Worker's Participation in Decision-making in Australia

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Abstract

Schemes for worker participation need to be seen in relation to the whole industrial relations framework within which they operate. European models of institutionalised worker participation common in many developed societies are extremely rare in Australia. Historically, both managers and trade unions have either resisted, or been apathetic towards, participative schemes, preferring instead to conduct their relations through the mechanisms of compulsory arbitration. All the evidence suggests that there is little experimentation with worker participation in decision-making in the private sector in Australia other than at the national level. The extent of employee participation in the private sector in Australia is known to be not high. While there is some evidence of an increased willingness to consult and a growth in the use of negotiated agreements, participation practices are uneven and not well-developed. In general, neither employers nor trade unions have shown much interest in increased participation, no doubt fearing that changes might lead to some restriction of their existing powers.

There is a climate for change, however, and evidence for this is found in the following: the virtual disappearance of managerial prerogatives through decisions of industrial tribunals as upheld in the High Court of Australia; the spread of participative arrangements at both the national and industry level, in particular, superannuation funds, many of which are jointly managed by unions and employers; new legislation, especially in the areas of occupational health and safety and equal opportunity, which focuses attention on consultation and participation; the pressing need to adjust to technological change which, in turn, has resulted in tribunal orders and awards requiring consultation; the search for improved productivity which will be achieved through productivity bargaining at various levels; and efforts to transform industrial relations by turning attention to the workplace and by altering traditional industrial law to achieve this fresh focus.

That the growing pressure for various forms of worker participation will increase is certain. What is less certain is the shape which it will adopt. The most likely outcome is that the centralising pressures of the traditional system for regulating employer/employee relations will continue to determine the balance of power. It is impossible to be anything but pessimistic about the prospects for institutionalised worker participation in the Australian private sector.

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Introduction

> ... the countries which have been most successful in restructuring their economic bases have industrial relations systems which emphasise innovation and creativity based on industrial democracy and employee participation. *Achieving the maximum possible productivity requires advanced forms of industrial democracy.* At the enterprise level these processes continually improve production, work organisation and practices. At higher levels, they are complemented by tripartite consultative, advisory and planning bodies.
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> .... decisive action to promote industrial democracy in Australia is essential if we are to develop a production consciousness and culture and thus increase productivity. The evidence of the beneficial effects of industrial democracy on productivity can no longer be ignored in Australia. Far greater understanding of the integral relationship between technology, work organisation, skill formation and modern industrial relations is required by management and unions alike. A national agreement on industrial democracy between peak union and employer councils and the Government would provide a basis for subsequent industry and enterprise level collective agreements in both the public and private sectors. Employers and unions, as a matter of priority, must then reach agreement on appropriate forms of representative, consultative and decision-making mechanisms in individual enterprises. Legislation will also be necessary to provide a base for this system of industrial democracy.
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> *Australia Reconstructed*: the report of the ACTU/TDC Mission to Western Europe, Executive Summary, p xiii (Commonwealth Department of Trade, Canberra, AGPS, 1987) [emphasis in original].

In 1978 Adelaide, South Australia, hosted the first ever International Industrial Democracy Conference.[1] That event was symptomatic of the widespread interest in industrial democracy which then existed in Australia.[2] The popular press, as well as academic and professional publications, carried articles which announced the exciting possibilities for Australia should it embrace the bold experiments in other countries. Yugoslavia, Sweden and West Germany were the most frequently cited examples of models which Australian industry was encouraged to emulate. In the fifteen years since that highpoint conference interest in worker's participation in Australia has waxed

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1 The proceedings are published as *International Conference on Industrial Democracy, Adelaide, 1979*, Sydney, CCH Australia, 1979.

2 Deery, J and Plowman, DH, *Australian Industrial Relations*, 3rd ed, Sydney, McGraw-Hill, 1991, Chapter 15.

and waned, usually in response to the two inter-related issues of the fortunes of the major political parties and unemployment statistics.[3]

The terms "worker participation" and "industrial democracy" have been used more or less interchangeably to describe a variety of arrangements by which employees contribute to the functioning of the organisation within which they work. An employee might be said to "participate" simply by reporting for work and performing the duties allocated to him or her. As the extract from *Australia Reconstructed* (cited above) demonstrates, the term is generally regarded, however, as indicating some broader degree of involvement than this, and is commonly used to mean worker participation in decision-making within the enterprise. Aungles and Parker, in a recent publication, observe that:[4]

> [A]t a general level, industrial democracy could be described as a movement towards giving all employees the right to access to information and the right to have access to and activity in the important decision-making procedures within the organisation.

Acceptance of that general notion of industrial democracy means that schemes of worker-participation must not be uncritically rejected or embraced, neither from one country to another nor from one enterprise to another. Before we can evaluate any worker-participation scheme we need to examine carefully the actual structures through which the joint resolution of common problems is to operate, to note how it works, and to ask why it works or why it fails to work. Most important of all, we must have some standards by which to judge the effects of the scheme. If the aim is to introduce some simple scheme for distributing income then no more need be said. If, on the other hand, the scheme is intended to reflect the broad thrust of the Aungles and Parker approach and to involve workers actively in areas of decision-making then it is suggested that the following benchmarks be adopted to measure the efficacy of the scheme:[5]

(a) the power effects: has real managerial power been redistributed?

(b) the equity effect: have workers been effectively drawn into the exercise of power?

(c) the morale effects: does the scheme increase satisfaction and personal involvement and commitment at all levels?

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3 See footnote 2; see also Aungles, SB and Parker, SR, *Work, Organisations and Change: themes and perspectives in Australia*, 2nd ed, Sydney, Allen and Unwin, 1991.

4 Aungles and Parker, at 170.

5 Brooks, BT, *The Practice of Industrial Relations in New Zealand*, Auckland, CCH New Zealand, 1978, Chapter 16.

(d) the productivity effects: what are the actual results in terms of the quality and quantity of the goods and services produced or provided?

These benchmark questions are implicit in the extract from *Australia Reconstructed.* Elsewhere, that same report makes it very clear that schemes for worker participation need to be seen in relation to the whole industrial relations framework within which they operate. It is therefore necessary at the outset to describe, briefly, the traditional Australian system of industrial relations which, despite recent attempted reforms, remains well entrenched.

Industrial Relations in Australia

To understand the Australian system of industrial relations it is necessary to consider the constitutional structure. The Commonwealth of Australia is a federation based on a Constitution which was enacted by the British parliament and came into effect in 1901. In most features of its political, social and economic life the Commonwealth of Australia follows the Westminster model but, for reasons which are still debated, the founders of the Commonwealth of Australia elected to pursue a quite novel path in the handling of industrial relations. Although Australia's British colonial origin had shaped the structure and character of Australian trade unionism, and the English common law governing the master-servant relationship was applied in Australian courts, the evolution of industrial relations in Australia since federation in 1901 has taken a markedly different turn from that of Great Britain. Instead of continuing the British tradition of non-intervention in the collective relations of employer and employee, the new Commonwealth of Australia established a system of compulsory arbitration of industrial disputes and evolved an impressive array of legal institutions and legal procedures to channel and to resolve disputes between employers and employees.

Even before federation in 1901 there was debate over the relationship between a centralised system of compulsory conciliation and arbitration and a system of decentralised collective bargaining, and the relative advantages of one system over the other. That debate has continued for nine decades and intensified very recently when the two most populous and industrialised States, New South Wales and Victoria, embarked on legislative attempts to reform the traditional system and to decentralise and deregulate their respective industrial relations systems.[6] Moreover, the present federal opposition party recently unveiled proposals for a deregulated industrial relations system which it proposed to implement should it become the government. Despite this constant debate, and the recent

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6 *Industrial Relations Act* 1991 (NSW); *Employee Relations Act* 1992 (Vic).

experiments, it is clear that the traditional system has retained its centrally important position in Australia's industrial relations over more than ninety years. And while there have been many changes over nine decades the system, in its essential elements, remains the same. The aim of the traditional system has been to eliminate industrial disruption and to prevent inflation by various forms of wage control. The machinery selected was that of conciliation and arbitration tribunals.

The essential characteristics of the Australian system of conciliation and arbitration have been many times remarked by both domestic and foreign commentators. It is necessary, briefly, to rehearse them here in order to establish the background against which to address the theme of this article.

It is a common observation that the most obvious characteristic of the Australian system is that it provides for *compulsory* conciliation and arbitration of constitutionally defined *industrial* disputes. While this overlooks the fact that there is no compulsion to participate in the system, it is true that once parties elect to function within the system evidence of the perceived coercive and compulsory nature of the system is easy to produce. The parties may be compelled to meet in conference; the parties have no choice as to the arbitrator; the arbitrated settlements, known as awards, are enforceable not by the parties bound but by the arbitrator; there is a wide range of criminal penalties imposed on parties to awards should they resort to direct industrial action.

The second distinguishing feature of the Australian system is that the parties have direct access to permanent arbitration tribunals. The tribunals are created by statute in both the federal and the six State jurisdictions and are the most characteristic institution in Australian labour relations. Ninety years after federation there are over 300 tribunals with an industrial relations function. In addition to the pure industrial tribunals there also exist the traditional British-style law courts with the High Court of Australia at the apex of the legal structure.

The third noteworthy characteristic is that the predominant activity of the permanent industrial tribunals is found in the process whereby awards are made for the prevention and settlement of industrial disputes. It is not the prevention of strikes, but the making and enforcement of awards, which characterises the Australian system, State and federal.

Fourthly, it needs to be kept clearly in mind that there is not one Australian system of conciliation and arbitration and not one system of industrial relations. Instead, there is the federal system and the six State systems. Reduced to its simplest, this reality means that,

in practice, the parties engaged in industrial relations in Australia have a choice of jurisdictions. While this may sound trite, it is a reality which creates astonishingly complex and intricate legal and industrial problems.[7]

The result of this proliferation of courts, tribunals and legislation is that the regulation of labour relations in Australia does not take place within either a simple employer/employee model or an equally simple management/union model, but within a complex network of relationships which is highly regulated by law. This, in turn, has the further consequence that discussion about employer/employee relations in Australia has traditionally been focused upon the operation of the system of compulsory industrial arbitration and the functioning of industrial tribunals. Thus the Australian system of labour relations is highly legalistic and interventionist, with both the bargaining structures and the bargaining procedures being tightly regulated and the employer/employee relationship being enfolded in a complex body of substantive law. There are a number of inter-related consequences flowing from this.

Labour Relations at the Workplace

The starting-point is an understanding that, historically, there has been little attention paid to the day-to-day conduct of labour relations at the workplace. Access to permanent industrial tribunals to regulate workplace labour problems has appealed to both trade unions and management. It is a very simple procedure to have a dispute heard by a tribunal.[8] One result is that the most basic of workplace issues are commonly put before tribunals. It follows that, historically, there have been few workplace grievance procedures. Nor is there a tradition of a strong shop-floor delegate structure amongst Australian trade unions. It is true that a few trade unions have adopted a system of delegates or shop-stewards but the function of these people has been limited. Lack of attention to industrial relations at the workplace also means that there is little data on the incidence of employee participation in Australian enterprises.[9] It

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7 Perhaps the neatest illustration of the problems arising from having more than one industrial jurisdiction is found in a case involving the internal government and administration of a trade union: *Moore v Doyle* (1969) 15 FLR 59.

8 This traditional position has changed with the introduction of the *Industrial Relations Act* 1991 (NSW) and the distinction drawn there in notifying a dispute concerning a settled right and a dispute not covering a settled right.

9 Ford, W and Tilley, L (eds), *Diversity, Change and Tradition: the environment for industrial democracy in Australia*, Canberra, AGPS, 1986;

appears that employee share-holding and other forms of profit-sharing are practised, but there is little evidence of participation in decisions affecting economic and financial matters. Major legislative changes are necessary before it would be possible to extend financial and economic decision-making to employees and/or their trade unions even if employees and/or their unions altered their traditional approach to industrial democracy.[10] More recently, there has been considerable research carried out on employee attitudes to participation. In 1984 the federal Department of Employment and Industrial Relations conducted a survey amongst high information-sharing companies to discover what the employees thought of information-sharing. It will come as a surprise to those familiar with worker-participation schemes in Europe to learn that Joint Consultative Committees received a very low rating amongst employees.[11] At the beginning of the 1990s, and after surveying the most recent research, Aungles and Parker concluded that Australian employees "are primarily concerned with the nature of the immediate work/task rather than participation in high-level decision making. They also seem to have little interest in collective ownership schemes".[12]

Not surprisingly, trade union policy in Australia reflects the attitudes of those employees who are union members. Australian unions have traditionally preferred to use the national industrial tribunals as a method to regulate workplace conditions. Those national tribunals, in turn, have reinforced the role of registered unions by such devices as imposing a right of entry by trade union officials. This means that elected union officials are entitled to enter workplaces to inspect wages and time books and other records. The further consequence is that the union representative at the workplace is little more than a link to the trade union structure and is unable to act independently. This lack of workplace autonomy is reinforced by the fact that in any given workplace there will be a large number of craft unions and thus any single shop-steward will represent but a small segment of the total workforce. In the result, the management will be unable to negotiate with a shop-steward as that person will immediately involve the trade union representative from outside the enterprise. The shop-steward's task has been to act as a link between the workplace and the full-time trade union official. This link has

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and see the federal government's policy discussion paper entitled *Industrial Democracy and Employee Participation*, Canberra, AGPS, 1986.

10 Pritchard, R, "Legislative Issues for Australia" in *International Conference on Industrial Democracy, Adelaide, 1979*, Sydney, CCH Australia, 1979, Chapter 20.

11 Hainey, G, "High information sharing companies: what their employees think" (1984) 10 *Work and People*, Canberra, AGPS, 17-25.

12 See work cited at footnote 3, at 165-166.

then been used to bring workplace issues before an industrial tribunal.

Labour Relations at the Enterprise Level

Immediate access to permanent industrial tribunals has meant that, historically, Australian trade unions have shown little interest in employee participation at the enterprise level. They have preferred to rely on negotiation at the industry or national level as well as looking to regulation of employment conditions by industrial tribunals and by legislative intervention.

The absence of participation at the workplace is paralleled by a similar absence at the plant, enterprise or group level. The formal bodies common in Europe, such as works councils, and the practice of having workers on the boards of companies in the private sector, is foreign to Australia. In the public sector there are a number of trade union officials appointed to the boards of statutory authorities and government enterprises but employee representation at the board level is extremely rare in the private sector. Instead, trade unions have preferred to rely on industry-wide negotiation and have looked to industrial tribunals and legislation to regulate employment conditions. As Professor Plowman has remarked, [13]

> [t]he works council approach, with its rejection of union representative rights at the enterprise, would appear particularly unsuited to existing institutional arrangements. The Australian arbitration systems rely almost exclusively upon class representation by way of registered unions.

The arbitration system makes the individual highly dependent upon his or her union. Traditionally, it has been the registered union alone which has had the right of audience before industrial tribunals.[14] Furthermore, the arbitration system actively encourages and promotes the registration of trade unions and their access to tribunals. The registered union has representational rights in respect of workplace rules. It follows that employer initiatives to support workplace systems of joint consultation involving direct individual employee representation will be seen by the registered trade unions as an attack upon their proper role. This opposition becomes especially strident when the proposals include allowing representation at the workplace to employees who are not trade union members. This opposition is especially marked where the

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13 Plowman, DH, *West German Co-Determination: An Australian Perspective*, Industrial Relations Working Paper No 74, Sydney, University of New South Wales, 1988, at 4.

14 This position has been altered in New South Wales and Victoria with the enactment, respectively, of the *Industrial Relations Act* 1991 (NSW) and the *Employee Relations Act* 1992 (Vic).

employing organisation is a multi-national business. Paradoxically, there is evidence that multi-nationals operating in Australia have been in the forefront of promoting participative innovations.[15] A federal government survey found a clear connection between country of origin and type of scheme: joint consultation was found only in British-based companies and only a German company had a works council; Japanese companies favoured quality circles and American companies preferred forms of job-enrichment popular in the USA.[16] While the multi-nationals showed evidence of adapting to Australian conditions, there is an absence of profit-sharing schemes despite their popularity in the USA and Europe and, strangely, the German companies operating in Australia did not encourage worker directors. At the same time, government sponsored research found that "there is still no clear picture of where most unions, in practice, stand in relation to industrial democracy".[17] This may be the result of a perception that the innovations are seen as having little to do with industrial democracy and are seen, instead, as simply a new method of management control. For trade unions in Australia the concept of "industrial democracy" necessitates a differentiation between "employee" participation and "union" participation: the terms are not considered synonymous.

The main springboard for developing employee participation at the enterprise level is found in the participative arrangements which presently exist at the industry level. There are many examples of industry level co-operation between employers and trade unions. The predominant structure is industry councils. Noteworthy is the establishment by the federal government of the Australian Manufacturing Council which has 11 specific industry councils. These councils, while lacking statutory authority, have broad responsibility in advising on manufacturing policy and in assisting industry to develop and implement solutions to major problems.

Co-operation at the National Level

The most obvious inter-industry and national participative system is the compulsory conciliation and arbitration system which was outlined earlier. In addition, there has long been mechanism at the national level for continuing consultation and co-operation between the government trade unions and the employers. One such body which ensures that national organisations of employers and employees have a direct input into industrial legislation is the National Labour Consultative Council. This council meets quarterly

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15 See works cited at footnote 9.

16 See works cited at footnote 9.

17 Tilley, L, "Unions and industrial democracy: a survey" in Ford, W and Tilley, L, work cited at footnote 9, Chapter 14, at 183.

and considers a range of matters including reports from sub-committees on such issues as industrial law, international labour affairs, occupational health and safety, women's employment and employee participation. The sub-committee on employee participation has produced three documents: *Employee Participation: a broad view* (1979); *Employee Participation: ways and means* (1980); and *Guidelines on Information Sharing* (1984). A further illustration of co-operation at the national level is found in the 1988 joint statement on participative practices issued by the Confederation of Australian Industry and the Australian Council of Trade Unions.

At the inter-industry level there are a number of tri-partite consultative bodies including the following: the Economic Policy Advisory Council (EPAC), which seeks to expand the information base available for economic policy formation; the Advisory Committee on Prices and Incomes (ACPI); and the Business and Unions Consultative Unit, which promotes export awareness and educates business and unions on Australia's trading position.

At the national level the most noteworthy illustration of co-operative practices is the tri-partism enshrined in the Prices and Incomes Policy Accord. That accord, a form of social contract, marks a change in the relationship between trade unions, government and employers. Throughout the 1980s there was a closer partnership between the three groups. The central issue for the future will be between those who want to see a continuance of centralised decision-making with close relationships between big business and big unions and close government involvement, and those who look for less regulation, less government involvement and less co-operation between business and unions.

Working Towards Worker Participation?

As with the unions, so have employers tended to focus on the application of awards made by the industrial tribunals, rather than on the development of participative plant or industry level structures. Furthermore, there has been an absence of legislative initiatives towards institutionalising worker participation or industrial democracy. Historically, neither federal parliaments, nor any of the six State parliaments, have enacted laws making worker participation programs mandatory for employers. In addition, there is a long line of High Court decisions which uphold the concept of "management prerogatives" which, in the Australian labour law system, translates into the notion that some matters are not negotiable; are not able to be the subject of a justiciable industrial dispute. Put another way, from its origins the system of conciliation and arbitration affirmed that

managerial rights are beyond the reach of industrial tribunals.[18] It is hardly surprising, therefore, that commissioned research has revealed a strong tendency for Australian management to defend its prerogative and resist forms of participation that involved any real sharing of its authority.[19]

The traditional approach of the High Court confined trade unions and employers to negotiating over "industrial matters" and the range of matters which fell within this definition has, in the past, been restricted to matters which directly affect the relations of employers and employees, most obviously wages and conditions. It is for this reason that trade unions in the past concentrated their attention on obtaining immediate benefits to members. Longer-term issues were ignored because the legal interpretation narrowed the area for negotiation. Historically, therefore, Australian workers have fallen behind the kinds of rights long available to workers in Europe, the United Kingdom and North America. Pension schemes, protection against redundancy, job-security rights and participatory schemes are of recent origin in Australia and have been made possible by a combination of recent legislative developments and a change in emphasis in the High Court's approach to the issue of management prerogatives.[20]

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18 The classic affirmation of this position came from Justice Higgins, the midwife to the system of compulsory conciliation and arbitration, in the following passage from his apologia published in 1922: "The Court leaves every employer free to carry on the business on his own system, so long as he does not perpetuate industrial trouble or endanger industrial peace; free to choose his employees on their merits and according to his exigencies; free to make use of new machines, of improved methods, of financial advantages, or advantages of locality, of superior knowledge; free to put the utmost pressure on anything and everything except human life" (Higgins, HB, *A New Province for Law and Order*, London, Constable, 1922, at 13). Perhaps the high point of the High Court of Australia's approach to protecting management prerogatives is found in the first three cases involving the Melbourne Tramways Board in the 1960s and, in particular, in the dissenting judgment of the then Chief Justice in the fourth case: see (1962) 108 CLR 166; (1965) 113 CLR 228; (1966) 115 CLR 443; and (1967) 117 CLR 78.

19 See works cited at footnote 9, especially the policy discussion paper, at 65.

20 *Re Manufacturing Grocers Federation* (1986) 160 CLR 341; *Re Cram; ex parte NSW Colliery Proprietors Association* (1987) 163 CLR 117; *Re Ranger Uranium Mines; ex parte FCU* (1987) 163 CLR 656; *Re FSU; ex parte Wooldumpers* (1989) 84 ALR 80; *Re Amalgamated Metal Workers Union of Australia; ex parte Shell Co of Australia Ltd* (1992) 66 ALJR 645. For a detailed discussion of recent legislative and judicial changes, see Brooks, BT, *Contract of Employment: Principles of Australian Employment Law*, 4th ed, Sydney, CCH Australia, 1992, especially Chapter 3.

In the past decade the High Court of Australia has moved away from its position of maintaining a separation between managerial rights and those matters which may be negotiated. In a 1984 decision the High Court held that an industrial matter existed when a State industrial tribunal required an employer to notify the relevant trade union prior to undertaking an investigation into technological change that might affect employment and to consult with the union, and any workers likely to be affected, while the investigation was proceeding. In the course of that decision several members of the High Court cast doubts upon the value of the concept of managerial rights.[21] Much more recently, the High Court has expressed the view that many management decisions, once treated as the sole prerogative of management, are now correctly seen as directly affecting the relationship of employer and employee and thus constitute the subject matter of an industrial dispute which a tribunal may settle.[22]

Historically, there has been an absence of legislation requiring worker-participation at either the national, industry or enterprise level. In recent times there have been changes in the law which make it necessary for employers and employees to pay closer attention to practices at the work-place. An example is the legislation passed by the federal government in 1986. This was the *Affirmative Action (Equal Employment Opportunity for Women) Act.* The legislation requires employers in the private sector who employ 100 or more employees to commence the development and implementation of affirmative action programs. The Act came into operation progressively, with large employers (those employing over 1000 people) affected first. In 1988 the obligation affected 527 companies. The 1986 Act established the Affirmative Action Agency which is administered by the Director of Affirmative Action. The aim of the law is to overcome the effects of historic discrimination against minorities which, in Australia, include women, Aborigines and immigrants. It is the intention of the law that, eventually, all employers who have 100 or more employees shall have appointed an Affirmative Action Officer who will be responsible for developing and implementing an affirmative action program. The intention of the legislation is that every enterprise in the private sector will develop and implement an affirmative action program through a sequence of steps involving managers, trade unions and employees. The steps are set out in the legislation as follows:

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21 *FCU of Australia v VEF* (1984) 154 CLR 472.

22 *Re Cram; ex parte NSW Colliery Proprietors Association Ltd* (1987) 163 CLR 117, especially at 169.

(a) the issuing of a policy statement as a statement of commitment;

(b) the appointment of an affirmative action co-ordinator;

(c) a consultation process with the relevant union/s;

(d) a consultation process involving employees;

(e) a program of statistics gathering, involving employees, by which the management identifies its workforce in terms of sex and job-classification;

(f) a review of all personnel practices and policies;

(g) the setting of targets and a timetable for achieving these targets; and

(h) the monitoring and evaluation of the program.

A second example of legislation which is directing attention to participative schemes at the workplace is found in recent occupational health and safety legislation. Despite appalling statistics showing that Australia led the world in many kinds of industrial injury and disease, there has been a very slow response from the law-makers. The most noteworthy feature of the new occupational health and safety legislation is an expression of the view that the promotion of health and safety at work is not something which rests entirely within the discretion of management, but rather that it cannot be achieved without the full co-operation and participation of employees.[23]

The issue is of vital importance to both employer and employee and there is a general agreement about the need for a participative approach. Australian trade unions have actively encouraged and supported the introduction and development of participatory schemes in the area of occupational health and safety. The present position is that every jurisdiction has adopted legislation providing for either health and safety representatives or joint safety committees or both. New South Wales and the Northern Territory provide for committees only; Tasmania has safety representatives only.

In 1989 the federal government announced that it was to introduce, for the first time in Australia's history, legislation regulating the health, safety and welfare of government employees. This scheme was to provide for employee participation and it was

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23 For a detailed discussion, see Brooks, AS, *Guidebook to Australian Occupational Health and Safety Law*, 3rd ed, Sydney, CCH Australia, 1988 (4th ed forthcoming).

part of the Prices and Incomes Policy Accord between the federal government and the Australian Council of Trade Unions (an example of participation at the national level). The accord pledged action in the area of occupational health and safety in this passage:

> ... the two parties agree that priority should be given by an incoming Labor government to establishing a framework through which unions and union-appointed health and safety representatives in places of Commonwealth government employment may be involved in jointly monitoring and controlling workplace hazards with management.

These sentiments were enshrined in legislation in 1991 when the federal government enacted the *Occupational Health and Safety (Commonwealth Employment) Act.*

Not only is there occupational health and safety legislation in most States which requires participative committees but the legislation demonstrates a tri-partite approach to the administration of the legislation. The most populated, and the most highly industrialised, State is New South Wales. Following the introduction of occupational health and safety legislation the New South Wales government amalgamated the administration of the legislation into a single organisation known as the Workcover Authority. The Board of that authority consists of representatives of employers, trade unions, insurance companies, legal practitioners and the government. The Board has a range of functions, including the development of a Code of Practice for adoption in each enterprise. In light of this new legislation Professor Niland wrote in 1989 that "[t]wo trends are likely in New South Wales over the next decade: an increase in awareness about and significance of occupational health and safety issues in the workplace, and a shift by the industrial tribunals towards a more effective servicing of the enterprise".[24] That servicing may well take the form of ensuring that employers consult with and involve workers in decisions affecting health and safety, as well as in other matters of work organisation arising from recent decisions of the federal industrial tribunal relating to the achievement of structural efficiency in industry.[25]

The High Court's traditional reluctance to interfere with management prerogatives, other than in the narrow area of wages and some working conditions, has been reflected in the awards of industrial tribunals. Historically, there has been a demonstrated lack of promotion of employee participatory schemes by the industrial

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24 Niland, JR, *Occupational Health and Safety: Transforming Industrial Relations In New South Wales,* Discussion Paper No 2, Minister for Industrial Relations and Employment, Sydney, October 1989, at 51.

25 *National Wage* case, August 1988, Print H4000; *National Wage* case, October 1991, Print K0300.

tribunals. More recently, however, the federal industrial tribunal has shown that it considers the question of employee participation in decision-making to be a legitimate part of Australia's industrial relations system. An example is the tribunal's decision in the Termination, Change and Redundancy case of 1984 to include in future awards a clause which requires that employers must notify the individual employees and their trade union representatives "as soon as a firm decision has been taken about major changes in production, program organisation, structure or technology which are likely to have significant effects on employees".[26] Not only must the employer who is introducing "major changes" notify the individual employees and the relevant trade union but the employer is under the further obligation to discuss the changes, give full information concerning the changes and give prompt attention to issues raised by the affected employees or by the trade union. The decisions of industrial tribunals are reflecting closer attention to the way in which industrial relations are being conducted at the workplace. The most dramatic example is found in the *National Wage* case decision of August 1988. In that decision the federal industrial tribunal granted a flat wage increase to all workers covered by awards but made it necessary for the parties (employers and employees) to show that they had achieved "structural efficiency" before a second tier of wage increases would be granted. The structural efficiency principle required management and unions to co-operate positively with a view "to implementing measures to improve the efficiency of industry and to provide workers with access to more varied, fulfilling and better paid jobs".[27]

That 1988 decision is all about questions of work organisation, the establishment of skill-related career paths, support for multi-skilling and the elimination of demarcation barriers. All of this entails worker-participation in, and influence on, management decisions and is embraced in the broad notion of award restructuring.

In light of this brief historical survey it is possible to assert that management rights have been protected in the Australian system to a degree unrivalled in any comparable industrialised society. Twenty years ago a South Australian government inquiry into union attitudes to worker participation concluded: [28]

> Unions appear to regard the present adversary system involved in compulsory arbitration as a recognition of the conflict between the interests of the private employer and the worker, and many prefer it to a scheme of worker participation which would emphasise co-operation or co-determination.

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26 [1984] 8 IR 34 at 52.

27 [1988] 25 IR 170 at 179.

28 Cited in Deery and Plowman, work cited at footnote 2, at 463.

Contemporaneously, and quite independently, an American academic had conducted a comparative survey which concluded that "the concept of worker participation in management is less developed in Australia than in any other westernised country to my knowledge".[29] That little changed in the following decade is clear from a December 1986 report of the federal Department of Employment and Industrial Relations. That report found that "whispers and waste-paper baskets" remain the major source of information for most employees and that the minimal basis for worker participation (effective information sharing) is generally not established.[30] In other words, in the past, Australian workers have had very little impact upon management decision-making. Whether or not that picture is changing is the theme of the remainder of this paper.

The traditional attitudes, beliefs, customs and practices of Australian management and unions have been predominantly concerned with authority and jurisdiction, rather than with organisational participation. Recent studies reveal a lack of confidence among Australian managers in the ability and interest of employees to participate in, and contribute to, organisational innovation and development.[31] Concepts such as quality circles and semi-autonomous work groups are rare, as they are perceived as a threat to trade union coverage of craft-defined tasks and have been introduced mainly by overseas-based multi-national corporations. They also run counter to the entrenched employer's view that decision-making is a management prerogative. Nevertheless, the work of Professors Lansbury and Davis indicates that proposals for the introduction of production teams with wide responsibility for decisions about how the job is to be performed, as well as about quality control, are well advanced in certain areas of Australian industry. In 1989 Professor Lansbury observed that "[w]ith the introduction of work teams and autonomous work groups, managers are expected to push many of their duties and responsibilities down to the work group and phase themselves out of a job".[32] But whether this will spin off into demands for worker participation through representation on boards of companies or works councils is very doubtful.

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29 Derber, M, "Cross Currents in Workers Participation" (1970) 9 *Industrial Relations*, cited in federal government discussion paper, *Worker Participation in Management, Commonwealth Conference, Canberra, January, 1974*, Canberra, AGPS, 1974, at 43.

30 See work cited at footnote 9.

31 Aungles and Parker, work cited at footnote 3, at 165-166.

32 Lansbury, R, "Changing Role of Line Management: Practical Implications", a paper presented to a Conference on Implementing Change at the Management Level, Sydney, 11 December, 1989.

As noted earlier, the most recent surveys indicate an entrenched employer view that decision-making is a management prerogative. In addition, Australian trade unions have shown no interest in employee participation through formal structures at the workplace. Nonetheless the 1985 *Report of the Committee of Review into Australian Industrial Relations Law and Systems* found that 63% of people surveyed responded affirmatively to the statement that "workers and managers need to make decisions together about what is to happen in their own workplace".[33] The report also noted the emergence of consultative arrangements in many areas of Australian industry but emphasised that this is largely confined to the public sector. In December 1986 the federal government issued a lengthy policy discussion paper entitled *Industrial Democracy and Employee Participation*.[34] In that discussion paper the federal Department of Employment and Industrial Relations reported that the research commissioned for the paper found little evidence of any widespread application of employee participation in Australia. The research found that "most schemes were management-initiated and *controlled*"[35] and did not involve either workers or their representatives having any significant influence on major decision-making. In short, management was strongly defending its prerogatives. In response to the federal government's paper the Confederation of Australian Industry (CAI) and the Australian Council of Trade Unions (ACTU) issued a joint statement of participative practices in 1988. The two bodies, which represent, respectively, employers and trade unions at the national level, stressed that productivity would be achieved where there were chains of command and where responsibility was pushed further down the chain. The joint statement emphasised the need for more consultation and more employee participation, a position which reflected surveyed public opinion at that time: 85% of Australians favoured closer communication and joint decision-making by workers and management.[36]

Conclusion

Yet it must be acknowledged that participatory processes are unlikely to be developed in isolation or in opposition to traditional industrial relations systems. While it is likely that the demand for various forms of worker participation will increase, it is difficult to predict the outcome. The safest bet is that the centralising pressures of the

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33 *Report of the Committee of Review into Australian Industrial Relations Law and Systems*, Vol 3, Appendices to the Report, Canberra, AGPS, 1985, at 245.

34 See work cited at footnote 9.

35 See work cited at footnote 9, at 65 (emphasis added).

36 See work cited at footnote 33, at 217.

traditional system for regulating employer/employee relations will continue to determine the outcome of demands for worker participation. The forces of Australian industrial relations tradition are powerful and will not simply fade away, notwithstanding "public opinion" which seeks change.