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### Works Councils: Lessons From Europe for Australia

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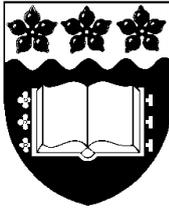
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**Works Councils: Lessons From Europe for Australia**

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and

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# **Works Councils: Lessons from Europe for Australia**

Herman Knudsen and Raymond Markey

Any discussion of the viability of works councils in the Australian context needs to examine their operation in Europe, where they have a reasonably substantial history and have become an established part of the industrial relation infrastructure. In recent years, works councils have also expanded their reach in Europe, as a result of national and supranational (European Union) initiatives. Reference to a European form of works councils, however, may hide marked differences in the structure and operations of works councils between different west European countries. This article begins by examining in some detail the diverse European experience of works councils. Based on that experience, it then explores the potential advantages of works councils in the Australian context, and the most appropriate form that they should take.

## **The European Experience**

Most European countries have works council or similar bodies through which employee representatives are informed and consulted on management decisions, or even take part in such decisions. Among the 15 European Union member states all but Britain and Ireland have such institutions, and they also exist in many other European countries as for example Norway, Hungary and Slovenia. The spread to countries outside Europe has not been overwhelming, but it is interesting that South Africa has recently introduced works councils.

The works council institution was originally developed in Germany and actually dates back to the 19th century, although it was only in 1920 that legislation made works councils a general feature of German industrial relations. Essentially, a works council is a body elected by all non managerial employees, a body entitled to meet with management and to be informed, consulted and involved in management decisions. Formally, and also to a large extent in reality, there is a clear division of labour between works councils and trade unions. The main function of the works councils is participation in management decisions, whereas the primary task of the unions is collective bargaining.

The strongholds of works councils today are Germany, Austria and the Netherlands. In these countries works councils are empowered with significant rights to co-determination. Co-determination is a form of joint decision-making where the works council has to give its consent before certain types of management decisions can be taken and implemented. In cases of disagreement

between the two sides the matter is settled either by an arbitration board (appointed by the parties themselves) or by the labour court.

In other countries with works councils, as for example Spain and Portugal, the right to co-determination is absent or insignificant. In Spain, however, works councils are entitled to conduct collective bargaining at the enterprise level. This mirrors the practice of illegal collective bargaining carried out under the Franco dictatorship by the radical workplace-oriented union, *comisiones obreras*.

Other European countries do not have works councils in the proper sense, but bodies with similar functions. In France and certain other countries, legislation provides for joint management-employee bodies for information and consultation. In Italy and the Scandinavian countries the structures for participation in management decisions are integrated with trade union structures. In Italy and Denmark, the workplace bodies for consultation are not based on legislation, but on collective agreements concluded by the peak organisations at national level. In Scandinavia as well as Italy trade unionists have a monopoly of representation at workplace level. In the Scandinavian countries – whether there is a employee-side only body (Sweden) or a joint cooperation body (Denmark and Norway) – the institutions are manned by local trade union delegates (shop stewards), elected only among the trade union members. In Italy, all employees may take part in elections, but only the trade unions can put up candidates.

In spite of the various forms of institutions in the different countries, it is fair to say that the works council is an institution with a significant impact on industrial relations in Europe. Termed works councils or not, almost all countries have introduced, usually through legislation, institutions which aims at promoting employee participation in management decisions. In the ‘deviant’ Danish case – where the form is joint ‘cooperation committees’ based on collective agreements – it is interesting to note that the first of these agreements was concluded in 1947, exactly at a time when the Danish government prepared legislation on works councils .

Works councils have also been on the European Union agenda in the attempt to approximate the industrial relations of the member states to each other and to consolidate what is often referred to as the ‘European social model’. After many years of discussion the directive on European Works Councils was adopted in 1994. It obliges management in multinational companies, if requested by employee representatives, to set up European works councils, comprising of employee representatives from the EU – and possibly other – countries in which they operate. The European works council is entitled to be informed and consulted by corporate management on strategic and other issues which have

consequences for workforces in more than one country. It has a right to meet with management at least once a year, and more frequently if for example management wants to relocate production and/or jobs from one country to another.

A further directive proposed by the EU concerns the obligation of national companies to inform and consult employee representatives. The aim is to generalize this employee right – which already exists in the great majority of member states – so that Britain, Ireland and coming member states will also be covered. The British Labour government is opposed to the proposal although the British trade union movement supports it. Opposition has also been voiced by Denmark where trade unions as well as employer organisations have expressed fear that the directive will endanger the voluntarily agreed cooperation committees.

So, it is too early to say that works councils in the strict sense form part of the European industrial relations model. However, in a broad sense they certainly do: Statutory based information, consultation and cooperation at workplace level is an increasingly important aspect of European industrial relations. The success of German, Dutch and Austrian works councils and similar bodies in other European countries – success in terms of their contributing to highly efficient economies, high labour standards, a low level of industrial conflict, and a significant degree of industrial democracy) - is hardly ever doubted by observers within these countries. Yet, these institutions do not spread easily to other countries with different traditions. It seems that such cross-border fertilization only appears in circumstances in which important social actors in the receiving country have experienced a severe crisis in the traditional institutions (as was the case in the South African transition from *apartheid*).

However, to import a well functioning institution from another country is certainly not without difficulties. For instance, if employers and employees only perceive their interests as conflicting and constantly fight each other to get a larger slice of the cake, works councils will hardly be able to flourish. The success of works councils is closely tied to a cooperative industrial relations climate, the existence of trust between the parties, and the belief that both parties can gain from a joint effort to make the cake bigger. It is also tied to the state as a force that can guarantee the long-term character of the relationship between employers and employees. Or, as it has been expressed by a German expert in the field (Müller-Jentsch 2001: 276):

“From German Labour history we could see that a long learning process was necessary to change the antagonistic orientations of both sides of industry before the advantages of the works council system were recognised...Since the initial

risks are high for both sides, especially in traditionally adversarial labour relations systems, works councils can only be established by the state. Only the state can make this institution mandatory and position it equidistant between capital and labour. But whether this will work is highly dependent on the attitudes and social practices of the parties involved.”

In order to explain this in more detail let's take a closer look at the German works councils – their functions, relations to management and trade unions, and historical development. The co-determination through works council constitute one of the three pillars of German industrial relations, the two others being collective bargaining and employee and trade union representation on the supervisory boards of companies.

The following account is based mainly on Knudsen (1995).

## **Works Councils in Germany**

### ***The constitution of the workplace***

Works councils in Germany are based on a rather detailed piece of regulation called the 'Works Constitution Act', in other words a constitution for the workplace defining the collective rights of employees as 'industrial citizens'. The legislation dates from 1920, but was abandoned by the Hitler regime. In 1952 it was re-introduced in a strengthened version by a Christian Democratic government, and in 1972 it was revised at the initiative of a Social Democratic government. Since then the basic rules have remained unchanged. After German reunification in 1990 they were also introduced in eastern Germany.

Employees in any establishment with at least five employees are entitled to set up a works council which meets with management at least once a month. Elections to the works council take place every four years. Often there are different candidate lists for blue-collar and white-collar workers. The number of representatives to be elected varies with the size of the workforce, from one in workplaces with 20 employees or less, to for instance 11 in workplaces with between 600 and 1000 employees, and more than 30 in workplaces with over 7000 employees.

The works council is entitled to meet during working hours and its expenses – including office space, other material facilities and secretarial assistance – are paid by the employer. The members of the council have a right to be released from their work tasks without loss of pay for the time necessary for performing their function. In workplaces with more than 300 employees, at least one works councillor can be released full time (ranging to 11 in establishments with more

than 9000 in the work force). Works council members enjoy a stronger protection against dismissal than ordinary employees.

The works council is primarily plant based. However, when an undertaking has several workplaces, the works council from each workplace can appoint delegates to a central works council – and in groups of companies to a group works council.

The Works Constitution Act obliges employers generally to “supply comprehensive information to the works council in good time”. More specifically, information has to be given on:

- the financial situation of the company,
- production, investment and rationalization plans,
- production techniques and work methods,
- reduction of operations and closure or transfer of production,
- changes in company organisation and objectives,
- and anything “that may materially affect the interests of the employees”.

For undertakings with over 1000 employees the information must be in writing and be given at least quarterly.

On most of these issues the works council is also entitled to be consulted by management. In general, consultations must take place over any plans concerning the construction and change of work buildings, the technical plant, the work process, and work operations and jobs. Similarly, the works council must be heard on matters relating to the size and composition of the workforce, training, and dismissals. Where there are more than 100 employees in the workforce, consultations must also take place regularly on the financial development of the establishment.

In a number of areas the works council is empowered with a right to co-determination. Co-determination apply in the following areas:

- rules of order and conduct in the establishment
- the start and termination of daily working hours and breaks, and the distribution of working hours over the days of the week
- temporary reductions or extensions of the normal time
- principles for holiday arrangements and holiday schedules
- technical devices for monitoring the performance or behaviour of the employees
- occupational health and safety
- principles of remuneration and the introduction of new payment systems
- the fixing of job and bonus rates and performance-related pay
- employee surveys and personal data included in employment contracts

- guidelines for the selection of employees for recruitment, transfer, regrading and dismissal
- guidelines for training programs and the selection of employees for training.

A further area for co-determination is job design. If the employer changes jobs in a way which obviously is contradicting with "established findings of ergonomics" concerning "human requirements", the works council can demand the matter to be settled by an arbitration committee. Finally, the works council is entitled to negotiate with management on any change which may "entail substantial prejudice to the employees". This article of the Works Constitution Act in particular aims at rationalizations leading to redundancies. In such situations management must negotiate a 'social compensation plan' with the works council through which redundant workers are helped into employment in other parts of the enterprise or other firms in the community, if possible, or offered training which may improve their chances of getting a new job. If an agreement cannot be reached through negotiations the case proceeds to the arbitration committee which is obliged to "take into account the social interests of the employees concerned while taking care that its decision does not place an unreasonable financial burden on the company".

The individual employee is allowed to contact the works council during its consultation hours, without loss of pay, and may ask the council to forward grievances and suggestions. The Act envisages that works meetings are held four times a year. At these meetings the works council reports on its activities and discusses various issues with the assembly of employees. Meetings are to be held during working hours and without loss of pay. They are not public, but management as well as trade union representatives may attend.

According to the Works Constitution Act the works council must work together with the employer "in a spirit of mutual trust". It is not allowed to call strikes or take industrial action of any kind.

### ***The works councils in practice***

One thing is the formal rules; another is actual practice. Do German works councils function as envisaged in the Works Constitution Act?

To an important extent they do, but not everywhere. In actual fact, only a minority of workplaces has a works council. Among workplaces with between five and 20 employees only 16 per cent have a works council. For workplaces with more than 20 employees the incidence is substantially higher – a recent study found work councils in 46 per cent of such workplaces in western Germany and 40 per cent in eastern Germany. And through these councils 74 and 66 per cent, respectively, of employees were represented.

Studies on works councils have generally found great differences as to how they function. (Knudsen 1995). While some works councils are quite passive and mainly just accept what management proposes, others play an active role attempting to influence management decisions. Of the latter type, most display a cooperative style towards management, while relatively fewer follow a more confrontational road (Kotthoff 1994). Until recently it was generally found that most works councils did not exploit fully their formal rights. Only rarely did they pro-actively attempt to influence decisions on for example new technology, work organisation and job design; more typically, they let management have all the initiative and only reacted to minor details of management proposals. Another important feature was the clear division between issues settled by collective bargaining and issues discussed between the works council and management.

In recent years works councils have come to play an increasingly central role. This is partly a consequence of the accelerating rate of change – in markets, technologies, production organisation and company structure, often involving the introduction of just-in-time principles, more flexibility in work patterns, and more customized products and services. Given the provisions of the Works Constitution Act, many types of change require the consent of the works council, and for change to proceed smoothly the active support of the works council is often essential.

Partly the increased significance of the works council is connected with changes in the collective bargaining system. In Germany as elsewhere, employers have pressed for more decentralised settlements as to wages as well as working time arrangements in order to increase flexibility. While sector level bargaining has been upheld, it continues in a form where agreements increasingly include so-called opening clauses for negotiations between management and works councils at the local level. For example, on working time the agreement may stipulate not much more than the number of working hours to be worked over a year and a weekly average, whereas all the detailed regulation of working time is left to the company level. In this way German trade unions have conceded to employer demands for more flexibility, and this again has given works councils a greater role to play.

For an establishment to be flexible and able to introduce changes effectively it is important that it gets the backing of the works council. This often leads to whole package deals – often termed ‘modernisation pacts’ or ‘employment pacts’: When management wants to modernise production methods and work organisation it gets the consent from the works council, but only on the condition that a certain level of employment is guaranteed and certain demands to job design and training are met. As a consequence, works councils are no longer just buffers

between employees and management helping to improve social integration and minimize conflict, they are also active players in attempts to develop workplaces in ways that secure employment and improve working conditions.

***Trade unions and works councils – from enemies to allies***

There is no doubt that an important motive for introducing works councils in Germany was to diminish trade union influence. German trade unions at that time were quite radical, although divided in a communist and reformist wing. What the state wanted was to have employee interests represented in a more peaceful, neutral and local way than through the highly politicized and mass-based trade unions.

Hence, in the trade union movement the 1920 law was not popular. The communist wing of the movement considered works councils to be instruments for subduing workers through ‘class collaboration’. They criticized the dual function given to works councils, namely to represent employee interests and at the same time support the employer in fulfilling the goals of the enterprise; also they could not accept the works councils’ peace obligation. Even the somewhat less radical Social Democratic wing of the movement was critical of the legislation; not least because employee representation at the workplace level was defined as a non union matter and unions were excluded from operating within the workplace.

Through the 1950s and 1960s works councils and trade unions largely were unconnected forms of interest representation with each their functions. Trade unions were responsible for collective bargaining, and sector level collective agreements meant that wages, working time and other distributive questions were solved above the level of the individual workplace. The works councils, for their part, represented the workforce at plant level solved specific plant issues in cooperation with management (Leminsky 2000).

Essentially, this division of labour still exists, but not as clearly as before, partly because of the decentralisation and flexibility tendencies described above, and partly because of changing trade union strategies. With the revision of the Works Constitution Act in 1972 trade union officials were allowed to attend works council and works meetings and to have access to workplaces in general. From then on the trade unions took a more active interest in influencing workplace industrial relations.

They did so in two ways. The first way was to further the election of workplace trade union delegates (shop stewards) as alternative representatives at shop floor level. The second way was to control the works councils by having trade union members, standing on trade union platforms, elected to the works councils.

While shop stewards have never become important players in workplace industrial relations, the other method has proved quite successful for the unions. In spite of the fact that only about one third of German employees are union members, candidates from the unions fill about three out of four works council seats.

A recent study of works councils in Germany's largest manufacturing sector, the mechanical engineering industry, found that 82.5 per cent of works councillors were union members and were in regular contact with their union. 70 per cent took advantage of external advice and support, almost exclusively from trade union officers. Furthermore, a large majority of works council members expected advice and support from their union – 87 per cent on questions concerning lay-offs, 73 per cent on pay, and 68 per cent on flexible working time (Müller-Jentsch 2001: 279).

Given that German unions are industrial unions following the principle of 'one plant, one union' it is not exaggerated to say that works councils in reality function as the basic unit of trade union organisation, as "the prolonged arm of the union movement" (Schregle 1986: 180). This has obvious advantages for works councils as well as trade unions. Works councils can receive training, professional advice and political support from the trade union and thus better be able to match management in discussions and negotiations; since the late 1970s trade unions have been active developing policies in areas which are relevant to works councils such as new technology, work organisation, job design, training, and methods for direct participation. The trade unions, for their part, get a much larger representation base through the works councils than suggested by the actual membership figures. (This tendency is even more outspoken in Spain where the unionisation rate is approximately 15 per cent while almost 90 per cent of works councillors are members of a union (Knudsen 1995: 65).

### **Lessons for Australia**

The major decline in the level of unionisation in Australia to 27 per cent, and as little as 11 per cent in the private sector, has created a 'representation gap' for employees in the workplace. This gap has not to date been effectively filled by other means, and it is not likely to disappear in the near future. For these reasons it is noticeable that some recent commentators have looked towards other means, such as works councils of a European kind, to fill the growing void in collective labour institutions in Australia (notably McCallum 1997).

As with other 'Anglo' countries such as the US and UK, Australian representative employee participation has been less substantially

institutionalised than in western Europe. In Australia and the Anglo countries generally, joint consultative committees JCCs are the most common form of representative employee participation. These differ from statutory works councils in that they are usually the product of unilateral management or of initiative union/management agreement. They also vary considerably in terms of composition, jurisdiction, powers and organisational level of operation. They commonly include up to 50 per cent managers, as well as employee representatives. The latter are sometimes appointed by management, sometimes by unions or a combination of the two, and seem to be less commonly elected directly by employees. JCCs usually have an advisory role to management, are often restricted in their jurisdiction to a narrow range of issues, and often have specific briefs for a limited period of time (task forces) (Strauss 1998: 28-9; Markey and Monat 1997: 1-26).

JCCs received considerable encouragement in Australia from the restructuring and structural efficiency guidelines adopted by the Australian Industrial Relations Commission in 1988/9. From 1990 to 1995 the proportion of workplaces with 20 or more employees that had standing joint consultative committees more than doubled, from 14 to 33 per cent. They are much more common in public sector, large and unionised workplaces (Morehead et al. 1997: 188-9). A similar pattern has occurred in the UK, except there the incidence of JCCs has actually declined since the 1980s, from 34 per cent of workplaces in 1984 to 29 per cent in 1990 and 1998. Survey evidence from the UK also indicates that many JCCs are 'not enduring institutions of employee representation' (Millward et al. 2000: 110).

In comparison with works councils, JCCs suffer a number of limitations as a form of genuine employee representation or voice. To the extent that they rely on management discretion in their formation, structure and powers, their limitations are clear. Where they rely on agreement with unions, their viability as a general representative approach to employee voice is also severely constrained in Australia (and the UK and US) by the declining level of union coverage and the fact that a majority of employees and workplaces are not unionised. In instigating JCCs, data from the Australian Workplace Industrial Relations Survey (AWIRS) shows that Australian managers were motivated mainly by the desire to improve communication, improve efficiency or product quality and implement change, much more so than a desire to increase job satisfaction or employee morale. This data also confirms that Australian JCCs have a relatively narrow range of issues over which they enjoy jurisdiction, although the important issue of work organisation is that most commonly dealt with (Morehead et al. 1997: 190-5). The available evidence from case studies as well as surveys suggest that Australian JCCs are almost exclusively advisory, rather than enjoying substantial co-decision-making powers (e.g. Markey and

Reglar 1997: 358-88 Bertone et al. 1998; Worland 1995), and the British WIRS (Workplace Industrial Relations Survey) data shows a similar pattern in the UK (Millward et al. 111-2; also Terry 1999). The inclusion of management representatives on JCCS also potentially limits their independence as an expression of employee voice.

Survey data regarding the effectiveness of JCCs is largely positive in terms of achieving management objectives, for Australia and the UK. However, this data should be treated with great caution. As Palmer and McGraw note:

It may well be the case that whilst managers are usually less represented than non-managers on JCCs they may nevertheless take an active role in structuring the discussion and the recommendations which are made. Little can also be said concerning whether the discussion is simply information sharing on the part of management or whether it involves meaningful consultation. Thus, it is questionable whether employees are empowered ..., simply through their ability to discuss a number of issues relevant to the core business and operational functions of their organisation. (Palmer and McGraw 1996: 182).

Palmer and McGraw also note the significance of the fact that HR managers are the usual survey source of data concerning the effectiveness of JCCs. Although Australian union delegates largely evaluated the quality of information provided by management to JCCs positively, surveys based on employee views of the effectiveness of JCCs may produce quite different results.

Given these major limitations in the structure and operations of JCCs as a form of employee participation, together with the strong evidence for the desirability of substantial forms of employee participation as a means of building workplace cooperation and commitment (see Gollan and Markey 2001), it seems appropriate to consider the introduction of works councils to Australian workplaces. It is possible to identify advantages for both employers and employees for a works council system in the Australian context. Under these circumstances, the support for works councils is potentially widespread.

It is notoriously difficult to import industrial relations institutions from one country into another, and to expect the same positive results in the new environment that may be apparent in the country of origin. The same institution may operate in an entirely different industrial relations culture which leads to entirely different outcomes. As noted earlier, the German system of works councils took a considerable time to develop the acceptance and trust by employers, employees and their unions necessary for its successful operation today. As a system it relies on a high degree of consensus or integrative

bargaining, but the Australian industrial relations culture has traditionally had a predominantly adversarial basis.

In this context it seems that the most effective way in which a generalised system of works councils could be developed in Australia would be through legislation. Without legislation which defines and guarantees their powers and composition, works councils may not be secure from managerial or union encroachments on their independence under certain circumstances, or at least may not appear to be, which would reduce the degree of trust, and hence, their effectiveness. Legislation would ensure that all works councils have the same opportunities and constraints. Apart from its role in pushing sometimes reluctant management or unions towards a cooperative, consultative relationship at the workplace, a statutory system has an important role to play in ensuring the neutrality of participative structures, free from the impositions of whichever party is favoured by the balance of industrial power (see Markey and Monat 1997: 416-7; McCallum 1997; Murakami 1999).

The German model of works councils seems the most likely to achieve these ends. It is an extensive system which guarantees specific structures and rights for the works councils. Most importantly, the German system maintains the integrity of works councils separate from both employers and unions, thus generating a high degree of trust on both sides. It would require national legislation, preferably with mirror state legislation given the significant 'residual' industrial powers of the states.

A German-style system of works councils would have a number of advantages in the Australian context. In the first instance, it would further the public policy objective of decentralisation of industrial relations processes to the enterprise level to maximise flexibility and efficiency. This has been consensus public policy since 1988, even if it has taken somewhat different forms under Labor and Liberal/National governments.

The second major advantage for application of the German works council system into Australia is that it offers a major, systematic mechanism for employee 'voice' at the workplace level, as well as protection of employee interests in the workplace process of change. This has become a particularly critical issue, since the decline in total union density in Australia to 27 per cent means that a majority of workplaces have no effective employee voice. This decline also means that the Swedish system of employee participation, based entirely upon unions, is inappropriate for Australian circumstances.

Thirdly, there are advantages in separating the negotiation of workplace change from unions and placing the main responsibility for it under the works councils

in a German-style system. This means that the employee representatives who are most directly affected and who have the most direct experience of conditions in a particular workplace become involved in the decision-making process.

The German system also maximises employee job security in the process of workplace change and the achievement of flexibility in the workplace. In the current Australian industrial relations system the negotiation of organisational change faces a relatively high degree of resistance from employees and their union representatives according to survey data. A major reason for this has been the association of workplace change with job loss (Morehead et al 1997: 247-55; Markey et al. 2001: 285-96). However, under the German system the works council has some of its most extensive rights for codetermination in relation to job loss as a result of restructuring, as we have seen. In this context, the process of codetermination is much more likely to alleviate job loss and to bring employees to acceptance of restructuring.

Similarly, the German works council system separates bargaining over wages and from the process of workplace change and the achievement of flexibility in the workplace. Organisational change has considerable potential to affect wage rates as a result of reclassification of grades of jobs, changes to skill requirements or the skills mix in the workforce, and changes to the productivity, pace and intensity of labour. For these reasons negotiation of organisational change is often closely associated with expectations over wage rates from both sides, particularly in the contemporary Australian institutional context where enterprise bargaining is the main determinant of wages and other conditions. However, whilst the German works councils may negotiate bonuses, shift allowances, and the skills mix of the workforce, general wage rates are negotiated at an industry level by the unions. Consequently, general wage rates are removed from the consideration of flexibility and change at the individual workplace. This simultaneously removes a major impediment to the successful negotiation of change and allows both management and works council to focus on more efficient work organisation itself.

In these ways the German works council system would offer mutual advantages to employers and employees in the Australian context. Employers would not compete on the basis of wage costs, but on the basis of achievement of genuine efficiencies in the workplace through workplace change. Employees would have less to fear from organisational change and the development of greater workplace efficiency if it was not so closely associated with job loss or variations in wages. Because of this, they would be less likely to be resistant to change.

More generally, Australian employers could benefit from a works council system in a number of ways. The extension of employee voice in the decision-making

process, often where none exists at all, extends the range of expertise informing decision-making. It also fosters employee cooperation and commitment to the outcomes of decision-making in the workplace. Most importantly, a works council system would encourage a consensual, integrative approach to important aspects of workplace negotiations, such as flexibility, and individual employee cases, which otherwise are likely to be resolved through a more adversarial system involving unions.

Participation begets participation: a large body of international survey and case study evidence now indicates strongly that the successful implementation of direct forms of participation, such as teamwork, quality circles and Total Quality Management programs, are facilitated by systems of representative participation such as works councils (Markey 2001: 9; Murakami 1999). Theoretical explanations of the role of direct participative mechanisms of this kind in promoting efficiency and innovative work patterns have been supported by a range of empirical data, such as the recent EPOC (Employee Participation in Organisational Change) survey of European Union countries (EPOC 1997). AWIRS also revealed that Australian employers were adopting direct participative practices at a high rate, with almost half of workplaces surveyed practicing team building and well over a third implementing semi or fully autonomous work groups and total quality management. These managers claimed that workplace performance improved in 84 per cent of cases, that product or service quality improved in 82 per cent of cases, that communication between managers and employees improved in 75 per cent of cases, and that the ease with which change was introduced improved in 73 per cent of cases where direct participative practices were employed. The same survey revealed a strong correlation between representative forms of participation – mainly JCCs – and unionisation in workplaces where direct participation had been implemented (Morehead et al. 1997: 325-6; Markey et al. 2001: 241-2;). The EPOC survey also showed a strong correlation between the success of direct participative practices and the incidence of representative participation, predominantly works councils. EPOC demonstrated

the importance of employee and employee representative involvement in the regulation of direct participation in order to improve both the quality of the participation itself and its economic and social effects. Far from being a barrier to progress, it seems, employee representatives are agents of change. The greater their involvement, in terms both of form and extent (and this applies particularly to negotiation and joint decision-making), the more the indicators of the effects were positive (EPOC 1997: 204).

Australian employers, therefore, could expect to benefit in the implementation of team work and other forms of direct employee participation designed to improve efficiency and quality, through the introduction of a more systematic and extensive form of workplace representative participation, such as works councils.

In the German case, the unions initially opposed the introduction of works councils, which were partly motivated by the desire to provide an alternative form of employee voice more tied to the interests of the enterprise. Australian unions, and their counterparts in other Anglo countries, have traditionally been deeply suspicious of representative forms of employee participation along these lines: that even if they are not designed to do so, they will effectively undermine union loyalty in the workplace by providing an alternative voice for employees (Markey 1989). This problem would become exacerbated for unions and employees if works councils became incorporated into management, which is precisely what unions have feared especially because of the relative power and resource imbalance between an employer and employees in one enterprise (Markey and Monat 1997: 3). In the US this fear focused upon the potential for company unions which employers used to undercut genuine employee organisations in the 1920s, and as a result the National Labour Relations Act of 1935 effectively bans any company representative bodies (see Dunlop Commission 1994 Part II). In addition, unions have traditionally been concerned with the prospects for 'workplace egoism', whereby employees in particular workplaces may be supportive of enterprise initiatives which undercut broader industry policies of unions, because of atypically negative or positive performance of their own particular enterprise. For example, a firm undergoing financial or market difficulties may be able to persuade employees that it is in their interest to accept flexible approaches to industry standards regarding lower wages or extra hours, which would have the effect of applying competitive pressure to other firms in the industry to follow suit (see Strauss 1998a: 126-34; Frege 1999: 43-53, 74).

However, notwithstanding these potentially negative impacts, unions generally are likely to benefit from a works council system with the appropriate checks and balances. As noted earlier the vast majority of works councillors in Germany, and most other European countries where they exist, are union members, even though only a minority of the workforce is unionised. Union activists are, by definition, likely to be more industrially active and visible in the workplace, to have objectives which they wish to pursue, and to network more effectively than non-unionists. This means that in practice unions may have an indirect influence on works councils.

The German and European experience generally also suggests that works councils commonly work in partnership with unions, especially in sharing of

data. In particular, the unions can provide the councils with research data relating to the industry and economy as a whole, nationally and internationally, which works councillors would not otherwise be able to access easily. Unions also have the networking capability to link work councillors from different firms so that they can share data and experiences (see especially Veersma and Tegelaers 1997: 67-86; Hege and Dufour 1995). In these ways unions can actually reach a wider proportion of the workforce than just union members, and the relationship may even assist unions in recruitment of members. For all of these reasons German unions are now fully supportive of works councils. Australian unions could also benefit from them in the same ways, as was recognised in *Unions 2000*.

The manner in which the division of powers and authority is structured between German works councils and unions may also provide wider benefits to unions and employees. Whilst works councils have autonomy over non-wage issues in the workplace, general standards and wage rates are regulated by industry level collective bargaining. This means that whilst the works councils maximise flexibility at the workplace level, there is also a high degree of centralised determination of wages and standard conditions such as working hours. In the Australian context this would imply a strengthening of the award system, without necessarily reducing enterprise flexibility. One instance of how this could operate successfully in achieving dual objectives is provided by the implementation of reduced working hours in Germany during the 1980s. The hours reduction was negotiated on an industry level, on the basis of a standard 37.5 hour week, or 35 hours in the metals industry. However, it was left to the works councils to negotiate at enterprise level the implementation of this standard, and a variety of approaches were adopted. These included a daily reduction in hours, a four and a half day week, a nine day fortnight, and longer annual leave (Jacobi et al. 1992: 250-1). Such flexibility is clearly of benefit to employers as well as employees.

Finally, the introduction of German-style works councils into the Australian industrial relations system could be achieved relatively easily within the existing institutional infrastructure of the industrial relations commissions at state and federal levels. These tribunals are well-equipped to undertake the role of the German Labour Court in resolving intractable disputes between works councils and employers where the councils have the right of co-determination. In doing so they also often establish minimum general standards through test cases. The Australian tribunals have long experience and considerable expertise in dealing with workplace issues such as restructuring and even unfair dismissals, which are likely to arise if we adopted the German system. However, the attraction of the German system is that its rationale is to encourage a consensus approach to these workplace issues by dealing with them at the workplace level rather than

through unions in a more adversarial framework. The German Labour Court, therefore, is only a last resort applied in a small minority of cases which represent a breakdown in the system, rather than its normal mode of operation.

## **Conclusions**

European style works councils and other forms of representative employee participation at the workplace level have wide support in a number of countries in Europe, amongst both employers and unions. There is considerable evidence that representative forms of participation help build employee commitment and cooperation, and facilitate 'high-trust, low conflict relations' between management, workers and unions. In addition, it is clear that representative participation is also strongly associated with effective forms of direct participation which are designed to enhance productivity and efficiency outcomes in the workplace. At the same time, the decline in union membership in Australia has created a major 'representation gap' which could be partially filled by an extensive system of workplace employee representation. The joint consultative committees which have become common in Australian workplaces in recent years have many drawbacks in providing the systematic approach to representative participation which is desirable. This is especially the case because they have not spread beyond a substantial minority of workplaces, their genuine independence from management is often questionable, and their powers in relation to management are too limited to offer a substantial employee voice in decision-making. For these reasons a systematic approach to representative participation in Australian workplaces is worth considering as an important matter of public policy.

The German style of works councils, operating in a system of co-determination defined by law, seems to offer particular advantages for the Australian context. The intervention of the state in this way structures an even-handedness which lies at the heart of the German system, and fosters the high degree of trust from employers and employees and unions which is necessary for the success of a system of this kind. In order to build the support necessary from both parties, it would be essential to maintain the clear separation of the works councils from both management and unions which characterises the German system.

The adoption of this system offers substantial advantages to employers, employees and unions in Australia, and the existing industrial relations tribunals have the necessary expertise to provide support. Employers would clearly benefit from the potential of works councils to improve flexibility and productivity and facilitate direct participative practices such as teamwork, in the workplace. The works councils structure also tends to remove some of the main

sources of employee resistance to workplace change. Consideration of wages are removed from the provenance of workplace change and flexibility in a centralised industry level system of wage determination collective bargaining with unions. Employment security is one of the strongest areas of works council codetermination power. These same factors offer much to employees and unions. Nor would unions necessarily have much to fear from works councils displacing their role and appeal to members, since unionists tend to be elected to works councils in far greater proportion than their general membership density. Indeed, the European experience reveals the potential for unions to develop strong partnership relations with works councils which would enable unions to indirectly reach a much greater proportion of the workforce than their own membership. The lessons from Europe point to a genuine win-win outcome from the adoption of a works council system on the German model in Australia.

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