikes, but higher levels of turnover and injury rates, greater use of casualised labour and compulsory redundancy, and a dismissal rate twice that of unionised firms. Firms in this sector were also less likely to have grievance procedures, consultative committees, or give information to employees. New Zealand, unfortunately, does not yet have comparable point of time (let alone longitudinal) data of the state of workplace industrial relations. However, an initial hypothesis that the authors would advance is that the Employment Contracts Act has produced a similar set of outcomes.

An interim assessment that the authors concur with, which has been explicit in part and implicit throughout this essay, is that New Zealand has been through a period of social Darwinism wherein the strong have got stronger, the weak weaker, the rich richer, and the poor poorer, the advantaged have become more so and so have the disadvantaged. Almost any schism in society that existed has widened and become more overt. Some think this is great, others are not so sure. Many new divisions have emerged. The Employment Contracts Act has been an integral part of the causal forces creating these schisms, but, unfortunately, not an essential pre-requisite to achieving the identified micro-level or macro advantages. Another academic commentator has reached a similar conclusion:

The ECA has been widely understood to have been a curate's egg - perhaps promoting productivity and competitiveness gains but also creating a large pool of unprotected, unorganised employees and a bargaining system increasingly bedevilled by labour market segment-ation effects, gender and race inequalities and the impact of macho management (Haworth, 1993).

Perhaps, given the intense political and ideological base of legislation of the ilk of the Employment Contracts Act, the last word should be left to the politicians. It is clear that the Rt. Hon. J. Bolger, Prime Minister of New Zealand, regards the Employment Contracts Act 1991 as a cornerstone of policy, a progressive piece of legislation that has played "a decisive role in our dramatic progress over the past four years" (Bolger, 1994b).

As a consequence he notes:

We are enjoying the highest growth rate in the Western World. Our inflation rate is among the lowest in the developed world. We have no balance of payment problems. Employment increased across the board by 57,000 last year (Bolger, 1994a).

The Hon. Paul Keating, Prime Minister of Australia, reviewing the outcomes of the alternative strategies pursued across the Tasman, noted:

Australia has economic growth the equal of, or surpassing, any in the OECD. Employment growth is high. The profit share is high. The inflation rate is low. We have new flexibility in the labour market. (AAP 29.9.94)

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