

ADAM
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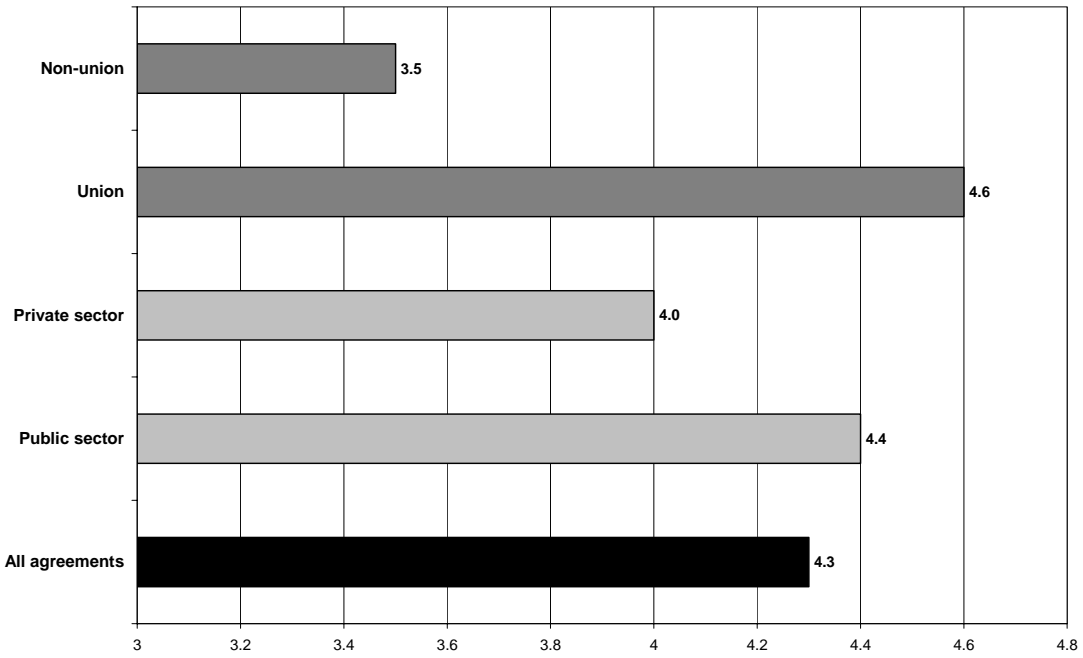
1 wage trends

wage increases in september 2004 quarter agreements

The average annual wage increase for certified agreements registered in the September 2004 quarter was 4.3 percent (per agreement), down by 0.3 percentage points from 4.6 percent in the June 2004 quarter.

In the September 2004 quarter the gap between union and non-union agreements has been maintained at 1.1 percentage points, compared to 1.8 percentage points in the June quarter. Figure 1.1 below shows that in the September 2004 quarter, the average annual wage increase was 4.6 percent in union agreements and 3.5 percent to non-union agreements. Private sector agreements certified in the September 2004 quarter have shown a drop in average annual wage increases from the previous quarter from 4.6 percent to 4.0 percent. While in the public sector, average annual wage increases have shown only a slight decrease from 4.6 percent in the June quarter to 4.4 percent in September.

figure 1.1: September 2004 quarter average annual percentage wage increase



Source: ADAM Database, 2004, acirrt, University of Sydney

Note: Government Business Enterprises and Non-profit agreements have been excluded due to small sample size

high wage outcomes in september 2004 quarter agreements

There were a number of agreements in the September quarter which incorporated wage increases (AAWI) in excess of 5%. The factors influencing these higher wage outcomes in enterprise bargaining were many and varied, but generally the more marked increases were achieved as a result of absorption of a range of allowances, rationalization of working hours and other arrangements written in to agreements to provide efficiencies and flexibility.

One agreement stands out from the rest with an average annual wage increase of 24% and an overall increase of 50% over a period of 15 months. This agreement was in the Local Government/Utilities industry. The agreement provides for an “annualised” wage package that compensated for absorption of other benefits previously available under the award. Also of note in this agreement were changes in approaches to occupational health and safety in the context of potentially very hazardous work.

Another significant wage outcome was provided for in an agreement in the Cleaning Services industry. Special circumstances applied in this case where the average annual average increase was 13.5% and the total increase over 36 months was 40%. The agreement involved an enterprise that grew out of privatisation of a government utility and where, over a period of time, pay rates had lagged well behind levels being paid for comparable work elsewhere.

Table 1.1: Key features of higher than average wage increases in September 2004 quarter enterprise agreements

Industry (AAWI)	Key Provisions
Local Government/ Utilities (AAWI 24%)	<ul style="list-style-type: none"> • This 15 month agreement provides employees with a guaranteed total wage increase of 50% in one installment. • A proportion of this wage increase compensates for absorption of allowances previously provided for under the award. • The agreement provides employees with an 'annualised' wage package that is inclusive of all wage, allowance and other entitlements, (i.e. no further payments for allowances, penalties, overtime etc., except for leave loading and superannuation). • Changes to work practices which enhance occupational health and safety in potentially dangerous circumstances are incorporated into the agreement.
Cleaning Services (AAWI 13.5%)	<ul style="list-style-type: none"> • Over a period of 36 months, this agreement provides for a guaranteed wage increase of 40% to be paid over 2 installments. • The agreement covers cleaning workers in a heavy industry environment, including maintenance during "shut down" periods.
Electrical Industry (AAWI 9.0%)	<ul style="list-style-type: none"> • This agreement has a duration of 15 months and provides employees with a total wage increase of 11.3%. The wage increases are to be paid in 2 installments. • The agreement includes provisions designed to deliver efficiency and productivity improvements through flexibility in working hours, spread of hours, rest periods, meal breaks and rostered days off.
Dairy Product Manufacturing Industry (AAWI 8.2%)	<ul style="list-style-type: none"> • This 22 month agreement provides employees with a total wage increase of 15%. The wage increases are paid over 6 installments. • Provisions within the agreement allow for increased flexibility in rostering arrangements, including commencement/finishing times and specification of the period of notice for variations.
Utilities Sector (AAWI 6.5%)	<ul style="list-style-type: none"> • This 36-month agreement provides a total guaranteed wage increase of 19.5% to be paid in three installments. On certification of the agreement, employees will receive a 10% wage increase. This is in recognition of a new classification structure. 12 months after certification of the agreement, employees will receive a 5% wage increase. On the third anniversary of the agreement, employees will receive a final wage increase of 4.5%. • With the introduction of a new classification system, employees have also had their wages annualised. Under this arrangement penalty payments, overtime and annual leave loading has been incorporated into the base rate of pay.

Source: ADAM Database, 2004, acirrt, September 2004 Quarter, University of Sydney.

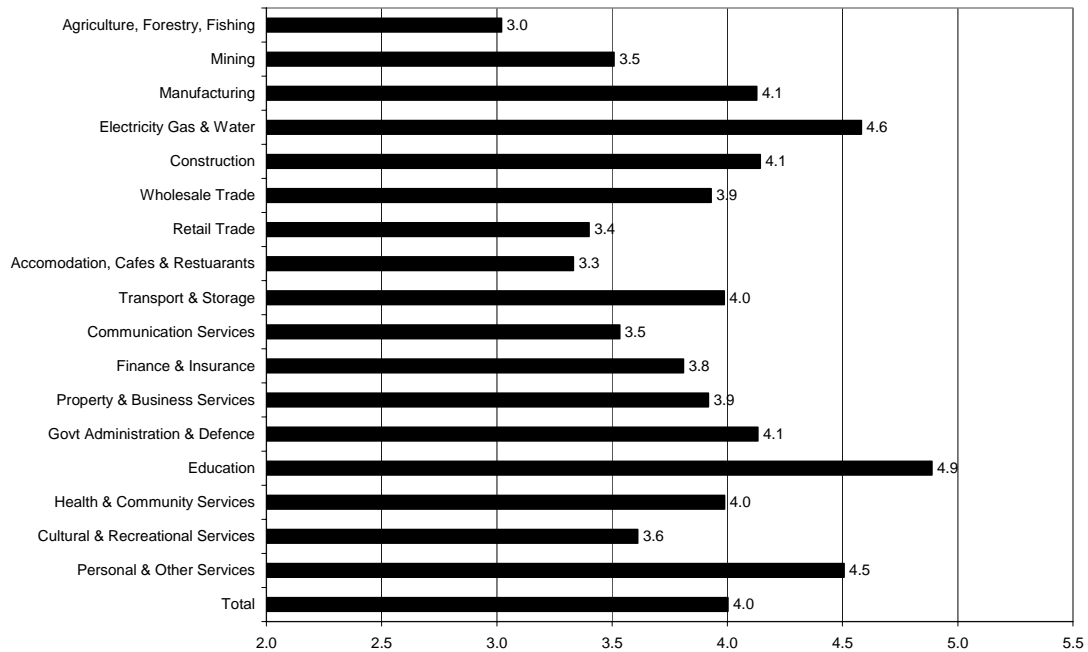
Note: High wage agreements are defined as those delivering an AAWI of 5% or above.

wage outcomes in current collective agreements

The average annual percentage wage increase for all currently operating agreements (as at the end of September 2004) was 4 percent (per agreement).

There have been a number of changes in average annual wage increase by industry since the previous *ADAM Report No 42*. Figure 1.2 shows that the education industry has take the lead from electricity, gas and water with wage increase outcomes of 4.9 percent and 4.6 percent respectively. Manufacturing agreements continue to hold constant at 4.1 percent as in the June and March quarters. Personal and other services continues its steady growth up 2 percentage points to 4.5 percent in all currently operating agreements. Once again agriculture (3.0 percent), retail trade (3.4 percent) and accommodation, cafes and restaurant (3.3 percent) industries provided the lowest annual wage increases in currently operating agreements.

figure 1.2: wage increases in currently operating agreements, by industry



Source: ADAM Database, 2004, acirrt, September 2004 Quarter, University of Sydney.

2 special issue

Salary Sacrificing in enterprise agreements

Over the last ten years there has been a major increase in the incidence of salary sacrificing in enterprise agreements. This increasing popularity may be threatened by recent decisions of the Australian Industrial Relations Commission (AIRC) following on from the Electrolux decision.

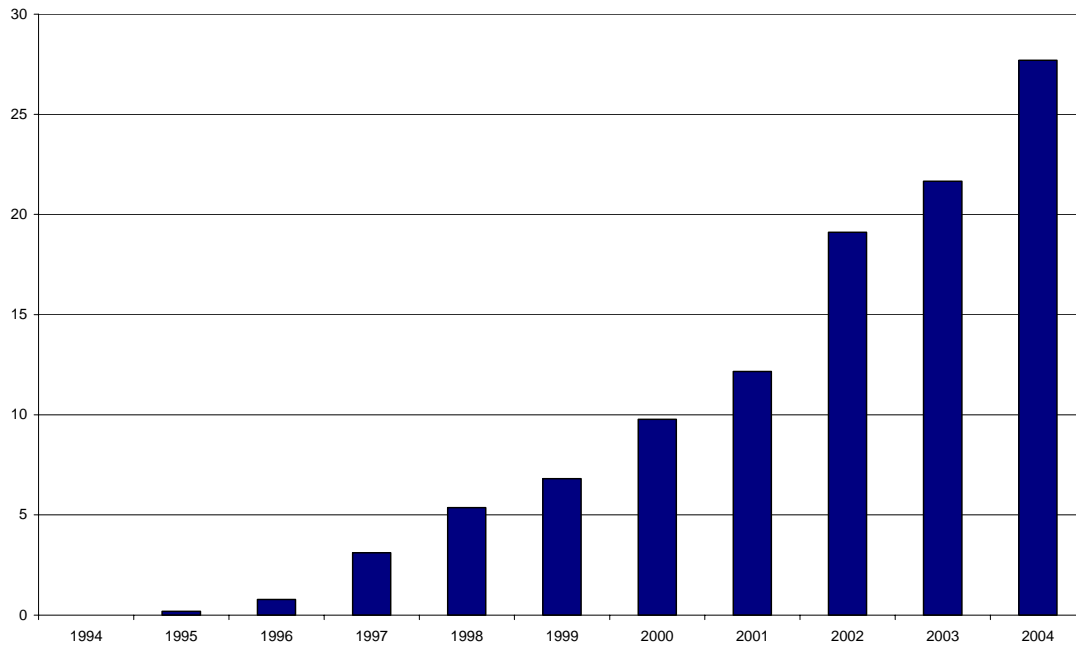
Salary sacrificing is defined by the Australian Taxation Office as a voluntary agreement between employees and their employers. Under this agreement, employees contractually give up part of the remuneration they would otherwise receive as salary or wages, in return for their employer providing benefits of a similar value. The main assumption made by the parties is that the employee is then taxed only on the reduced salary or wages and that the employer is liable to pay fringe benefits tax, if any, on the benefits provided. Employers may provide benefits such as employer superannuation contributions, use of a motor vehicle or payment of school fees, childcare costs or loan repayments.

The concept of salary packaging became popular in the years prior to the introduction of FBT. Employers were able to provide tax-free remuneration to employees by substituting non-cash benefits for salary and wages. With the introduction of FBT, it was expected that employees receiving packaged benefits would forego previously tax-free remuneration benefits and revert to cash salaries. However, salary packaging remained popular for the following reasons:

- some items were exempt from FBT;
- some items were concessionally taxed; and
- there was a difference in tax rates between the top personal marginal rate, the FBT rate and the company tax rate.

Figure 2.1 shows the increasing incidence of salary sacrificing in enterprise agreements since 1994. Salary sacrificing has become particularly popular in the public and not-for-profit sectors with 24% and 21% respectively of agreements in these sectors including salary sacrifice. In these sectors salary sacrificing allows employers to provide increased benefits to employees in sectors where salaries are traditionally lower than in the private sector. Public and not-for-profit sector employers are also more able to take advantage of taxation rates to make salary sacrificing more economically viable.

figure 2.1: incidence of salary sacrificing in agreements 1994-2004



Source: ADAM Database, 2004, acirrt, September 2004 Quarter, University of Sydney.

Salary sacrificing is also particularly popular in currently operating agreements from the South Australian jurisdiction, with 32% of South Australian agreements including such clauses compared to 24% in Queensland agreements, 18% in New South Wales agreements, 17% in federal agreements, and 11% in Western Australian agreements.

In terms of industries, 17.6% of agreements in the utilities industry include salary sacrificing provisions, while 17.3% of those in mining, 16.5% in health and community services and 13.6% of those in the education industry include such provisions.

Examples of salary sacrificing

The following sample clause from the education industry is a particularly comprehensive example of salary sacrificing, allowing employees to utilise salary sacrificing for a broad range of items.

By written agreement, a continuing or fixed term employee of 12 months or more, may receive in lieu of Salary those salary sacrificing items which are GST-free or input taxed, provided that the value of the package includes the cost of FBT and is no less than the relevant salary for the position.

Salary sacrificing items include:

- Superannuation*
- Mortgage repayments or residential rent*
- Other loan repayments (including credit cards)*
- Payments to child care centres or school tuition fees*
- Health insurance*

- Overseas holiday expenses
- Share purchases
- Other agreed items

Where approved, salary sacrificing will be available for private use of company owned vehicles and for vehicles financed through a novated lease arrangement where the company is a party to the lease

In the September quarter 2004, an innovative approach to salary sacrificing from the mining industry allows employees to not only sacrifice their salary and bonuses into their superannuation, but also any accrued entitlement to sick leave beyond a basic cover of 30 days.

12.7 Salary Sacrifice

12.7.1 An employee may elect to sacrifice into his or her agreed Superannuation Scheme any part of the cash component of the salary package or production bonus, within the requirements of the Commissioner of taxation. Any election to sacrifice in this way must be made in advance of the relevant remuneration being earned.

*12.7.2 Salary sacrifice of future sick leave accruals will be offered to employees who are not in the A** Superannuation Scheme (ie those who receive standard industry arrangements), and who have retained the sick leave provision that allows for 15 days sick leave to be accrued annually. This is offered subject to Company finances and with the following limitations:-*

- a. At least 30 days will need to be retained as sick leave.*
- b. The opportunity to nominate to transfer future sick leave accruals to superannuation will arise on the employees anniversary and will be limited to the 15 days due to accrue for the following year.*

However, the use of salary sacrificing in enterprise agreements has recently been brought into question by certain decisions of the AIRC. acirrt's Therese MacDermott examines the issues below.

The Impact of the Electrolux decision on Salary Sacrifice Clauses

The scope of federal enterprise bargaining has been significantly affected by the recent High Court decision of *Electrolux Home Products Pty Ltd v Australian Workers' Union* [2004] HCA 40 (2 September 2004). The case brought into question the legality of strike action dating back to 1999, in support of a proposed enterprise agreement that included a requirement that non-union members pay a bargaining agents fee to the relevant union. However, the impact of the case is more extensive than the question of bargaining agents fees. In determining this point through its interpretation of the well know industrial phrase "pertaining to the employment relationship," the case has created uncertainty as to what can be included in federal enterprise agreements.

The Court's ruling

The phrase “pertaining to the employment relationship” in section 170LI of the *Workplace Relations Act 1996* defines the scope of union and non-union enterprise agreements. In interpreting this phrase, the High Court saw no reason to depart from the line of constitutional cases such as *Portus* and *Alcan* that had considered whether the deduction of union dues pertained to the employment relationship, and therefore could be the subject of awards. The Courts had consistently rejected such demands. Despite the change of context from awards made pursuant to the industrial power, to enterprise agreements made pursuant to the corporations power, the High Court found the situation of a demand for a bargaining agents fee to be analogous, and therefore not pertaining to the employment relationship.

As Gleeson CJ stated in the *Electrolux* decision:

“The established principle, however, is that, in the context with which this legislation is concerned, it is matters which affect employers and employees in their capacity as such that “pertain to the relations of employers and employees”....the relations of employers and employees” refers to the industrial relationship, and not to matters having an indirect, consequential and remote effect on that relationship.”

The Court also stated in the *Electrolux* decision that:

“Nothing in Pt VIB nor in the rest of the Act suggests that s 170LI should not be given its plain and literal meaning. The statutory context in which s 170LI appears, the purpose of certification, the powers and procedures of the Commission in respect of certification and the legal consequences of certification suggest that s 170LI only permits the certification of an agreement where all the terms of the agreement are about matters pertaining to the requisite relationship or about matters ancillary or incidental to those matters or machinery provisions with respect to those matters.”

Hence, all terms of an agreement must satisfy the “pertaining” test, unless they qualify as being ancillary, incidental or machinery provisions. A demand for a bargaining agents fee was found not to pertain in the requisite manner, only being indirectly and inconsequently related to the employment relationship.

The Court’s decision also carries the implication that if any clause included in the proposed enterprise agreement was found not to pertain to the employment relationship, then the whole agreement could not be certified. The corollary of this is that if subsequent to the certification of an agreement a clause is found not to pertain to the employment relationship, the whole agreement is invalid. Similarly, industrial action taken in support of a proposed agreement loses its protected status if any clauses are found not to pertain.

The consequences for bargaining

The decision has created great uncertainty as to what can and what can’t be included in federal enterprise agreements. By the time the decision was handed down, claims for bargaining agents fees were already outside the scope of what is permitted in agreements, having been the subject of specific legislation (*Workplace Relations Amendment (Prohibition of Compulsory Union Fees) Act 2003*) that made them objectionable provisions.

Since the High Court’s decision in September 2004, there have been a number of decisions of the AIRC that have necessitated a close examination of whether particular clauses pertain to the

employment relationship or are in some way incidental, ancillary or machinery provisions. Each decision depends very much on its own facts and the wording of the proposed clauses. However, there have been varying interpretations of clauses such as those dealing with trade union training leave, union meetings, rights of entry, union encouragement and contractor provisions. Salary sacrifice provisions have also come under scrutiny, and some of the decisions on this issue are set out below.

Uncertainty still remains over the exact status of existing agreements that contain non-pertaining clauses, and whether such clauses are enforceable in some other form. The scope for protected action has also been restricted with the real risk of exposure to common law liability if industrial action is taken in relation to clauses that are later found not to pertain.

Recent legislative intervention

In an attempt to address some of the uncertainty surrounding the Electrolux decision, the Federal government has legislated (*Workplace Relations Amendment (Agreement Validation) Bill* 2004 to validate clauses in agreements certified or varied before the date of the High Court's decision (2 September 2004). This only extends to those provisions that are pertaining to the employment relationship (called permitted matters), and therefore leaves in limbo the clauses that the parties agreed upon, and had certified, but are likely to be found to be non-pertaining clauses.

Do clauses dealing with salary sacrifice pertain to the employment relationship?

A number of recent decisions of the AIRC have involved the question of whether a clause in a proposed enterprise agreement that makes provision for salary sacrifice pertains to the employment relationship and therefore can be certified. While each decision involves differently worded clauses, no clear consensus has emerged on whether such clauses can be included in enterprise agreements. A number of the cases are discussed below. A special Full Bench hearing has been convened for 20 -21 December 2004 in Adelaide to hear appeals in three of these cases (*Schefenacker*, *Murray Bridge*, and *La Trobe University* cases). All three cases involve salary sacrifice or salary packaging clauses that have been rejected as not pertaining to the employment relationship.

SCHEFENACKER VISION SYSTEMS PTY LTD AND OTHERS (PR952801) 28 OCTOBER 2004

In the *Schefenacker* case, Senior Deputy President O'Callaghan was required to determine whether the following clause pertained to the employment relationship.

"26.0 SALARY SACRIFICE

Employees may choose to salary sacrifice part of their wage for pre-tax benefits, in accordance with the rules of the Australian Taxation Office. The amount of salary sacrifice will be deducted from the employee's gross wage.

Salary sacrifice does not reduce the employee's hourly gross rate of pay for the purposes of award entitlements (including accrued entitlements and the application of penalty rates).

The amount of salary sacrifice nominated by the employee must not reduce the employee's ordinary time earnings below the award rate for the employee's classification as stated in the Metal, Engineering & Associated Industries Award 1998.

In the event that the law governing taxation changes in such a way as to make the objective of this clause ineffective, unattainable or illegal, the company will advise the employees concerned and the salary sacrifice contribution arrangement will be amended or terminated."

Senior Deputy President O'Callaghan concluded that the effect of the salary sacrifice arrangements in question allowed employees to arrange for a limited portion of their remuneration to be paid into either superannuation or in another form which then provides a taxation benefit to the employee. On the issue of salary sacrifice arrangements that are paid into an employee's superannuation, he concluded that such as clause could properly be described as a matter pertaining to the employment relationship. However, he considered the clause in question to be an impediment to certification as it allowed for other salary sacrifice arrangements.

Senior Deputy President O'Callaghan was of the opinion that :

"Salary sacrifice does not involve an extra payment to a third party by the employer, it is about the redistribution of the employee's pay to provide a tax benefit for the employee. In this sense it differs from the arrangements considered in Portus and Alcan. Such arrangements do not establish a debtor/creditor relationship but are, instead, about the voluntary distribution of employee's income which is, in effect, at the discretion and the control of the employee."

However, he reluctantly concludes that he must take the same approach to salary sacrifice arrangements as was taken to deduction of union dues by the High Court in decisions such as *Portus*, in which Barwick CJ stated:

"In my opinion, the demand that the employer should pay out of earned wages some amounts to persons nominated by the employee is not a matter affecting the relations of employer and employee. It does not seem to me to advance the matter that the intended payee is the organization registered under the Act of which the employee is a member [(1972) 127 CLR 353 at 357]."

AUSTRALIAN NURSING FEDERATION AND RURAL CITY OF MURRAY BRIDGE (PR952449) 29 OCTOBER 2004

In a further decision of Senior Deputy President O'Callaghan involving salary sacrifice arrangements, it was again acknowledged that those involving payment into an employee's superannuation clearly pertain to the employment relationship. However, because the clause in question involved the nomination of an external provider for the salary sacrifice services, Senior Deputy President O'Callaghan found that:

"I am unable to conclude that such an arrangement pertains to the employment relationship. It appears to involve an arrangement between the employee and the provider and then an arrangement between the provider and the employer. The introduction of the provider establishes a third party arrangement which precludes the clause from being described as pertaining to the employment relationship."

PERTH JEWISH AGED HOME SOCIETY INC. (PR953454) 18 NOVEMBER 2004

The agreement provided the following at clause 7(3):

"Notwithstanding the wages outlined in sub clause (1) an employee following 12 months continuous service, may elect to forego a percentage of the weekly wage for an agreed benefit or benefits provided by the employer in accordance with Appendix A - Salary Packaging. Provided that the terms and conditions of such a package shall not, when viewed objectively, be less favourable than the entitlements that would otherwise be provided by this agreement."

Deputy President McCarthy found that this salary packaging arrangement did pertain to the employment relationship on the following basis:

"In this agreement it appears to me that the salary packaging arrangements provide a benefit to the employee. The benefit the employee receives is the payment by the employer of a particular expense or the payment of additional moneys for the employee's superannuation.

Importantly if the salary package policy of the employer were to only allow additional payments by way of salary sacrifice into superannuation there would appear to be little doubt that the provision related to the employer and employee relationship.

The employer is not obliged to make payment to a specific agency or organisation or service provider but rather is directed by the employee to make payment of a debt the employee has to another party".

LA TROBE UNIVERSITY (PR3628) 24 NOVEMBER 2004

In the *La Trobe University* certification proceedings, Commissioner Whelan considered whether salary sacrifice was a matter pertaining to the employment relationship between an employer and employee. She stated that;

*"The only difference between the payment on behalf of the employee of child care fees or a lease on a personal motor vehicles in these circumstances and the payment of union dues (or health insurance premiums or similar salary deductions) as dealt with in *Portus, Alcan and Electrolux* is that the payments in this case are made from pre-tax income and in the latter from post-tax income."*

*"Clearly remuneration can be comprised of cash as well as non-cash benefits *Rofin Australia Pty Ltd v Newton* [Print P6855]. With salary sacrifice or salary packaging arrangements however we are not talking of additional non-cash benefits provided by the employer, over and above salary and wages, but of diverting money which would otherwise be paid to the employee as wages or salary to a third party. I fail to see how this differs in substance from the payment 'from wages' of amounts to third parties."*

Her conclusion that the arrangement does not pertain to the employment relationship is expressed as follows:

*While I have sympathy with both the employer and the employees in this case and, for my own part, would consider the provisions as a matter of common practice and industrial reality to be matters pertaining to the employment relationship, on the basis of the High Court decision in *Electrolux* I am unable to reach such a conclusion".*

ORIGIN ENERGY LTD AND THE NATIONAL UNION OF WORKERS (PR954225) 13 DECEMBER 2004

A proposed clause of the Origin Energy Ltd (Port Botany Operators) Certified Agreement 2004 provided employees at Origin Energy with three salary sacrifice programs;

*“(a) **Origin Energy Bills Program** - this allows employees to package up to \$666 per year of their pre-tax income to pay for Origin energy products and services. The amount nominated by the employee is deducted in equal instalments from the employee’s gross pay and paid into a drawback account. The employees are still required to pay for their Origin products and services in the normal way but they can seek reimbursement from the company. The company deducts the amount claimed from the employee’s drawback account and deposit it into the employee’s bank account in the next pay cycle.*

*(b) **Superannuation Program** -employees can elect to salary sacrifice their superannuation contributions from their gross pay. These contributions are preserved until retirement.*

*(c) **Exempt Benefits Program** - this allows employees to sacrifice up to a maximum of \$5,000 of their gross pay, over any number of pay periods, up to a maximum of 12 months. Employees can then seek reimbursement for items exempt from FBT, such as lap top computers and briefcases. Employees are responsible for purchasing the items, with employees reimbursed by the company on lodgement of a tax invoice.”*

Senior Deputy President Hamberger concluded that the clause clearly pertained to the employment relationship on the basis that:

*The salary sacrifice arrangements at Origin Energy (with the exception of superannuation contributions that are clearly covered by Manufacturing Grocers) do not involve payments made by the employer to a third party and do not involve the employer acting as an agent, either for the employee or a third party. This is quite different from the bargaining agent’s fee at issue in the Electrolux decisions where the employer was to contract with its employees on behalf of the relevant union, as its agent. Moreover, in Electrolux the proposed agency so created was for the benefit of the union - not the employee (Merkel J of the Federal Court of Australia in *Electrolux Home Products Pty Ltd v Australian Workers’ Union* [2001] FCA 1600). That is in complete contrast with the salary packaging arrangement at Origin Energy, which clearly involves a benefit for the employee.*

*“Unlike the payroll deduction of union dues considered in *Portus*, the Origin Energy salary sacrifice arrangements*

- do not establish any type of debtor/creditor relationship;*
- are done at the direction of the employee as an employee and not in some other capacity (unlike payroll deduction of union fees considered in *Portus* and *Alcan* where it was held that the arrangement concerned the employee as a union member rather than as an employee); and*
- do not involve the creation of a relationship between the employer and some third party....*

Remuneration is fundamentally an incident of the employment relationship. As salary sacrifice arrangement at Origin Energy simply provides the employee some choice about the form in which remuneration is paid, salary sacrificing is also an incident of the employment relationship.”

Concluding remarks

Hopefully the Full Bench hearing convened for 20-21 December 2004 to hear various appeals on whether salary sacrifice clauses pertain to the employment relationship will introduce some degree of certainty in the area. Although clauses that provide for salary sacrifice to be paid into an employee's superannuation have been certified, other salary sacrifice arrangements remain in doubt. A useful outcome of the appeal process would be for a set of agreed criteria or guidelines that can be used to determine whether a clause satisfies the High Court's test of "pertaining to the employment relationship", in order to come within the scope of federal enterprise bargaining.

3 innovative clauses

Innovative leave entitlements

Several agreements this quarter offer innovative leave provisions. The following leave entitlements have been tailored to suit the employees' personnel needs, with increased focus on rewarding employee loyalty through additional leave entitlements.

The first agreement from the public sector provides a range of additional leave entitlements. In recognition of continuous service with the organization employees are provided with two and half days per annum. In addition to the statutory personal leave entitlements, employees covered by this agreement are also granted one weeks paid special leave for personal reasons. To encourage employees to undertake further education the organization provides employees with up to 23 paid study leave days per annum.

The second agreement from the hospitality industry provides a number of innovative leave entitlements. In recognition of continuous service, employees covered by this agreement are entitled to a graduated annual leave loading up to 25%. Employee's are also provided an additional paid days leave to celebrate their birthday.

The third agreement from the transport industry provides employees with additional paid leave entitlements to assist the employee in recovering from being involved in a fatal or critical incident. Employees are able to access two days paid leave for the purpose of counselling or medical appointments.

The final agreement offering innovative leave provisions comes from the transport industry. Employees are able to be paid out their accrued entitlements, provided the employees maintain at least 20 days annual leave. Furthermore, employees receive a generous annual leave loading of 26.32%.

EXTRACT 1 (PUBLIC SECTOR):

Continuous leave and high study leave entitlement (23 days per year)

“18. Continuous Service Leave

18.1 In addition to other leave entitlements set out in this Agreement, an employee will be entitled to two and a half (2½) days per annum, pro rata, continuous service leave on ordinary pay.

18.2 Such leave may be cumulative or may be taken immediately following the 12 months in respect of which it was accrued.

18.3 An employee is not entitled to continuous service leave if her/his total continuous duration of service is less than 12 months.

19. Special Leave

19.1 An employee may be granted a maximum of one (1) week paid leave for personal reasons in each twelve months service at the discretion of the Director and such further period as may be approved by the Board. Any period of special leave granted further to the one week provided for, is to be without pay.

21. Study Leave

21.1 An employee will be entitled to 23 working days per annum, pro-rata, paid leave to attend personal studies relevant to her/his work, where the course of study is approved in advance by the Director.

21.2 An employee may take a period of study leave with the approval of the supervisor.

21.3 Approval of study leave will be subject to the employer’s convenience and will not unreasonably affect the operation of the workplace, but will not be unreasonably withheld.”.



EXTRACT 2 (HOSPITALITY INDUSTRY):

Graduated annual leave loading based on years of service AG835871

“12.3 Payment of annual leave

“annual leave loading for each completed year of service will be paid in accordance with the following;

<i>Years of continuous service</i>	<i>Percentage</i>
<i>First year</i>	<i>12.5</i>
<i>Second year</i>	<i>15</i>
<i>Third year and thereafter</i>	<i>25</i>

Birthday Holiday AG835871

“9.1 Entitlement to Public Holidays

All full time and part-time employees are entitled to the following public holidays, without loss of pay.

<i>New Years Day</i>	<i>Australia Day</i>
<i>Labour Day</i>	<i>Good Friday</i>

Easter Saturday	Easter Monday
Anzac Day	Queens Birthday
Christmas Day	Boxing Day

Anniversary of the employee's birth date.

If any additional public holidays are declared by the State, those days shall be additional holidays.

9.2 "Birthday Holiday" when to be taken.

Employees are entitled to have the day off without loss of pay or a substitute day within 28 days as mutually agreed.

Employees must notify management at least 14 days prior of the day to be taken."

EXTRACT 3 (TRANSPORT INDUSTRY):

Trauma Leave

"29. Trauma Leave

"29.1 Where employees are directly involved in a fatal or serious accident or event defined as a "critical incident" and they are not themselves physically injured in the accident or event, they will be provided with 2 days paid trauma leave on Total Remuneration to attend compulsory medical or other counselling. Employees will be given a choice of approved practitioners and/or counsellors."

EXTRACT 4 (TRANSPORT INDUSTRY):

Payout of Annual Leave

"16.4 Annual Leave cash out option

If:

(a) you have taken at least 10 days' annual leave between 30 May 2004 and 31 May 2005; and

(b) you have more than 20 days' accrued annual leave as at 31 May 2005; then you may elect to cash out any accrued but untaken annual leave in excess of 20 days (as at 31 May 2005), provided that health and safety issues permit. You must make your election between 31 May 2005 and 28 June 2005 by notifying your manager in writing.

Cash out of annual leave will only be available once during the term of this Agreement. Cashed out annual leave will be paid less applicable taxes and will include leave loading.

16.5 Leave loading

You will receive a leave loading of 26.32% of your Base Hourly Rate of Pay on all annual leave taken as leave."

bonus payments

While traditionally bonus systems have been based on the attainment of key performance indicators, recently a significant increase has been observed in the types of bonus systems incorporated into agreements. The following clauses are indicative of bonus systems being contingent on factors such as absenteeism levels, length of service and traditional performance based measures. This quarter there was also evidence of financial rewards being supplemented by other forms of rewards, such as gift vouchers or additional leave. Employers need to tailor these forms of reward to ensure that employees perceive them to be beneficial.

The first agreement from the construction industry illustrates the use of extrinsic rewards. In this agreement employees are rewarded with a gift voucher valued at \$150 for maintaining a 100% attendance record. While absence due to long service leave, annual leave and public holidays does not exclude employees from attaining the bonus payment, absences due to sickness or for personal reasons preclude the attainment of this reward. However, this bonus payment system may pose the problem of encouraging some employees to attend work while ill, instead of accessing their sick leave entitlement.

One agreement from the transport industry incorporates a highly innovative bonus system. In rewarding continued service and loyalty to the organisation, employees who can demonstrate that their terms and conditions of employment were regulated by the previous enterprise agreement will receive either a lump sum bonus of \$4000 or a sum equivalent to 6.76 of their classification wage rate. Instead of receiving this payment employees may also choose to be credited with five days of paid special leave per year for the life of the agreement.

In the final agreement from the local government sector, provides both part-time and full-time employees with an additional payment based on improvement in a number of key performance areas. These areas include operational performance, customer service, occupational health and safety and risk management. Employees receive their bonus payments on a bi-annual basis.

EXTRACT 5 (CONSTRUCTION INDUSTRY):

Attendance Bonus

“8.4 Attendance Bonus

8.4.1 A bonus will be awarded to all employees who have a 100% attendance record for any given calendar year. Approved long service leave, annual leave and public holidays that are taken throughout the year do not exclude the employee from this bonus. The bonus will be in the form of a \$150.00 voucher from K & D Warehouse for the employee.”

EXTRACT 6 (TRANSPORT INDUSTRY):

Special Leave/Special Bonus

“25. SPECIAL LEAVE

(1) Every employee entitled to make an election to receive a lump sum payment under sub-clause 12(1)(d) (Rates of Pay and Classifications) and who does not so elect shall, on each 1st July during the first three years of this Agreement, be entitled to be credited with five days of special leave.

(2) Special leave shall be taken within one year of accruing otherwise it shall be no longer available to the employee.

(3) Subject to sub-clauses (1) and (2) of this Clause, the provisions of sub-clauses (2) to (10) of Clause 22 (Annual leave) shall apply to the accrual, taking and payment of special leave.”

EXTRACT 7 (PUBLIC SECTOR):

Bonus Payment based on KPI's AG835834 – Local government

“22 EMPLOYEE BONUS:

A bonus in the range of \$26 to \$208 per full-time employee and pro-rata for part-time and new employees, based on the achievements of the objectives listed below in each previous two quarters, will be paid in:

- a) July 2004*
- b) July 2005*
- c) July 2006*
- d) June 2007*

'P = target 'V = value of the payment for the six month period

<i>Activity</i>	<i>TI</i>	<i>VI</i>	<i>T2</i>	<i>V2</i>	<i>T3</i>	<i>V3</i>
<i>Operational Plan programs and targets</i>	<i>at least 85% met</i>	<i>\$78</i>	<i>at least 90% met</i>	<i>\$104</i>	<i>at least 95% met</i>	<i>\$156</i>
<i>Customer Service Action Request System</i>	<i>at least 85% conformance</i>	<i>\$26</i>	<i>at least 90% conformance</i>	<i>\$39</i>	<i>at least 95% conformance</i>	<i>\$52</i>

Risk Management	Consultative Committee may develop criteria for evaluation					
Occupational Health and Safety	Consultative Committee may develop criteria for evaluation					
Total Value if all targets met		\$104		\$143		\$208

Note:

- 1) The payment of a bonus does not require targets to be met in all activities. If only one target was met then a bonus payment to the value of the target for that activity would be made. If no targets are met then no bonus payment will be made.
- 2) Where any activity comprises a target or set of targets which could not be met due to special causes which were beyond the control of the relevant department/employees, then that activity/targets shall not be taken into consideration when determining the bonus to be paid at the end of the respective period.
Determination of special causes will be at the discretion of the General Manager following consultation with the Enterprise Agreement Committee.
- 3) Payment of employee bonus shall be at the discretion of the General Manager following consultation with the Enterprise Agreement Committee."



employee benefits

Several agreements this quarter identified a commitment made by employers to provide additional benefits that are designed to maintain and enhance employee wellbeing. With the spiraling cost of private health insurance, a number of agreements have included generous health insurance packages. This would suggest that employers are adopting more alternative approaches in an effort to enhance employee commitment and loyalty.

The first agreement from the packaging industry provides all employees and their dependents with premium hospital and health insurance cover. In this agreement, however, the annual excess component of the policy remains the responsibility of the employee.

In the second agreement from the utilities sector, employees under this agreement are provided with a health benefit plan that is subsidized by the employer to the value of 80%. Employees who choose to join the health plan have the option of the level of financial cover that will suit their needs.

In the third agreement from the service to business sector employees are entitled to reimbursement for any costs associated with eyesight correction, and flu vaccination. Employees are actively encouraged to participate in eyesight testing on a bi-annual basis.

EXTRACT 8 (PACKAGING INDUSTRY):***“3.4 Hospital and Health Insurance Cover***

The Company will provide to all Packaging Operators fully funded hospital health insurance from Medibank Private. The VIP Blue Ribbon Hospital Cover insurance will cover the employee, their partner, children and dependent students under twenty-five years of age. It will be the responsibility of the employee to pay the annual excess.”

EXTRACT 9 (UTILITIES SECTOR):***“19. Health Benefits Plan***

19.1 As soon as practicable after commencement of employment, permanent full time and permanent part-time employees may advise the Company that they wish to join the health benefits plan selected by the Company.

19.1.1 The Company’s health benefits plan (“the Plan”) will allow an employee to select an appropriate level of financial protection for hospital, dental, hearing and vision care expenses from a health services organisation nominated by the Company.

19.1.2 The Company will contribute 80% of the cost of each employee’s selected level of health cover. The employee shall authorise the Company to make regular payroll deductions of an amount equivalent to 20% of the cost of the employee’s health cover selection.

19.1.3 Employees may review their choice of health cover at any time and apply to change their selection from the date of commencement of the pay period following notification to the Company of their decision subject to compliance with the rules of the health insurance plan.’

EXTRACT 10 (SERVICES TO BUSINESS SECTOR):***‘Eye Sight Testing***

79. THE COMPANY will provide for eyesight testing and reimbursement for prescribed eyesight correction to all employees who, as an integral part of their duties, are required to operate Screen Based Equipment (SBE).

80. Employees are entitled to retesting once every two years unless symptoms occur which indicate that further testing is necessary. Employees applying for testing at intervals of less than two years should support their application with medical evidence.

81. THE COMPANY will pay the full cost of the initial testing. If an employee is referred by the person conducting the initial test to an ophthalmologist for a condition related to the purpose for which they are being tested, this referral will also be paid by THE COMPANY.

82. Where spectacles are prescribed, as a result of eyesight testing or retesting in accordance with clauses 79 and 80, specifically for use with screen-based equipment, THE COMPANY will reimburse up to:

- (a) A\$96 or NZ\$ 118 for single vision spectacles; and*
- (b) A\$150 or NZ \$186 for bifocals.*

83. *Visual correction which is recommended for general use, such as reading and driving, will not be reimbursed.*

84. *Administration of the eyesight testing provisions will be in accordance with THE COMPANY guidelines.'*

other innovations

Other innovations identified this quarter relate to alternative methods of providing employees with maternity leave payments; remuneration option scheme and trade union training leave.

The first agreement from the manufacturing industry acknowledges the importance of child rearing by providing employees with a paid maternity leave bonus of \$2000. This payment is designed to financially assist employees during the mandatory six weeks absence prior to the birth of the child. Paid maternity leave is traditionally calculated in terms of the weeks however, this agreement indicates that employers are instituting alternative arrangements for this payment.

The second agreement from the manufacturing sector provides employees with the option to sacrifice a component of their weekly wage for the opportunity to receive a biannual bonus based upon organizational performance. Sales performance is the indicator utilized in this particular agreement.

In the final agreement from the retail sector recognizes the importance the role unions play in representing the interests of employees. As a result the level of trade union training leave that can be accessed by union delegates is contingent on the size of the workforce and the total number of hours worked per week at each particular worksite. The agreement provides for a generous maximum entitlement of four weeks per year.

EXTRACT 11 (MANUFACTURING INDUSTRY):***Maternity Leave Payment AG835889 – Manufacturing******“7.1 Maternity Leave***

An employee, who, under the conditions of the Vehicle Industry Award 2000, applies for and takes maternity leave, will in addition, be entitled to apply for and receive a lump gross payment of \$2000.00.

This payment will be referred to as the Maternity Leave Payment. The Maternity Leave Payment will be made as a lump sum through the company’s normal payroll procedures and taxed at the appropriate rate. The purpose of the payment is to partially cushion the effect of the compulsory 6 week absence from work as required by the award.

The Maternity Leave Payment will be paid under the following conditions:

1) *An employee claiming the Maternity Leave Payment shall enter into a written agreement to repay the Grant if she does not remain in employment with the company for at least 3 months after her return from Maternity Leave. Provided that she will retain the Grant without conditions if:*

The employee is obliged to resign her position after the birth, for medical reasons relating to the new child, or

The pregnancy terminates after 28 weeks, other than by the birth of a living child.

2) *If the employee chooses not to apply for the payment before she commences unpaid Maternity leave, she will be eligible to apply at any time during the period of maternity leave.*

3) *These provisions apply to female employees who give birth to a child on or after the date of operation of this agreement and will be applied in conjunction with the Maternity Leave clauses in the Vehicle Industry Award 2000 (7.2).”*

EXTRACT 12 (MANUFACTURING INDUSTRY):***Share the Reward Scheme******“10. SHARE THE REWARDS SCHEME***

“The Share the Rewards scheme has been developed to allow employees to be rewarded directly from the business they contribute to.

The Share the Rewards scheme currently requires employees to put \$400.00 (ordinary earnings) per annum ‘at stake’, by way of a reduced hourly rate, to have the ability to earn more than double that amount. The scheme is calculated and paid out twice a year based on the results for May to October and November to April.

Formula for Calculation

The basis for calculation is taken from the Sales and EBIT - (Earnings before Interest and Tax) for Australian Based Sales (excluding Inter-company sales and service).

The EBIT is expressed as a percentage of sales for each six month period. It is calculated to two decimal places and rounded to the nearest whole number.

For each 1% of EBIT to Sales, each participating employee will receive a \$40 payment (before tax).

The actual payment will be calculated and paid in December and June.

Note: Service is excluded from all our reporting.

Example:

If the six-month result is 7% EBIT to Sales, then each employee will receive \$280.00. (All results are based on round numbers).

If the following six-month period showed a profit of 13% EBIT to sales, then each employee would receive a further \$520.00, resulting in \$800.00 annual amount.

Management is committed to communicating the progressive EBIT to Sales performance with employees on a monthly basis, as is currently done using the Monthly Team Brief mechanism.

During the months of October 2004, and October 2005, the employees covered by this agreement will vote as to whether to:

- 1. Continue the profit share program without change, i.e. Continue to contribute the amount of \$400.00 per annum,*
- 2. Continue the profit share program at a reduced contribution rate of \$200.00 per annum, or*
- 3. Discontinue the program.*

A majority of votes is required to change this share mechanism and Individuals may not separately opt in or out of this profit share mechanism. Should a change to the share mechanism be voted to occur in October, the change will be effective from the first available pay period in the month of November.

In the event that the scheme is abandoned, the \$400 risked will be paid as part of their hourly base rate."

EXTRACT 13 (RETAIL INDUSTRY):

Employee Representation

"5.12 Union: Training Leave

5.12.1 This clause shall not apply to a warehouse where less than 380 ordinary hours per week are worked under this Agreement.

5.12.2 A union delegate, duly elected, or appointed union delegate shall, upon written application by the Union in respect of which that person is a member, be granted up to five (5) days leave with pay each calendar year, non cumulative, to attend courses conducted by the Australian Workers' Union which are designed to promote good industrial relations and industrial efficiency in the retail industry. The Union shall advise the company of the details of such courses at least three (3) months prior to their proposed conduct.

5.12.3 Other courses, not conducted by The Australian Workers' Union but which are agreed between the Union and the Company may be included under this clause.

5.12.4 Any written application by the Union seeking release of a delegate or representative to attend a course shall include details of the type and content of the course to be attended as well as the dates upon which the course is proposed to be conducted. Such application shall be made not less than six (6) weeks before the intended course, or such lesser period as may be agreed between the Company, the Union and the employee concerned.

5.12.5 The Company having been so approached by written application by the Union shall respond to such application within fourteen (14) days of receipt of such application by advising whether the request for release of the union delegate or representative is agreed to

or otherwise. If the request is not agreed to, the Company shall state the reasons for such rejection.

5.12.6 If the Union in making the approach does not accept the reasons for rejection as communicated to it by the Company the rejection may be processed as a dispute pursuant to clause 2.6 (Grievance Procedure) of this Agreement.

5.12.7 Only employees who have completed six (6) months of continuous service with the Company shall be eligible for leave under this clause. In the case where an employee has more than six (6) months continuous service with the Company but is employed in a warehouse which has not been open for more than six (6) months the Company shall not be required to grant leave during the first six (6) months of such new warehouse's operation.

5.12.8 Subject to other requirements of this clause the taking of leave (to be known as Union training leave) shall be arranged so as to minimise any adverse effect on the Company's operation. Where the Company approaches the Union and demonstrates genuine difficulties with respect to the release of a particular union delegate at a particular time (including where the Company might have previously advised of its ability to release such union delegate) the Union will not unreasonably press its request for the release of that delegate/representative at that time. If the matter is not amicably resolved it shall be processed as a dispute pursuant to clause 2.6 (Grievance Procedure) of this Agreement.

5.12.9 The maximum number of ordinary hours of Union training leave which the Company shall be required to grant at each warehouse within any calendar years shall be as follows:

No. of ordinary hours worked at warehouse per week	No. of ordinary hours leave per calendar year
380 up to 1,140 hours	38 hours
1,141 up to 2,280 hours	76 hours
2,281 up to 3,800 hours	114 hours
more than 3,800 hours	152 hours

5.12.10 At each warehouse the maximum number of employees entitled to attend a course at the same time shall be two (2). This shall not stop the Company from agreeing to release additional employees.

5.12.11 Leave of absence granted pursuant to this clause shall count as service for all purposes of the Agreement.

5.12.12 Each employee on Union training leave in accordance with this clause shall be paid all ordinary time earnings which such employee would have been paid had the employee not been absent on such Union training leave.

5.12.13 The Company shall not incur any liability with respect to the costs of travel to and from the place where the courses are conducted, nor to any accommodation and associated costs during such leave.

5.12.14 Leave granted shall not incur any additional payment to the extent that the course attended coincides with any other period of paid leave pursuant to this Agreement.

5.12.15 On completion of the course the Company shall be provided with proof of attendance at the course and information on the nature of the course.

5.12.16 In the event that a scheduled Rostered Day Off, resulting from a work arrangement established in accordance with this Agreement, falls within a period of Union training leave approved pursuant to this clause, no alternative day off shall be substituted in lieu.

5.12.17 Should an employee granted Union training leave pursuant to this clause fail to attend the nominated course or any part thereof, the Company shall be notified by the employee or Union within twenty-four (24) hours or as soon as practicable, and no payment is to be made by the Company pursuant to this clause in respect of such Union training leave for the period of non-attendance by the employee concerned.

5.12.18 In determining the term "year" or "calendar year" such reference shall be deemed to relate to the period between 1 January and 31 December each year."

.....

4 technical notes

method for calculating average annual percentage wage increases (AAWI) per agreement

The total wage increase granted over the life of the agreement is divided by the number of months for which the enterprise agreement operates. This figure is then multiplied by twelve to generate an estimate of what the increase would be over a twelve month (annual) period. Estimates of average wage increases are calculated for those agreements that provide for a quantifiable wage increase. Not all agreements provide sufficient information to calculate annual wage increases embodied in them. The majority, however, report either what the rate of increase is or provide sufficient information to calculate it. Flat dollar increases are converted to a percentage by either: a) using the weekly rate of pay that applied prior to the new rates under the new agreement to calculate the equivalent percentage amount, or b) contacting the employer party to the agreement (AWAs excepted). Other non-quantifiable wage increases within an agreement, such as those that rely on award increases, inflationary (CPI) movements, or individual staff appraisals to determine quantum wage increases, are not included in these calculations. Where different quantum wage increases are given for different groups of workers within the same agreement, an average quantum wage increase is calculated and used. ACIRRT also uses a simple rather than compound percentage wage increase.

The wage increases are those that affect ordinary weekly earnings (base rates of pay). AAWI figures do not include payments in addition to base rates (such as overtime, bonus payments, one-off annualisation of salaries, performance pay, profit-sharing, allowances etc). Wage agreements whose average percentage increase could not be quantified (eg, those introducing a new salary structure) are also excluded from these estimates.

Due to delays in the registration process, some agreements will only run officially for a couple of months. Where it is apparent that the official duration of the agreement is unduly short (ie. less than 9 months), such agreements are excluded from the calculations so as not to artificially raise the estimate of average annual increases contained in all agreements.

Sample

As at September 2004, the ADAM Database has information on 12,058 registered enterprise (collective) agreements from the Federal and State jurisdictions as follows:

Federal (5984), NSW (1989), SA (884), Queensland (2062), WA (1137).

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about the ADAM Database

Since 1993, **acirrt** has maintained the Agreements Database and Monitor (ADAM), Australia's most comprehensive and authoritative database of enterprise agreements. With detailed up-to-date information on over 12,000 federal and state enterprise agreements and over 1,200 federal AWAs, ADAM is an invaluable resource that is frequently used by IR/HR practitioners, economic analysts, researchers, policy makers, and academics. Information from the ADAM Database is available in two ways:

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