The state of representative participation in Australia: Where to next?

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1. INTRODUCTION

In recent years employee involvement or participation in workplace decision-making has been a major focus of international attention for researchers, managers and policymakers alike as they seek means for improving communication and cooperation between management and labour. This trend has been the product of broader changes in management practices associated with the spread of strategic human resource management, which seeks improved enterprise efficiency in the context of intensified business competition at a global level. The concern with employee participation has included direct job-oriented employee involvement through, for example, teamwork and quality circles, as well

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as representative forms of participation. The main forms of representative participation are works councils and employee representatives on boards of management. These are the focus of this paper, principally because they raise broader questions of governance and policy at a macro level.

The paper first examines the rationale for representative participation, and the circumstances under which it has spread internationally. It then surveys the existing data for representative participation in Australia, and presents a case for legislation to introduce a generalised system of German-style works councils. The last section of the paper argues that the first step towards this end should be the instigation of a major research agenda to discover more regarding the elements of historical and contemporary practice which have accounted for success and failure in representative participation in Australia.

2. THE RATIONALE FOR REPRESENTATIVE EMPLOYEE PARTICIPATION

The rationale for employee participation and representation in the workplace generally is threefold. First, a longstanding human relations tradition has argued that employees have non-pecuniary needs for creativity, achievement and social approval. By allowing employees a voice in the workplace, participation may promote employees’ sense of competence, self-worth and self-actualisation. As the workforce becomes more educated and basic material needs are better satisfied, this perspective has gained greater currency.

Secondly, employee participation has been advocated as a form of power sharing on the basis of democratic principles. This is sometimes referred to as ‘industrial citizenship’. Those who advance this argument for participation commonly favour the terminology of ‘industrial democracy’, although this has usually not been the preferred terminology of employers.

On the left of the political spectrum, 'workers' control' extends industrial democracy to the polar opposite of managerial prerogative. Both of the broad rationales described here refer to 'empowerment' of employees through participation.

Thirdly, the case for employee participation has been based upon the argument that it contributes substantially to organisational efficiency. An extensive literature has argued that employee participation has the capacity to enhance the quality of decision-making by broadening the inputs, promotes commitment to the outcomes of the decision-making process, improves motivation, communications and cooperation in the workplace, may reduce the workload of supervisors, encourages skills development in the workforce, and can contribute to improved employee/employer relations generally in the workplace. These arguments represent a reaction against Fordist mass production technologies, and their tendency to deskill employees. Some researchers argue that employee participation and empowerment are progressive management practices which have universal benefits to performance enhancement, as opposed to most other HRM practices whose success is contingent upon the organisational context.

Historically, the main appeal for employee participation has shifted between the three broad rationales referred to above, reflecting shifts in economic circumstances and the balance of power between capital and labour. Humanistic and power-sharing arguments were dominant in the...
1960s and 1970s, particularly in the context of worker militancy and economic buoyancy. However, organisational efficiency has provided the strongest base for promotion of employee participation since the 1980s. This shift has occurred in a context of intensified competition in a globalised economic environment, the dominance of economic rationalism in public policy, and the tipping of the balance of power in favour of employers, especially as union membership has declined. It is notable that in Germany, where works councils were strengthened by legislation in 2001, they are attributed with a major share of the responsibility for the efficiency and competitiveness of German firms.

These general rationales for employee involvement apply both to direct and representative forms: however, representative participation attracts its own supporting arguments. With the decline of trade union membership and consequent weakening of unionism as a form of collective representation and employee voice in many countries, the importance of representative institutions such as works councils has taken on new significance in recent years, filling, or potentially filling, a collective 'representation gap' in the workplace. Representative participation through works councils or employee representatives on boards also has become a consideration in the growing international concern with corporate governance which has emerged as a result of a series of major corporate failures since the late 1980s, the most spectacular recent examples being Enron and WorldCom.

Until recently the corporate governance debate had focused upon strengthening the position of the shareholders, but these comprise only one of the stakeholders involved:

The specific orientation on shareholders' interests (and shareholder value) carries the risk of a too one-sided focus on – mainly short term – results and the value of the shares. The shareholder model does not allow sufficiently for other interests such as those of the employees or the environment. A too one-sided

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focus on profitability may adversely affect the attention for the longer-term policy and the company's future, not to mention the social responsibility of the company.12

In his preface to the World Bank publication, Corporate Governance: A Framework for Implementation, Sir Adrian Cadbury recognised a broader range of stakeholders, including employees, customers and community.13 In the ‘stakeholder-model’ of corporate governance, the employees’ representatives ‘play an active role – as participants – in corporate governance, in the process of strategic decision-making at corporate level’.14 With the continuous process of mergers, take-overs, reorganisations, downsizing and internationalisation of companies and the growing global character of business, the issue has assumed growing importance.

In the states of central and eastern Europe the issue of employee participation in corporate governance has had particular salience during a transformation process from centrally-planned to market economies in the past decade or more. These states have grappled with the dual issues of constructing private enterprise firms with a capital base as well as new industrial relations systems. The two issues often overlapped, with employees receiving privileged access to company shares and participating in new forms of collective representation through works councils and/or trade unions, in addition to employee representation on boards of management.15

3. THE INTERNATIONALISATION OF REPRESENTATIVE PARTICIPATION PRACTICES

Against this background, the incidence and range of representative participation has expanded substantially. In Germany the works council system

was extended by reform legislation of June 2001. From the mid-1990s multinational European Works Councils (EWCs) have slowly begun to establish themselves in the European Union (EU) and European Economic Area (Iceland, Liechtenstein and Norway in addition to the EU countries) as a result of the 1994 EWC Directive of the EU. Of more than 1800 multinational companies estimated to be affected by the EWC Directive, 639 have concluded agreements for establishing EWCs, negotiations in a further 150 were still underway in 2003, and a further 40 voluntary EWC agreements had been reached prior to the 1994 Directive. Since the implementation of the Directive greater numbers of companies have been brought under its purview by the enlargement of the EU to 25 member states (note the impact in central and eastern Europe already). Coverage also expanded when Britain acceded to the Directive at the end of 1997.

Two further measures of the EU provide support for EWCs and other forms of representative participation. Late in 2001 a European Company Statute was adopted, to provide companies with the option of forming a European Company—‘Societas Europeae’ (SE). These are able to function on a European-wide basis governed by EU law, which facilitates mergers and multinational operations under a uniform set of rules for management and reporting systems. The creation of a European Company requires negotiations for employee participation with a body, such as a works council or trade union, representing all employees in the companies involved. Failing agreement, a standard set of principles require regular reporting to and consultation with a body representing employees, concerning business plans, production and sales levels, restructuring and retrenchments. This was followed early in 2002 by the


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Information and Consultation Directive, that obliges all businesses with over 50 employees to implement genuine consultation of their employees prior to all major decisions, particularly if they affect jobs. Later that year a draft Directive on information and consultation in relation to company takeovers was also adopted.\textsuperscript{20}

It is important to note that multinationals based outside the EU, in Japan and the USA, for example, are subject to the EWC Directive for their EU operations. Indeed, a quarter of multinationals covered by the Directive are based outside the EU, and of these 61 per cent are based in the US, i.e. 15 per cent of all multinationals affected.\textsuperscript{21} Similarly, even before Britain was covered by the EWC Directive, many British-based firms were subject to it for their continental European operations, so long as they fulfilled the relevant threshold criteria: over 1,000 employees in the EU, and establishments employing 150 employees in at least two EU countries (outside the UK). The Trades Union Congress estimated in 1994 that 102 British firms were affected in this way. For this reason some British and overseas-based firms with obligations to form EWCs based on continental European operations extended coverage to British workers anyway, because to exclude them from an existing structure would be discriminatory.\textsuperscript{22} It seems that a similar rationale may now be taking effect with firms subject to the EWC Directive, but also employing substantial workforces outside the EU. At least two major multinationals – SKF (the Swedish-based ball-bearing manufacturer) and Volkswagen – have extended their EWCs into World Works Councils (WWCs) covering employees in Asia, South Africa and South America.\textsuperscript{23} These are based upon voluntary agreements with relevant unions, rather than any legal obligation, with the International Metalworkers’ Federation playing a major initiating role. Based on the EWC model, an employer representative at the 4th Regional Asian International Industrial Relations Association Congress in Manila in November 2001 called for the estab-


lishment of Asian Works Councils. The increased momentum of market (including labour market) globalisation and international mergers in recent years provides considerable incentive for the globalisation of participative and consultative practices, especially from the employees' perspective.

The recent European experience built on strong foundations. Prior to the EWCs, most EU countries, and a number outside the EU, had well-established systems of works councils, through which employee representatives are informed or consulted on management decisions, or even participate in decision-making (codetermination). These workplace representative organs have mainly been introduced by legislation, which varies considerably between countries. The most substantial instances, in terms of consultative and codetermination rights, have been in Scandinavia and Germany. The Swedish model is based on workplace trade union clubs as the basis of workplace participation and consultation, whereas the German model is based upon statutory works councils with defined powers and roles separate from those of trade unions. Two-thirds of EU member states, and a number of European countries outside the EU, also have statutory board-level representation for employees. As with works councils, these structures vary considerably in terms of the size threshold of companies, level of employee representation, or even the sector in which they apply. In the 'Rhineland' countries (Germany, Austria, the Netherlands) and Denmark, companies operate with a dual structure of supervisory and management boards, and on the German supervisory boards there is full parity representation.24

This European model of representative participation, in its various forms, has underlain the EU-wide developments of recent years. As we have seen, its influence is also reaching beyond Europe. What is its relevance for Australia?

4. **Australian Representative Participation at the Workplace**

As with other English-speaking countries such as the US and UK, Australian representative employee participation other than through trade unions has been less substantially institutionalised than in western Europe. In Australia and the English-speaking countries generally, no legislation exists for works councils or employee representatives on boards. Joint consultative committees (JCCs) are the nearest equivalent to works councils, and the most common form of representative employee participation, but employee representation on boards also occurs in some firms.25

4.1. **Joint Consultative Committees (JCCs)**

JCCs differ from statutory works councils in that they are usually the product of unilateral management initiative or of 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 a purely 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).26 British data shows a similar pattern.27

JCCs received 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

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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. Similar trends have 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’.29

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.30 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, notably improved efficiency and communication and facilitation of organisational change. However, this data should be treated with great caution. As Palmer and McGraw note:

29 Millward et al., All Change at Work?, p. 110.
30 Morehead et al., Changes at Work, pp. 190-5.
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.32

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. Surveys based on employee views of the effectiveness of JCCs may produce quite different results.

The trends from surveys were corroborated by Mitchell et al.33 in a detailed examination of enterprise flexibility agreements and certified agreements ratified by the Australian Industrial Relations Commission in 1994/5. They were interested in the impact of sections of the Commonwealth Industrial Relations Reform Act 1993, which sought to encourage employee involvement in decision-making at the workplace level. The Act required as a pre-condition for certification of enterprise agreements that they establish a process for consultation over 'changes to the organisation or performance of work'. JCCs were the most common response to this requirement in agreements (62 per cent of certified agreements, and 59 per cent of enterprise flexibility agreements). However, the vast majority of these agreements (75 per cent and 64 per cent respectively) failed to specify a fixed frequency of JCC meetings, and most did not even refer to the frequency of meetings (64 per cent and 56 per cent respectively). In addition, 60 per cent of all agreements failed to provide for the constitution of the JCC, and in a majority of those which made these provisions the means for appointing the JCC members was not indicated. These results demonstrate a low commitment to the operation of JCCs and ensuring their representativeness. Mitchell et al. further noted a relatively narrow range of issues falling within the jurisdiction of these agreements.

committees. They concluded that the legislation failed to strengthen employee involvement in decision-making, mainly because the AIRC did not implement the letter or spirit of the law in this area.

The Commonwealth Workplace Relations Act 1996 superseded the 1993 legislation, but has done little effectively to encourage JCCs or other forms of employee involvement. The Act provides for non-union enterprise agreements, which may offer opportunities for non-union forms of employee representation. However, these continue to account for only a small proportion of agreements certified, and in the absence of detailed studies, there is little reason to suppose that where JCCs have been formed that they are any more effective than indicated in previous enterprise flexibility agreements. Mitchell and Fetter have also found that Australian Workplace Agreements mandated by the 1996 Act rarely refer to JCCs, or even more generally to consultation and information-sharing, notwithstanding their frequent association with High Performance Work Systems (or High Involvement or High Commitment Workplaces), which emphasise cooperation and consultation with employees. Gollan’s subsequent study of AWAs indicated that JCCs were often part of the process leading to implementation of AWAs, and that ‘employers who made use of JCCs or works committees were significantly more likely to have had an improvement in labour productivity’. The two greatest benefits from JCCs according to these employers were improvements in implementation of change and labour productivity, with management-employee relations third, and employee commitment equal fourth with quality. This ranking of objectives and outcomes is similar to the AWIRS 95 results discussed earlier, and Palmer and McGraw’s observations on the reliability of such data remain apposite here; it reflects managerial priorities, relies on managers’ perceptions of effectiveness and does not necessarily indicate effective employee voice or empowerment.

The available evidence from a small number of more detailed case studies further confirms the limitations of JCCs, where they exist. Buchanan investigated 19 enterprises in the metals and allied industries for which in-depth documentation of consultative practices was introduced as part of the Australian Best Practice Demonstration Program of


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1991-96. He concluded that actual implementation of consultative arrangements ‘was patchy and often transient’, that they ‘lacked autonomy from management’, and were associated with ‘sidelining of union representation’ as well as work intensification, enhanced managerial control and extension of non-standard forms of employment.36 McGraw and Palmer’s case study research into the establishment of JCCs as part of the enterprise bargaining process demonstrated that many are confined by management to trivial issues, which they characterise as the three T’s: tea, towels and toilets.37 Furthermore, they argued that many are short-lived, and they leave many issues unresolved because of inadequate provision of resources to implement recommendations and inadequate training to facilitate effective participation. Other case studies confirm that Australian JCCs are almost exclusively advisory, rather than enjoying substantial co-decision-making powers.38

4.2. Employee Representatives on Boards (ERBs)

We also may elicit some idea of the incidence of ERB in the 1990s from the Australian Workplace Industrial Relations Surveys of 1990 and 1995 (AWIRS 90 and 95). However, these surveys are based on workplaces with 20 or more employees, rather than organisations, which limits the inference of general conclusions. AWIRS 90 found that only 7 per cent of all workplaces surveyed had ERB.39 Five years later this had grown to 13 per cent.40 No significant

40 Morehead et al., Changes at Work, pp. 188-89.
correlation was found between ERB and union presence or size of the workplace. However, there were significance levels of 99 per cent for correlations between ERB and public/private sector and industry.

One in five public-sector workplaces had ERB, twice as likely as in the private sector. The industries where ERB occurred most frequently were Education (54 per cent), Health and Community Services (23 per cent) and Communication Services (20 per cent), although not Government Administration (7 per cent). These industries are all dominated by public-sector agencies. Government Administration workplaces normally come under the control of public-service departments which are not governed by a board structure, but are directly responsible to Ministers. Health and Community Services and Communication Services, on the other hand, are characterised more by statutory authorities or corporations which are governed by boards: e.g. Area Health Services and Australia Post. Education is more mixed, since it includes universities, which are clearly statutory authorities governed by boards (called councils), but also schools and TAFE vocational education colleges which have boards but do not enjoy the full autonomy of a statutory authority. Strictly speaking, these do not count as examples of employee representation on corporate boards of management in the sense that has been discussed here. Their exclusion would significantly reduce the incidence of ERB for the public sector.

Public-sector influences also accounted for Cultural and Recreational Services scoring relatively highly with ERB frequency (13 per cent). In the sub-section for Libraries, Museums and the Arts, ERB occurred in 23 per cent of cases. The relatively high incidence of ERB in the private sector dominated industries of Property and Business Services (15 per cent), Wholesale Trade (13 per cent), and Construction (11 per cent) is less easy to explain, but otherwise these trends are not unexpected.

Australian governments have instigated ERBs for statutory authorities and corporations from at least the 1950s, particularly at the State government level. In 1952 a trade-union representative was included on the board of the newly established NSW Electricity Commission. Other State electricity authorities followed suit over the next few years, and in NSW the State Dockyard and the railways also included ERBs, as did the State Superannuation Board. From the 1970s this became more common. State ALP governments did this as a matter of policy, led by the South Australian ALP government of the 1970s. At the federal level

ERBs also appeared on statutory authorities such as the ABC, Australia Post, QANTAS and the Reserve Bank, particularly under the federal ALP government from 1983-96. In the last two of these instances, however, this was the result of appointment of a union official to a board vacancy, rather then the creation of a board position specifically for an employee representative.

Although we lack detailed research in this area, it is likely that the degree of public-sector ERB has declined in recent years as a result of political choice and the process of corporatisation and privatisation of many public-sector agencies. For example, in NSW the corporatisation of the TAB led to a board restructuring which lost employee representatives in the process. This occurred in a number of cases in Victoria under the Kennett Liberal government during the 1990s. At the federal level similar processes have seen the loss of an employee representative on the QANTAS board. Some of this loss of public-sector ERBs is also the result of political choice, in the case of the Victorian Kennett government and the post 1996 federal Liberal/National government. The Reserve Bank, for example, no longer has an ERB. This case is an indication of how brittle the practice is when it relies on the ad hoc good grace of government, rather than structured positions.

5. **Future Directions for Australia**

The limited incidence of employee representation on boards in Australia, and the major limitations in the structure and operations of JCCs, indicate the need to consider the introduction of more substantial forms of representative employee participation as a means of building workplace cooperation and commitment. In the light of recent corporate collapses in Australia, such as HIH, One.Tel and Ansett, with the ensuing loss of or threat to workers’ entitlements, it seems a particularly apposite moment to examine forms of corporate governance which both recognise employees as legitimate stakeholders and potentially provide an internal corporate means of monitoring the activities of boards of directors and management. The ‘representation gap’ in Australia is also extensive, with the major decline in the level of unionisation in Australia to 23 per cent, and as little as 18 per cent in the private sector; a majority of workplaces have no

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43 Australian Bureau of Statistics, Employee Earnings, Benefits and Trade Union Membership, cat. 6310.0.
effective employee voice. To date this gap has not been effectively filled by other means, and it is not likely to be filled in the near future.

For these reasons it is noticeable that recent commentators already have looked towards other means, such as European-style works councils to fill the growing void in collective labour institutions in Australia. Works councils allow greater opportunities for employee voice than employee representatives on boards, and they have substantial foundations, in the existing JCCs, upon which to build. ERBs in themselves also have major limitations in terms of their powers, their knowledge base, restrictions of confidentiality, communications difficulties with employees, and role conflicts. They function best in association with other forms of participation, such as works councils. However, ERBs may be an effective support mechanism for works councils, as is the case in the German codetermination system. It is possible to identify substantial advantages for both employers and employees from a generalised works council system in the Australian context. Under these circumstances, the support for works councils is potentially widespread.

It is notable that eight Australian companies are covered already by the EWC Directive for their EU operations. These include: Amcor, Australian National Industries Ltd., Boral, Burns Philp, Mayne Nickless, National Australia Group, Pioneer International Ltd., and TNT. Other US, Japanese, British or European multinationals operating in Australia undoubtedly have EWCs in the EU. This provides a substantial base from which Australian unions might negotiate works council structures, and/or inclusion in a WWC. It also means that these companies would be familiar with the impact of legislation to implement a works council system. 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 upon their independence, or at least may not appear to be, which would reduce the degree of trust between the participants, and hence, the effectiveness of the works councils. 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 participa-

tive structures, free from the impositions of whichever party is favoured by the balance of industrial power.46

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. The decline in union membership means that the Swedish system of employee participation, based entirely upon unions, is inappropriate for Australian circumstances. 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.47 It would require national legislation, preferably with mirror state legislation given the significant 'residual' industrial powers of the states. A number of recent commentators have indicated the practical constitutional possibilities for national legislation implementing representative employee participation, particularly through works councils.48

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 the consensus public policy approach since 1988, even if it has taken somewhat different forms under Labor and Liberal/National governments.


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Secondly, 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. However, under the German system the works council has some of its most extensive rights for consultation 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 an acceptance of restructuring.

Similarly, the German works council system separates bargaining over wages 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

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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 strongly indicates 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. 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 Employee Participation in Organisational Change (EPOC) survey of European Union countries. 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 employers 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

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participation had been implemented. Gollan's study of AWAs in Australia indicated similar positive correlations between collective JCCs and direct forms of participation.

The EPOC survey also showed a strong complementarity 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.

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 English-speaking countries, have traditionally been deeply suspicious of representative forms of employee participation along these lines. The concern is that they will effectively undermine union loyalty in the workplace by providing an alternative voice for employees, even if they are not designed with such an objective in mind. 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 an enterprise. In the US this fear focused

52 Morehead et al., Changes at Work, pp. 325-6; Markey et al., Regional Employment Relations at Work, pp. 241-2.
53 Gollan and Hamberger, 'Enterprise-based Employee Representation in Australia', p. 29.
54 EPOC Research Group, 'New Forms of Work Organisation', p. 204.
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. 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.

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 councilors 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 councilors would not otherwise be able to access easily. Unions also have the networking capability to link work councilors from different firms so that they can share data and experiences. 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

56 See Dunlop Commission, Part II.
unions are now fully supportive of works councils. Australian unions could also benefit from them in the same ways.

The potential benefits of a works council system for Australian unions were recognised in 1995 by the Evatt Foundation report, *Unions 2001. A Blueprint for Trade Union Activism*. It noted the way in which German works councils collaborate effectively with unions, providing unions with a two-way communication channel linking them with the shopfloor or office, a strong organisational base which partially overcomes the freerider issue, and strengthens union claims to speak for workers as a whole even if union membership accounts for a minority of the workforce. The authors of the report saw works councils as a major contributor to an ‘articulated’ union movement with strong central organisations as well as the capacity to intervene in enterprise decision-making. The potential for conflicting loyalties to undermine union authority and produce a ‘union-substitution effect’ was considered to have little if any impact in Germany. However, the authors also noted some dangers to unions where the unions were divided on ideological lines and competed for members, as in the Netherlands and France. Here, because the works councils can become extensions of this union competition, the articulated representation of employee interests does not effectively emerge, and unions may be weakened by works councils. Nevertheless, this potential weakness generally does not apply to Australia because of its more centralised structure of unionism. Consequently, the authors recommended the establishment of a union commission of inquiry to review the advantages and disadvantages of various models of works councils to develop an appropriate model for Australian conditions, but no action has ever been taken in this direction.

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.

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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. Such flexibility is clearly of benefit to employers as well as employees.

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 codetermination. 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 would be 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.

Finally, the overseas experience suggests that training of works councilors is critical for their effective participation in enterprise governance. Within Australia this is already evident from the experience with JCCs, and the substantial penetration of JCCs into Australian workplaces suggests that a solid base of skills development already exists in this area for further expansion. There is also evidence that training for representative participation overlaps extensively with training requirements for other aspects of employees' jobs, notably teamwork, but also in more basic areas such as literacy, numeracy, rudimentary accounting skills and meeting procedure. Employers, therefore, would be likely to benefit more generally from further investment in this area.


6. **FIRST STEPS**

None of the major actors in Australian industrial relations at this stage is committed to a legislative program for mandatory works councils. The nationally ruling Liberal and National Parties have quite fixed anti-legislative policies in this area. The Labor Party (ALP) also stopped short of supporting mandatory legislation when it was last in power at a national level, in 1983-96, although it did support employee participation, not least in the 1993 Act referred to earlier. Even if the ALP had introduced such legislation, it is unlikely to have passed the Senate, where it did not enjoy a majority. It is possible that the ALP could support works councils in the future, as it has at a State level in New South Wales and South Australia previously in the 1970s. It might expect support in the Senate from the minor Democratic Party, which has a policy supporting means for the extension of employee participation, without specifically referring to legislation for mandatory works councils. However, if the ALP did form government nationally in the future, it could not rely on the Democrats holding the balance of power in the Senate.

ALP policy would be dependent on the position of the other major industrial relations parties. Neither employers nor unions have policies supporting mandatory works councils. Employers have a long history of opposing legislative interference with managerial prerogative, although they have a substantial history of supporting voluntarist forms of employee participation such as JCCs. Unions also have a well-developed suspicion of non-union forms of employee participation as managerialist manipulation of workers and as a means of undermining union loyalty. These fears were to some extent confirmed by the experience of the 1980s and 1990s referred to earlier. Nevertheless, there are signs of the beginning of a shift in attitude in the unions since the Evatt Foundation’s report, *Unions 2001*. A small number of union leaders have publicly...

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63 Hagan and Markey, ‘Technological Change and the Unions’. 

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suggested the positive potential of works councils, and the issue has received growing support within the peak union body, the Australian Council of Trade Unions.\(^{64}\)

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. These issues have been the subject of extensive debate in labour law literature.\(^{65}\)

Nevertheless, there are clear indications of the potential for extensive cultural shift in the Australian industrial relations system. Twenty-five years ago, Professor John Niland (former president of the IIIRA) advocated enterprise-based collective bargaining as a replacement for the traditional Australian centralised system of industrial relations based on industry and occupational awards of arbitration tribunals. At the time this seemed a utopian dream. In 1985 the first general enquiry into the Australian industrial relations system for 60 years strongly confirmed the efficacy of the centralised tribunal system.\(^{66}\) Yet, within three years a Liberal State government in NSW began to prepare for the first loosening of the centralised system with an inquiry led by Niland.\(^{67}\) From 1990 Labor and Liberal governments successively weakened the traditional system in favour of an enterprise bargaining system, which today underpins the industrial relations system. Who could have predicted such

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65 For a review of much of this literature, see A. Forsyth, ‘Works Councils in Germany: Are they ‘Transplantable’ to Australia?’, in Gollan et al., Works Councils in Australia, pp. 135-4.

66 Hancock Report – Committee of Review of Australian Industrial Relations Law and Systems Report, 3 Vols., Canberra, 1985, AGPS.

major changes 20 years ago? Equally, who would have predicted that the British industrial relations system would face the changes it does today as a result of EU legislation?

This argument, together with the international spread of works council structures, finds support in Poole et al.'s ‘favourable conjunctures’ theoretical explanation for shifts in approach to employee participation, with its emphasis on contingency and agency of the actors.68 The first main variables that Poole et al. identify in this framework, the macro-conditions external to organisations, have considerable potential to exert a major impact on Australian conditions through the combined processes of globalisation, EU legislation and efforts to improve corporate governance. The emphasis on workplace-level bargaining and efficiency in the current Australian system certainly produces organisational structures and processes at the level of the firm which are conducive to representative participation. Recent strategic choices of employers and unions also have clearly favoured the extension of representative participation through JCCs, with all their limitations. The power of these actors, however, is insufficient to induce system-wide changes without legislative support.

Supporters of a cyclical approach to explaining historical shifts in employee participation practices69 would note that in the 1970s industrial democracy, and particularly works councils, were a focus for public policy debate in Australia, as elsewhere.70 Some initiatives were undertaken by business and governments offered a range of supportive measures short of compulsory legislation in this era, but this movement was not sustained. What happened to these experiments at the enterprise level? How successful were they, and why did they fail to spread more widely? The answer to these questions is that we do not know. We do not even know for sure that these experiments all failed. Indeed, there are even earlier examples of attempts to introduce representative participation in the Whitley Industrial Councils from 1918 in NSW, about which we know virtually nothing.71 Similarly, no systematic studies have been undertaken for the experience of ERBs in State-owned enterprises, which spread throughout Australia during the 1970s. Furthermore, we lack a

clear and systematic understanding of the operation of legislation at the State level of jurisdiction that requires employee representation on occupational health and safety committees. A substantial record of activities in these areas remains to be uncovered.

The first step, therefore, is to attempt to learn from our extensive historical experience in Australia by undertaking an extensive and systematic research agenda to discover the elements of success and failure in the past. However, this should also be extended to the contemporary situation. Despite the broad contours of current practices which may be gleaned from surveys, much more detailed data is required to understand the factors which have supported and hindered representative participation. Systematic data relating to employee representation on Australian boards does not exist, nor is there a body of research literature examining the role and practices of ERB. More literature has been produced concerning JCCs, but it remains limited. We need to know more about the organisational and cultural environments in which works councils would thrive, including possible regional variations within Australia. Apart from surveys, this data will also need to be derived from an extensive program of case studies to capture the complex tapestry of participation in different organisational settings.

The second step, which might be taken simultaneously, is extensive international case study research on examples of system transformation towards representative participation. The British case offers a unique opportunity in this regard as it moves towards compliance with EU legislation outlined earlier. It is particularly apposite because of some of the institutional and behavioural aspects of industrial relations it shares with Australia. Other examples of transformation might also be taken from central and eastern Europe.

Only after the major research agenda described here has commenced can the formulation of adequate public policy take place. This research would provide the basis for the adaptation of a German works council model to Australian conditions, which would avoid the problems associated with simply trying to transplant institutions from different countries and cultural environments. Furthermore, this research agenda would itself contribute to the momentum for cultural change.

7. Conclusions

European-style works councils and other forms of representative employee participation at the enterprise and 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. These trends indicate the need and conditions for development of a systematic approach to representative participation in Australian workplaces 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 council structure also tends to remove some of the main sources of employee resistance to workplace change. Wage considerations are removed from the provenance of workplace change and flexibility in a centralised industry level system of wage determination by collective bargaining with unions. Employment security is one of the strongest areas of works council co-determination 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.

However, before systemic change is embarked upon, we need to understand much more about the extensive Australian historical record in this area and about current practices. We also need to learn from systemic transformations occurring in Britain and central and eastern Europe. This requires a major research effort, so that public policy choices are well informed.