



MAKE AUSTRALIA FAIR AGAIN: THE CASE FOR EMPLOYEE REPRESENTATION ON COMPANY BOARDS

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Labor ideas for a better Australia

Make Australia Fair Again: the Case for Employee Representation on Company Boards

The Australian way of life is premised on a basic set of assumptions: decent pay, working conditions and job security, a fair say for working women and men in our workplaces and parliaments, and a fair say in the nation's civic life. In 2017, the Australian way is fraying. Globalisation and technological disruption, declining manufacturing and the collapse of mass unionism paired with decentralised wage determination, have combined to challenge its core ethos. Full-time jobs are declining in favour of part-time, casualised and precarious contract work. Wage theft and workplace exploitation is rife. Company profits grow apace yet annual wages growth is at record low rates, underpinning levels of inequality not seen since the 1940s. There is abundant evidence that the fruits of 26 years of continuous, record national economic growth have not been shared equally. The erosion of the Australian way is not just bad for working people but bad for the national economy and bad for our democracy, and at odds with the national interest. To address the big challenges facing our country we need to fashion a new politics of the common good. In this second John Curtin Research Centre policy essay Nick Dyrenfurth makes the case for employee representation on company boards. This vital reform to our corporate governance, he argues, is necessary to rebuild a pro-worker, pro-business economy: fostering workplace cooperation, boosting productivity, and tackling rising inequality and stagnating real wages. No less than the future of the Australian way is at stake.

About the author

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Introduction

'Jack is not only as good as his master'

In his iconic account of Australia's egalitarian national character, the historian Russel Ward summarised the core ethos of the 'The Australian Legend' from the viewpoint of the typical citizen: "He believes that Jack is not only as good as his master but ... probably a good deal better."¹ Rooted in the experiences of convicts transported from Britain to the then penal colony, the struggles of itinerant rural workers, democrats and later unionised labour, colonial Australians came to believe that theirs was the land of the fair go. Their birthright was a fair day's pay for a fair day's work and equal opportunity for all. Excessive inequalities of wealth, status and power were to have no place in a New World country such as Australia.

Out of the traumatic experience of the great strikes and depression of the 1890s was fashioned the Australian way of life. Some commentators term it the post-Federation 'Australian Settlement', a means of explaining bipartisan support for commonwealth policies such as industrial arbitration, industry protection, so-called state paternalism (government intervention as per the building of a welfare state), imperial benevolence (reliance upon Britain for trade and defence) and the racially-discriminatory migration laws known as White Australia.² This settlement dominated public policymaking during the twentieth century. It was not merely technocratic, but spoke to the simple human aspiration to lead a good life: decent pay, work conditions and job security, a fair say for working women and men in our workplaces and parliaments, and in the civic life of the nation. As the unionist and Labor MP William Spence proclaimed in 1890: "the working man must take his proper place in the nation."³ Two decades later Spence's 1908 book *Lessons of History* made a similar case. Only through a Laborite politics of the common good could Australia remain the paradise of working people:

There is enough latent goodness and sense of justice in man to make life better if it is given a chance by a better environment. Our hope is in the masses, in government by self, and by everyone self-consciously taking an active part in the ruling of the collective life ... We have the power if we have the will. Let each remember that man has failed before because each carelessly left to some other the work of the Common Good. We must reverse that. Each must take his or her share. With unity above all as our watchword, the Common Good our aim, we will soon find common ground of agreement as to the way in which the goal should be reached. The

best start we can give to our children is the certainty of better conditions; the sweetest memory of us to them the fact that we did so.⁴

Two years later Spence's party swept to power, forming the world's first majority national Labor government anywhere in the world. Unions and the Labor Party institutionalised the voice of working people in the nation's life. Indeed, the Australian way was really the Labor way. For example, Australia invented the concept of the 'living wage' via the 1907 Harvester judgment of the Commonwealth Arbitration Court, a delayed response to the industrial turmoil of the previous decade, and modelled on South Australian legislation of 1894. A "fair and reasonable" wage was premised on the "normal needs of the average employee regarded as a human being living in a civilized community" rather than just the dictates of company profits.⁵ Australia earned a reputation as a 'social laboratory' during this era; innovative government policies were said to be creating one of the most egalitarian societies on earth, in stark contrast to the endemic poverty, violence and class privation of Old World Europe.

Underlying these developments was a belief that Jack was indeed as 'good as his master' in determining the nation's future. Neither God, nor enlightened politicians, has ever gifted higher wages including penalty rates for working on weekends and public holidays, sick pay, annual and long-service leave, health and safety laws, workers' compensation, unfair dismissal protection and superannuation, or the small matter of weekends. These achievements were demanded, negotiated and won. Then, as now, Australia was imperfectly egalitarian. In 1902 women won the right to vote; yet they were viewed as dependants rather than providers. Aborigines were excluded from the benefits of citizenship provided by the settlement, presumed to be doomed to extinction. The 'nomad tribes' of Ward's account – the largely unskilled, virtually homeless men of the bush and urban unskilled casuals who trawled the streets for work – were the face of Australian poverty, today's precariat. Despite further depression and recessions, two world wars, a major renovation of the Australian way after world war two, and recent dabbling in free-market economics, our way – call it the 'fair go' or a compact between government and the people and between generations – was largely maintained.

In 2017 it is difficult to avoid the sense that the Australian way is fraying. Globalisation, technological disruption,

declining manufacturing, and the collapse of mass unionism paired with decentralised wage determination have combined to challenge its core ethos. Full-time jobs are declining in favour of part-time, casual and fixed-term, precarious work. Company profits remains healthy yet annual wages growth is at record low rates and lags behind productivity growth. Union coverage has collapsed, contributing to levels of inequality not seen since the 1940s. Living standards have grown sluggishly over the past four years. There is abundant evidence that the fruits of twenty six years of continuous growth are not being shared equally, which is bad for working people, bad for the economy, and bad for our democracy, encouraging extremist politics, and opening the door for false prophets such as Pauline Hanson.

Our national inheritance is not to be discarded lightly. To save the Australian way a new policy settlement is urgently required. Australians are keen to see more bipartisanship and cooperation, not just in politics – but in life in general. We need to fix our industrial relations system to re-create a resilient pro-business, pro-worker framework which prizes profit and productivity as much as cooperation and fairness. We need to recreate institutions that can sustain a high-growth, high-skilled and high-wage economy tailored towards the long-run and not one sustained by ephemeral mining and property booms, or which relies upon lazy, counter-productive measures such as cutting wages. Reasserting the place of collective bargaining over ‘flexible’ individual agreements is one solution. Yet if labour market institutions

and business elements continue to ignore the national interest, we must consider innovative policies.

Labor was the driving force behind the Australian settlement erected in the 1900s and 1910s. The golden economic age running from the late 1940s to the 1970s was the result of the post-war reconstruction work of the governments of John Curtin and Ben Chifley. Bob Hawke and Paul Keating’s modernisation agenda of the 1980s and 90s built a more open, dynamic and productive economy

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in tandem with a union movement which worked constructively and collaboratively with business. It was a distinctively Labor response to the Global Financial Crisis during the Rudd and Gillard governments which saw the nation avoid the devastating impact felt elsewhere in the world. In 2017, the nation looks to Labor to forge a new compact, a new politics of the common good. To address the big challenges facing our country we need a workplace and company culture fit for purpose in the twenty-first century. One idea, drawing on the experience of Germany’s successful social market

economy, is to encourage and, if need be, legislate for employee representation on company boards. This policy paper argues that this reform to our corporate governance and industrial relations framework is the best means of fostering workplace cooperation, boosting productivity, as well as tackling inequality, insecure work and stagnant real wages. Or are Jack and Jill no longer as good as their masters?

Part One

Labourism and the Australian Way

The Australian Way did not happen by accident. Ordinary Australians demanded a good life for themselves from the jump.¹ As convictism gave way to a free society from the 1820s onwards, working people led the way in the fight to democratise the colonies. Retail workers established Early Closing Associations. The campaign for the eight hour working day was won by Sydney stonemasons in 1855; Melbourne and Brisbane followed suit in 1856 and 1857 respectively. Working people built institutions of mutual help providing insurance against unemployment and sickness, funeral and building societies and also formed organisations to specifically battle against workplace injustice – across the following decades, unions of printers, carpenters, boot-makers, tailors, bakers, stonemasons and workers in countless trades joined together. In Victoria, working people played their part in winning the world's first manhood suffrage in 1856.

Within a few decades a place of exile was transformed into a land of hope and prosperity for ordinary men and women. Working people enjoyed high wages and living standards by international standards; freedom of association allowed them to create new unions. From the 1850s, following the lead of their British brethren, they formed small-scale, city-based 'craft unions' representing skilled and semi-skilled workers in a particular trade. Their male members – and they were almost always men – came together for a simple reason: to improve their lot by increasing wages and lowering working hours. Unions extracted many pro-worker reforms from colonial governments. In 1875, the Victorian parliament passed the Supervision of Workrooms and Factories Act, which sought to regulate female-dominated factory work. Six years later the NSW parliament legislated for a Trade Union Act that gave legal recognition to unions and allowed their formal registration. "If there was a paradise for the working man on earth it is to be found in the sunny lands beneath the Southern Cross", Edward O'Sullivan, President of the Sydney Trades and Labour Council announced in 1883, "the lot of the Australian man is one to be envied by the masses of the civilized world."² Even then the impact of creeping industrialisation and the greed of some employers, notably big pastoralists and shipping companies, spurred renewed organisation of working people. Thus, industry-wide 'new' unions of wharfies, miners and pastoral labourers such as shearers emerged. As a result, by the end of the 1880s, the Australian workforce was the world's most highly unionised. Union density was roughly twenty per cent of the working population, in a country which was arguably

more egalitarian and provided better opportunities for working people than anywhere in the world at the time.

The great strikes of the 1890s tested the resolve of the labour movement. The 1890 maritime strike, shearers' strikes in 1891 and 1894, and the 1892 Broken Hill miners' strike each resulted in defeat for unions and their members. A global depression brewing since the decade's beginning fell with particular force upon the colonies. The collapse of the 1880s land boom, a greatly reduced flow of English capital culminating in the 'bank crashes' of 1893 and dwindling export markets for Australian goods combined to produce a perfect economic storm. Wherever they toiled, Australian workers enjoyed a precarious existence for the rest of the decade. In the cities, more than a third of the workforce was unemployed during the worst of the crisis. Families went hungry and lived in constant fear of being thrown onto the street. Those workers lucky enough to keep their jobs saw their wages slashed. Union membership plummeted: in 1890 one in five workers belonged to a union; by 1896 that number was one in twenty.

From the flames of industrial defeat the labour movement emerged refreshed. The creation of large general unions such as the Australian Workers Union was one industrial tactic. The great strikes also convinced working-class unionists of the necessity of forming a political party of their own. The creed of Labourism was to exercise a profound influence over the Australian Way. Labor's central organising principle held that parliamentary action could, in tandem with strong unionism, civilise capitalism in the interests of workers and their families, through policies such as compulsory arbitration, protection, White Australia, and welfare initiatives. In 1891, NSW Labor contested its first election: voters returned a staggering 35 candidates from a lower house of 141 seats. Labor parties of various descriptions were formed in other colonies with varying degrees of success. Queensland Labor stunned the colonies in 1899 by forming the world's first such government, albeit of a week's duration. If it was an exception to the rule in this era, Labor MPs won valuable reforms – electoral law changes, land and income tax reform, restrictions on 'coloured' immigration, factories and shops legislation and age pensions. In 1901, an arbitration act became law in NSW, replacing ineffectual voluntary laws. Labourism prevented a multitude of anti-worker policies from becoming law.

Labourism came into its own during the twentieth

century. The first decade of the new century, beginning with the federation of the Australian colonies in 1901, was a time of hope and optimism for working people. Interventionist, progressively-minded governments were said to be creating one of the most egalitarian societies on earth. While Labor did not govern federally in its own right until 1910 (it formed minority administrations in 1904 and 1908-09), the labour movement was at the forefront of these world-leading developments. The labour movement's strength in workplaces and parliament was realised by the passage in 1904 of the Conciliation and Arbitration Act. The centrepiece of the Act was the creation of a new Commonwealth Court of Conciliation and Arbitration to centrally fix wages and conditions. Arbitration's supposed greatest champions were so-called progressive, protectionist 'liberals', politicians who saw themselves as representing neither capital nor labour. Largely-speaking they gathered around the leadership of three-time Prime Minister and then Labor-ally Alfred Deakin. The Chris Watson-led Labor Party forged an informal coalition with the Liberal Protectionist governments of Edmund Barton and, from 1903, Deakin. Labor and the Deakinites believed in using the state to regulate market capitalism to provide a protected standard of living (sometimes called the 'living wage'). Australian industries would be protected to secure plentiful work with adequate wages, albeit for working men whose dependants were assumed to be his wife and children.

Many valuable social and political reforms were implemented during this period, especially during Deakin's 1905-08 term. Yet Labor favoured a more heavily interventionist state than did the Liberals, with an enlarged role for government-owned enterprises. This was an aspiration it was prepared to realise by altering the Constitution. And Labor's union links inevitably meant that it was determined upon tilting the balance of power in the workplace in favour of employees. Indeed arbitration and the landmark 1907 Harvester judgement would not have occurred without the institutional pressure exerted by the labour interest. Compulsory conciliation and arbitration of wages and working conditions was eventually adopted by most states, to the undeniable benefit of working people. In the twentieth century, virtually all enforceable awards made by the Commonwealth Court of Conciliation and Arbitration increased wages and allowed unions to exercise more control over the labour process and working conditions. When Labor governments came to office over the 1900s they actively encouraged unionism. In 1901, 97,000 or 6.1 per cent of workers were unionised; a decade later they numbered 354,000 or 27.9 per cent, signifying a degree of coverage then unprecedented in the world.³ National union density never once fell below 40 per cent

between 1913 and 1992, and was typically much higher.⁴ Labor's electoral progress was confirmed when, following the fusion of the anti-Labor parties in 1909, the federal party won the 1910 election in a landslide. It was the first working-class or socialist party to govern nationally anywhere in the world.

The progressive settlement – the institutionalisation of the Australian way of life – greatly redressed labour's inequality of bargaining power with capital. It was a defence of the labour interest in the interests of the common good. This is not to say our country was ever some kind of classless paradise, and the struggle against vested interests in the workforce and parliament has been a long one, but thanks to the labourist model, working people enjoyed a relatively better and more secure standard of living. A comparison with other developed, new world countries is instructive. It mattered that our country fashioned a Labor party of its own. Historian Robin Archer notably suggests that had the United States, like Australia, developed such a party, it is "likely that business interests would have had less influence over public policy, that income and wealth would have been more equally distributed, that trade unions would have been stronger, and that a more comprehensive welfare state would have developed."⁵

Granted, the decades following 1913 would not be kind to Labor. The World War One split over military conscription, the internecine warfare of the 1920s particularly in NSW, and the Great Depression schism which brought down Jim Scullin's government in 1931, acted to keep federal Labor off the treasury benches. Indeed, the brutality of the 1930s Great Depression severely tested the party and union movement's faith in labourism as a means of civilising capitalism. But the labourist settlement managed to endure – instructively it was the attempt by Nationalist Prime Minister Stanley Melbourne Bruce to destroy commonwealth arbitration that ushered in the election of Jim Scullin in 1929 – and actually prospered at a state level, where Labor often became the natural party of government. Most significant was Queensland, where Labor essentially held state office continually from 1915 until the 1957 party split.

Labor governments federally have been the exception to the rule. Yet when in power it has been Labor which has done most to redefine the Australian way to adapt to the times. The World War Two Labor government of John Curtin (1941-45) is most often remembered for its effective management of the war-effort. Yet such a narrow focus obscures the efficacy of Curtin and his Treasurer and successor as Prime Minister Ben Chifley's plans for

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post-war reconstruction. Consider its housing policy. It was estimated that there would be a housing shortage of 250,000 to 300,000 homes by the end of World War Two. In 1943 the Curtin government set up the Commonwealth Housing Commission to plan for the future housing needs of the nation, plans which were put into action. The Housing Agreement of 1945 included provision for rebates of rent in certain circumstances, with a family on a basic wage paying no more than one fifth its income on rent. It was the Chifley Labor government who made available federal funds to the states for public housing construction.⁶ Among its many achievements, Chifley's administration built the modern welfare state amid a general expansion of the role of government to avoid a repeat of the horrors of the depression. Labor extended the welfare state by adding a widow's pension, unemployment and other benefits. The Commonwealth effectively took over the income tax powers from the states. Support for manufacturing, expanded tertiary education and a program of mass immigration followed. As Janet McCalman has argued in *The Tocsin* "it was the expansion of government—federal, state and local—and the building and servicing of infrastructure using full-time workers that abolished the precariat. For the first time in Australia's history, unskilled men could get a permanent job, be effectively unionised, have a training structure both for themselves and their children, and a secure, imaginable future. It also created work for another group in Australian society: a new educated middle class ..."⁷

Labor lost the 1949 federal election owing to a weariness with the continuation of wartime controls, its controversial plans to nationalise the banking system and growing spectre of Cold War politics. It would remain out of power for the next twenty-three years, splitting for the third time in 1955. Robert Menzies' Liberals did not undo but extended Labor's project, presiding over the long economic boom of the post-war years hallmarked by large-scale infrastructure projects like the Snowy Mountains hydro-electric scheme, Keynesian economic management and expansion of manufacturing industries. The updated settlement worked. From 1942 until 1974, the ranks of the jobless remained below three per cent, bringing full employment to Australia for the first time since the nineteenth century. Rising affluence meant that working people could reasonably expect to find steady, well-paying jobs and be able to purchase a car and a house. Between 1946 and 1949/50 the basic wage increased by 54.3 per cent and over the three years to 1953 by 45.7 per cent, henceforth rising in a more moderate manner.⁸ The real average weekly earnings of Australian workers after overtime and over-award payments increased by 78 per cent between 1947 and 1971, to say nothing of shorter working hours, paid annual leave, as well as increasing overtime and penalty rates.⁹ Unionism scaled unprecedented heights. In 1948, 64.9 per cent of workers could produce a membership ticket – a staggering 81.1 per cent in Queensland.¹⁰ The golden age of prosperity was Labor's creation, yet without

Labor in power.

Gough Whitlam famously led Labor back into office in 1972. There is not sufficient space here to detail its policy achievements and struggles of his government, suffice to say that this period is typically seen through its hectic pace of reform culminating in the 1975 Dismissal, in other words an anomaly or interregnum between the Menzies era and the Fraser government. Whitlam's reformist government should be seen as part of a continuum in the modernising Labor project which oversaw the major refurbishment of the Australian settlement that took place in the 1980s, and which reframed Labor's mission away from a narrow focus on workplace issues and public ownership towards equality of opportunity and service delivery. For Frank Bongiorno: 'the Hawke Government's victories and stability owed much to the party reforms of the Whitlam era. Medicare was a more successful re-run of Medibank. The Sex Discrimination Act built on the Whitlam government's support for women's rights. The reduction in industry protection began under Whitlam, with the 1973 tariff cuts. Whitlam was no less preoccupied with recasting Australia's relationships with Asia than Hawke and Keating.'¹¹

The Hawke government (1983-91), to be sure, was different to its predecessor, both in the style, substance and longevity. Hawke and his treasurer Paul Keating were less interested in ambitious schemes for universal welfare provision or wealth redistribution, notwithstanding their introduction of capital gains and fringe benefits taxes. They saw economic growth and expanded employment, training and education (along with reintroduction of tertiary fees), as the best means of increasing the prosperity of the poorest, along with carefully targeted assistance to the disadvantaged. Hawke Labor forged a version of 'Third Way' politics – neither socialist nor capitalist, but in between – well before that term was associated with the British Labour governments of Tony Blair, and which helped Australia avoid the worst excesses of Thatcherism during the 1980s. It was, in effect, the second refurbishment of the Australian settlement. In response to the supposed discrediting of Keynesian economics in the 1970s and the sclerotic nature of the Australian economy, the Hawke government opened up and modernised the economy: the dollar was floated in late 1983, foreign banks were allowed to enter Australia, restrictions on foreign investment were relaxed and tariffs reduced. From the late 1980s government enterprises such as the airlines and the Commonwealth Bank were subject to privatisation.

Hawke Labor's success was built on its brokerage of a new politics of the common good. In an effort to avoid the industrial turbulence, unemployment and rampant inflation of the Whitlam and Fraser years, Hawke campaigned during the 1983 election under the slogan of 'Bringing Australia Together'. Central to that vision was his promise to implement a so-called Accord (formally the 'Statement of Accord by the ALP and the Australian

Council of Trade Unions Regarding Economic Policy in 1983'). In return for exercising monetary wage restraint, unions would be given a formal voice in government deliberations such as industry policy, and a raft of increases to the so-called 'social wage' were to be introduced – for example the re-legislation of a form of universal healthcare in the shape of Medicare, as well as compulsory superannuation, increased spending on education and other redistributive measures. The Accord survived and, at least until the emergence of enterprise bargaining in the early 1990s, remained the centrepiece of Labor in office – renegotiated eight times during the years 1983-1996. Labor enjoyed a period of unprecedented success, winning five election victories in a row, despite the devastating recession of the early 1990s. The 26 years of interrupted economic growth since 1992 are a testament to Hawke and Keating's reworking of the settlement and in more recent times the Rudd and Gillard government's savvy negotiation of the Global Financial Crisis through its successful stimulus programs, keeping people in work all the while pursuing an ambitious labourist reform program – a price on carbon, a national broadband network,

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and national disability insurance scheme. Even here, however, the 1980s resettlement's legacy underpinned that response, notwithstanding that John Howard's 11 and a half year old Coalition government (1996-2007) was the major beneficiary, certainly in electoral terms.

This is not to suggest that this era was unproblematic. I have argued that a '1983 and all that' view of the Hawke/Keating years has acted as a repressive force upon Labor in two ways – one, the party in government struggles to live up to those herculean standards and, second, an overweening deference to that era blocks the path to philosophical and policy renewal.¹² Yet led by Bill Shorten, his Deputy Tanya Plibersek, Shadow Treasurer Chris Bowen and a range of Gen X and Y thinkers, since its catastrophic defeat at the 2013 election, federal Labor has fashioned a relevant, distinctively Labor agenda to suit the times – reforming negative gearing concessions, capital gains tax, and superannuation. It's why Labor came close to making the Turnbull government a 'oncer' at the 2016 election. It's time to go even more boldly.

Part Two

Unmaking the Australian Way?

In 2017 the Australian way of life is fraying. While we avoided the worst effects of the global financial crisis, and working and middle class people in Australia have done better over the past thirty years than most developed countries notably the United States, inequality has risen to heights not seen since the 1940s. Indeed, inequality has rapidly increased over the past four years of dithering, divided Coalition government.¹ Australia has recorded 103 quarters between June 1991 and March 2017 without two straight quarters of negative economic growth; that is without technically dipping into recession. Australian company profits remain healthy – rising by some 40% in 2017 alone – yet the annual rate of wages growth sits at record lows (0.9%)². The wage share of income has fallen to its lowest point in 53 years, before factoring in the impact of cuts to weekend and public holiday penalty rate cuts. A recent analysis undertaken by the McKell Institute estimates that nearly 700,000 retail and hospitality workers will be affected. Rural and regional Australian workers in particular will be hit hard, losing between \$370 million and \$1.55 billion from their pay each year, reducing disposable income in regional areas by between \$174.6 million and \$748.3 million. Penalty rate cuts will disproportionately impact female workers, who account for nearly 55 per cent of those affected, exacerbating the gender pay gap.³

Good, secure, well-paying jobs are increasingly being replaced by low-skill, low-wage insecure work that lacks dignity and meaningful career progression. Over 70,000 full-time jobs were lost in Australia during 2016.⁴ The Centre for Future Work reports that less than half of Australian workers now hold down a full-time permanent job. 23% are employed casually, the remainder being part-time, labour hire or hold an ABN, a new precarious tribe increasingly denied job security, sick leave and holiday pay, and superannuation.⁵ The official jobless rate sits at a four-year-low of 5.5 per cent, just 0.5 percentage points above what the RBA terms ‘full employment’.⁶ Yet this rate defines the ‘employed’ as having worked one hour during a given week. Underemployment has hit a record high of 8.6 or 1.1 million individuals.⁷ It is younger Australians who are being hit hardest. Youth unemployment numbers some 13.5%; youth underemployment has reached 18%.

According to the Generation Stalled report commissioned by the Brotherhood of St Laurence, almost one-third of young Australians are unemployed or underemployed, the highest level in 40 years.⁸ Total labour under-utilisation sits at 14.4% which means nearly 2 million people are not working as much as they would like. Some unscrupulous employers are exploiting loopholes in the recently rebadged 457 work visa system. Wage theft and workplace exploitation is rife. In the case of the 7-Eleven franchise scandal, compensation paid to wages stolen from employees has reached \$110 million, an average of \$39,089 for each of the 2832 claims made.⁹ The omens are poor for future job security: a 2015 report by the Committee for Economic Development of Australia estimates that 40 per cent of the existing jobs are likely to disappear in the next 10 to 15 years due to technological change.¹⁰

According to an Essential Report poll published in late 2016, nearly three-quarters of respondents agreed with the survey’s proposition that ‘life’ for ‘working class’ and ‘middle class’ Australians has “got worse” or “stayed about

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the same” “over the last few years”.¹¹ Meanwhile CEO pay and wages for our highest-income employees continues to grow at unsustainable and unfair levels. As Andrew Leigh notes: “Over the past generation, earnings have grown three times as fast for the top tenth of Australian workers as the bottom tenth. Since the early-1990s, average CEO pay in large firms has risen from \$1 million to \$3 million. The top 1 percent share has doubled, and the richest 200 have a rising share of our national wealth.”¹² Here and in other developed countries, productivity is increasingly decoupled from wages growth, and productivity improvements are flowing to the top twenty per cent of income earners. Inequality is being driven by tax avoidance particularly by multinational

companies. The ATO reports that 30% of our largest private companies pay no corporate tax. We are losing at least \$6 billion a year through multinational tax avoidance, money which could be spent on education, health, infrastructure, and affordable housing.¹³ The fruits of Australia’s twenty-six years of continuous, record national economic growth have not been shared equally. In any case, our world-beating GDP growth numbers belie a more fragile outlook.

Trend line growth is weak. Productive investment is poor. Exports are less diversified than any time since the wool boom of the 1950s. Our economic institutions are simply not working in the interests of the majority.

The Australian way is fraying in other respects. In our centre's first policy essay Misha Zelinsky argued that the dream of home ownership is slipping away from too many, particularly younger Australians. As he writes, "Home ownership is central to an economic agenda of inclusive prosperity where any Aussie can expect to have a good job, access to affordable health care, the opportunity of a great education and a chance to better themselves in life ... If we aren't careful, our runaway housing market threatens to unstitch the Australian way of life as we know it."¹⁴ Those lucky enough to have entered the market are servicing oversized mortgages. Reserve Bank data shows that Australian household debt in the March quarter was equal to 190 per cent of yearly disposable income and Australian housing debt reached 135 per cent of annual disposable income. These are not world-beating records of which to be proud – a state of affairs which will only worsen with declining rates of full-time work and falling real wages.¹⁵

The solutions offered up by some policymakers and our labour market institutions scarcely suffice. The Turnbull government's plan to get Australians into work entails paying up to 10,000 'interns' to labour in the retail industry for as little as \$4 an hour, only exerting further downward pressure of wages. In May, the Fair Work Commission announced that the minimum wage will increase by \$18.29 per hour, or \$22.20 per week, just under half what the ACTU had asked for as part of its formal submission. This modest rise is a slap in the face for low-paid workers coming on top of the Commission's announcement in February of historic cuts to weekend penalty rates, and not obviated by the FWC's decision not to fully implement them until 2020. Reductions to public holiday penalty rates began on July 1.¹⁶ Remarkably, National Retail Association boss Dominique Lamb cried foul. "Retailers need a break and they need it now."¹⁷

Employers should be careful what they wish for. There is abundant evidence that reductions in penalty rates will not save or create more jobs or stimulate growth. Cutting penalties – especially without commensurate increases to the base rate of pay – is not just unfair but dumb economics. Wages are not just some impost on business. Stagnant or falling real wages, and rising inequality, are bad for all Australians and the overall economy, and not just low

and middle income earners, especially for the retail and hospitality sectors. Reducing the purchasing power of the bulk of the population, the means by which we spend our money in shops, save to buy a house or service a mortgage and pay taxes, is bad for business, bad for jobs, bad for aspiring or existing homeowners, and bad for the budget, reducing our ability to fund essential services such as health, education and national security. Indeed, Australia's anaemic post-GFC recovery is being hampered by rising inequality and social immobility, putting a brake on growth and productivity, as the Chifley Research Centre's work around inclusive prosperity has pointed out.¹⁸

Reserve Bank of Australia governor Philip Lowe recently addressed the crisis in real wage growth. Workers, he argued, should demand a greater share of the economy's profits through wage gains. Yet Lowe's argument was undercut by his insistence that wage claims could be won in an industrial environment devoid of job security and his insistence that the shift to part-time and casual work was less of a problem than many suggest. "The fact that we're working a few less hours on average is probably a good thing, not a bad thing or a sign of weakness", Lowe argued.¹⁹ Even putting aside the fact that just a few weeks later employees of the RBA were granted sub-inflation wage rises,²⁰ this is dubious. Experience shows that unless labour wields bargaining power collectively, individual workers are less capable to demand real wage increases from their employers. As a recent survey found, the mean income of Australia's union members across all industries and occupation groups was \$73,000 compared with a \$64,000 average for non-unionists. Conversely, Andrew Leigh estimates that falling rates of union membership explains about one-third of the rise in overall inequality over the past generation.²¹

It is time to rethink the nature of labour market institutions and our ability to negotiate a common good between employees and employers. In part this means revisiting the system of enterprise bargaining legislated for by the Hawke/Keating governments.²² The Hawke government initially trod carefully in respect of labour market reform. A 1987 national wage case introduced the concept of a two-tier system of wage determination, the first major step away from centralised wage fixing. In the first tier, a flat rate increase granted by the arbitration court would apply to all workers; in the second, it was determined that the court would set specific criteria for further productivity-based increases depending upon prevailing economic conditions. The Labor government shifted decisively away from the centralised system of wage determination in the early 1990s. In April 1991, the ACTU

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began the movement towards such a system by rejecting the modest wage increase offered by a national wage case decision of the Australian Industrial Relations Commission (AIRC). The 1992 *Industrial Relations Act* provided for a number of amendments to the existing Act that reduced the power of the AIRC in favour of a limited form of enterprise bargaining, whereby pay increases were linked to productivity improvements. This trend strengthened with further revisions to the Act over the next two years, especially changes overseen by Industrial Relations Minister Laurie Brereton as part of the federal government's 1993 revision to the Accord (Mark VII). Nonetheless, the role of unions in the setting of pay and conditions was maintained, and a central tribunal continued to play a part in registering agreements and awards, setting minimum standards (a 'no disadvantage test') and resolving disputes. Over time, however, the changes effectively allowed for a trickle and then a flood of enterprise bargaining agreements, some of which did not involve unions at all. The government arguably erred by failing to embed a statutory protection for collective bargaining within the legislation. The new settlement ushered in during the 1980s and 90s – Hawke–Keating's historic rebalancing of state and market forces – while leaving Australia a better, more open and generally wealthier place, emptied out much of the traditional labourist model.

Enterprise bargaining, combined with the decline of manufacturing and blue-collar industries and aggressive employer activism, has contributed to the collapse of union membership, well before the advent of Howard government's anti-union workplace legislation and the Abbott government's royal commission into trade union governance. Between 1986 and 2008 union density fell from 45.6 to 18.9 per cent; while absolute membership dropped from 2.7 million in 1990 to 1.7 million in 2008. In the private sector, the marginalisation of unions is pronounced, where they cover just 10% of workers.²³ Only about 6% workers under 25 years of age belong to a union. While the union movement remains our biggest social movement, density has fallen to a historic low of around 15 per cent and is increasingly centred on the public sector and community services. The defeat of Howard's WorkChoices legislation at the 2007 election, replaced by the Rudd government's Fair Work Act, has not turned back the tide. A perverse situation has been allowed to develop whereby 60% of Australians workers are covered by union negotiated awards and agreements but a majority of employees effectively freeride.²⁴ Some companies are simply terminating enterprise agreements without recourse to their workforces and forcing employees back to award minimum wages. Employers are manipulating the Fair

Work system by failing to properly declare their financial position during enterprise negotiations, most notably in the case of freight company Aurizon. The July 2017 Fair Work Commission ruling which inserts a casual conversion clause in modern awards, enabling casual employees engaged in regular patterns of work to request permanent positions after twelve months, is a welcome, but minor step in the right direction. Yet the rights thus obtained have been found to be of little value for job security in those industries where they already exist, such as manufacturing. An out-of-date enterprise bargaining system combined with weaker unions hurts workers and the overall economy. As the former Deputy Prime Minister and Treasurer Wayne Swan argues: "It's no coincidence that both union membership and workers' share of income are at their lowest levels in at least 60 years."²⁵ This is a global trend. A 2015 International Monetary Fund study of advanced economies found strong evidence that the erosion of labour market institutions such as unions is associated with increasing income

inequality: "the weakening of unions contributed to the rise of top earners' income shares and less redistribution, and eroding minimum wages increased overall inequality considerably."²⁶

Once an internationally-recognised social laboratory we risk becoming an inequality Petri dish. In response to the unmaking of the Australian way, what is needed is a new politics of the common good and a new settlement for our times. This

is a plea heard not only in Australia, but internationally. Last year, the Center for American Progress published a report on the need for 'inclusive prosperity', a theme which has also been pursued by the Michael Cooney-led Chifley Research Centre, suggesting: "Just as it took the New Deal and the European social welfare state to make the Industrial Revolution work for the many and not the few during the 20th century, we need new social and political institutions to make 21st century capitalism work for the many and not the few."²⁷ What can we do? The Universal Basic Income is not the solution – individualising the problem and fostering welfare dependency. Readdressing the imbalance in bargaining power between employees and employers is vital and reasserting the role of unions and collective bargaining in wage negotiations is an obvious approach. We need to make collective, enterprise bargaining fair and relevant to the times rather than the 1990s. None of this will occur overnight, or by accident. A fairer say for employees in our workplaces and a fairer share of the economic pie entails more innovative solutions. In the age of Uber, Labor is uniquely positioned to drawn upon its historic role in renewing the Australian Way, specifically through new forms of active employee participation in our corporate governance.

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Part Three

The Light on the Hill, via Germany?

There is a long tradition of western social democratic parties looking to the electoral strategies and thinking of fellow-travellers. The leading nineteenth-century German theorist and politician Eduard Bernstein suggested that social democrats do not pursue some utopian end goal; rather “the movement is everything”. Bernstein’s own views evolved from contact with the socialism of Marx and Engels and his engagement with English Fabianism. Australian Labor’s precocious electoral growth during the 1890s and 1900s won the attention of European observers such as Albert Metin and British activists like Tom Mann, while Australian publicists such as Henry Boote and William Spence were attuned to international events and ideas. The Curtin and Chifley government’s post-war reconstruction program and extension of the welfare state looked to developments in the Anglosphere, American President Franklin D. Roosevelt’s 1930s New Deal and Britain’s 1942 Beveridge Report. Gough Whitlam drew on British Labour intellectual Anthony Crosland’s revisionism of the 1950s, as he modernised the ALP in the late 1960s and early 70s. Conversely, British Labour’s so-called ‘Third Way’ thinking of the mid-1990s was influenced by the practical experience of the Hawke/Keating Labor governments. Scandinavia has provided a wellspring of policy ideas for Australian Laborites, while others have recently sought inspiration from Britain’s Blue Labour movement championed by Maurice Glasman.¹ It’s time, again, for Labor to look for genuine inspiration from farther afield. The path to Ben Chifley’s ‘Light on the Hill’ may be traversed via the fertile territory of Germany.

The post-1948 West German ‘economic miracle’ is a misnomer. Sustained German prosperity was not some accident, but was the product of determined cooperation between government, business and workforces – the common good in action. Whereas the last Liberal Prime Minister to not launch a royal commission into unions was Billy McMahon, German unions are not demonised to the same extent by conservatives. They are crucial to the workings of its social market economy. There was to be sure a pre-war history of works councils being supported by the Social Democrats and the trade unions after the 1918 Revolution. The Weimar Government passed a Works Council Act in 1920 and subsequent amendments provided for worker directors to reinforce political democracy and

acted as a bulwark against fascism. It was an early target of Hitler in 1933 along with trade unions and co-operatives. Ironically, while originally the idea of a group of prominent native economists the German social market was forced upon the country after World War Two by the victorious British occupation authorities, representatives of a country who pursued a very different economic regime after the war years. Within Germany the centrepiece of the social market, the German Codetermination Act (*Mitbestimmungsgesetz*) was opposed by some business groups. It has since become a part of the furniture of corporate Germany. Social market measures have been maintained by both sides of German politics and enjoy wide support from the populace. They were originally legislated for by the conservative Christian Democratic government of Konrad Adenauer.

The social market was crucial to the post-war economic success story of West Germany. Its bipartisanship and resilience has meant that even though the centre-left Social Democratic Party has suffered a significant decline, the institutions which protect workers have endured. And despite greatly exaggerated reports of its demise, the German economy recovered from the Global Financial Crisis faster than any other European country. Beginning in the early 1950s, a legislated system of works councils (*Betriebsrat*) – the committees that can be formed to represent all employees at an enterprise level – employee representation on company boards, vocational regulation of entry into the labour market, and

stress on regional banking and investment in long-run profitable businesses rather than short-term speculation, has made Germany’s economy dynamic and resilient and its society more egalitarian and democratic. Whereas our manufacturing industry lies in tatters, Germany’s government-subsidised equivalent has made it the world’s third-largest exporter.² In 2016, Volkswagen replaced Toyota as the world’s largest car manufacturer.³ This is a high-skill, high-wage economy built upon workers, companies and government taking a long-term view, rather than chasing a quick buck or bashing unions for political gain. The great paradox is that the country with the greatest degree of labour representation in its corporate structure, the most intense system of vocational involvement in labour market participation, and the greatest constraints on finance capital, is the most competitive within the international economy. It does so because it is built on a recognition of

a balance of interests, enshrined by economic democracy and corporate governance representation for labour requiring shared financial information and a negotiation of company strategy not exclusively set on terms beneficial to owners and managers.⁴

Granted, as the historian Frank Bongiorno notes in a perceptive Fabians essay on the Blue Labour movement, post-war Germany did not develop these institutions by accident. Modell Deutschland is the result of a particular experience different from ours, namely fascism. Codetermination in Germany also arose as an alternative to the nationalisation of industry pursued in Britain in light of the role played by the other occupying power, the United States.⁵ Any Australian adoption of its ideas must be calibrated to local circumstances. Yet employee representation on company boards speaks to one of the animating ideas of the labourist-informed Australian Way – a fair say and fair go for working people.

Mitbestimmung. It's tricky to pronounce but this German word – translated as codetermination – is one Australians should learn as we navigate today's policy challenges. Codetermination is the centrepiece of German corporate governance. The idea is simple: for the good of all, workers must have a fair say in the governance of the companies they make productive and profitable. Germany introduced codetermination in 1951, establishing employee participation at two levels of corporate governance in the coal, iron, and steel industries, giving equal representation to employees and employers at the firm level, with works councils on the shopfloor, and at a higher level, employee representatives on the supervisory board. Codetermination is today regulated by the Codetermination Act 1976 (*Mitbestimmungsgesetz*), and the Work Constitution Act 1972 (*Betriebsverfassungsgesetz*). The former made codetermination applicable to all firms throughout the German economy employing more than 2,000 workers, but without full parity. Employees were also granted a formal say in the workings of their companies through works councils, which sees elected committees of workers informed or consulted on decisions concerning working conditions and rights. In 1976 the Works Constitution Act strengthened their responsibility of works councils in setting piece (penalty) rates, workplace design and matters concerning promotion and retraining. It accorded works councils greater production-level control and boosted arbitration procedures in cases of dismissal, retraining and relocation expenses. Wages levels were set through regional collective bargaining with recourse to strike action. Henceforth, parity representation between employers and unions over the control of pension funds was established in all sectors of the German economy.⁶

How does it work in practice? Whereas Australia has a unitary board structure, Germany possesses a two-tier company board system, made up of a supervisory board (*Aufsichtsrat*) and management board (*Vorstand*). (Most countries with codetermination laws have single-tier boards – notably Sweden and France). Codetermination is applied according to company size. The German One-Third Participation Act (*Drittelbeteiligungsgesetz*) allocates one-third of supervisory board seats to employee representatives in companies with between 500 and 2,000 employees. In Germany, a company with over 2000 employees ensures just under one half of the seats. Half of the supervisory board members of Germany's largest corporations — think Siemens, Bertelsmann, BMW and Daimler — are elected by their workers.⁷ Having been elected by a combination of shareholders and workers, the supervisory board is responsible for overseeing the company's strategy. In Germany, the supervisory board's chair, who holds a casting vote, is always a shareholder representative. The supervisory board in turn is responsible for appointing the management board which oversees the company's day-to-day operations. The management board is required to have one worker representative (*Arbeitsdirektor*). While neither board can interfere with each other's operations, the genius is this – by virtue of employee representation management cannot ignore the interests of the workforce. In practice, the two boards typically work well together in a spirit of collaboration and consensus.

At the shopfloor level, works councils are an effective tool. They enjoy veto power over certain management decisions pertaining to the company's treatment of individual employees, in particular redeployment and dismissal. Work councils possess 'co-decision rights' to meet with management to discuss company, finances, daily work schedules, scheduling of holidays and other matters. There are also 'information and consultation rights' in regards to planning for the introduction of new technologies, mergers and layoffs. Importantly, they have access to information essential to bargaining negotiations, such as profit and wages data.⁸

The German model has worked successfully on a number of levels, because it is a win-win outcome for labour and capital. Codetermination draws on the irreplaceable, shopfloor knowledge of a company's workforce and promotes cooperation between employees and managers. Workers have a better, more strategic say and employees receive a fairer distribution of profits by virtue of increased bargaining power of workers at the expense of owners. One study of 25 EU countries found that countries with stronger worker participation rights perform better in terms of labor productivity, R&D intensity, and had lower strike rates;⁹ another examining the association between codetermination and inequality (measured using the

“...employee representation on company boards speaks to one of the animating ideas of the labourist-informed Australian Way – a fair say and fair go for working people.”

Gini index) in OECD countries discovered lower income inequality in countries with codetermination.¹⁰ In turn management gets a better sense of what actually works on the shopfloor. Works councils are associated with lower rates of absenteeism, more worker training, better handling of worker grievances and smoother implementation of health and safety standards. Conflict between management and workers is reduced and communication channels between each other are vastly improved. Directors are also drawn from a wider social and professional circle. All this promotes consensus, longer-term decision-making, making for better-paid, more productive and safer workplaces, reducing strikes, and improving the transparency of information such as salaries, all of which benefits investors, workers and consumers.¹¹ This is a pro-business and pro-worker model that puts power directly in people's hands, because employee and employers are given incentives and empowered to shape and share the same long-term goals and policies. There is also less resistance to technological and structural change and greater flexibility in accepting retraining, benefitting the overall German economy. By contrast, with the emergence of what is known as Industry 4.0, Australia risks creating a technological-determinist dystopia unless issues of genuine worker involvement are addressed.

While Europe and much of the developed world has struggled to emerge from the shadows of the GFC, and Britain is convulsed by Brexit, the resilience of the German economy is striking. Germany emerged from recession with higher growth and lower levels of unemployment and youth unemployment. Germany has largely bucked the developed world trend of steady losses of well-paid blue-collar jobs to automation and to cheaper imports, notably from China.¹² German companies tend to invest for the long term, including in research and development and training, and enjoy large export surpluses and high output per head as a share of its economy.¹³ Germany's manufacturing sector is twice the size of Britain's – 23% of national GDP, compared with 11%, according to the World Bank,¹⁴ and dwarfs that of Australia, where its value-added proportion fallen to 6.8%.¹⁵ In particular Germany's mid-sized manufacturers, known as the *Mittelstand*, are the backbone of the economy – their focus on innovation is vital to their world-leading performance. A further comparison is instructive, the German steel industry has not buckled under the pressure of dumping by China.¹⁶ German industrial giants such

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as Volkswagen are global leaders in their field. Though inequality has increased in Germany over the past two decades, as it has in most developed economies, the increase has not been as pronounced as, for instance, in Britain. This did not happen by accident. The case of Volkswagen is instructive. Britain's High Pay Centre issued a report on workers representation which featured interviews with a number of German board members – both employee directors and shareholder representatives. During the financial crisis, a long-term perspective rather than the views of short-termist shareholders and managers ensured Volkswagen focused on protecting jobs, reaching an agreement with the workforce to reduce working hours, but avoiding layoffs. As the economy recovered, existing workers were able to increase their hours, saving the company money on training and recruitment costs. Excessive executive pay was also reined in. The supervisory board at Volkswagen secured a significant reduction in CEO Martin Winterkorn's pay package in 2013 after a public outcry the previous year. Instructively, the High Pay Centre report noted that interviewees from a management background were equally supportive of worker representation on boards.¹⁷ Recent figures show Germany's healthy condition is likely to persist. Germany's economy expanded 0.6 per cent in the first quarter of this year, twice the pace of Britain and more than three times that of the US.

The current unemployment rate has fallen to 3.9%, lower than almost all developed countries, and the lowest since German reunification 27 years ago. Last year, Germany's strong trade surplus was a whopping 8.3% of GDP – at almost \$300bn it is far larger than China's surplus.¹⁸

There are increasing calls for other countries to adopt aspects of the German model outside of its homeland. Conservative British Prime Minister Theresa May successfully campaigned for her party's leadership in July 2016 by pledging 'not just consumers represented on company boards, but workers as well', although she has since backtracked.¹⁹ The proposal has enjoyed significant support in the British Labour Party. Wayne Swan argues that Australia should look at such a system, specifically pointing to a revived role for unions on the Reserve Bank board.²⁰ Can codetermination work here? This is to ask the wrong question; rather how will Australia's future economy function without this meaningful voice for working people?

Part Four

How employee representation can work in Australia

Before outlining why employee representation on company boards can work in Australia, let us deal with possible objections to its implementation. Employers might be expected to resist such a reform on the grounds of what they perceive to be managerial prerogative, believing that organisational efficiency and profit-making is enhanced by lower wages, the absence of unions and collective bargaining, an erroneous belief covered in part two of this essay. Australian-based expert Professor Jean du Plessis suggests that codetermination is unlikely to be adopted for the simple reason that management and shareholders would resist giving up power.¹ But as argued previously firms ought to see employee representation as a win-win for business and workers on a number of levels. Specifically employee representation on Australian company boards will:

- Promote better communication channels between all stakeholders.
- Improve boardroom diversity by explicitly incorporating employee voices.
- Raise profits through deeper and better collaboration resulting in greater productivity, better products and less strikes. As Professor Roy Green's work into High Performance Workplace demonstrates, Australia performs poorly in management capability, because of inadequate workplace collaboration.²
- Secure for workers higher wages and better, more secure working conditions.
- Militate against financial difficulties leading to the sudden collapse of firms as has been the recent case with steelmaker Arrium and previously HIH and One-Tel, whereby employees and unions are blindsided through a lack of information.
- Prevent companies from disregarding their social responsibilities, for example the conduct of James Hardie, which restructured its operations in 2001 to avoid paying compensation to victims of exposure to asbestos products. This would benefit both employees and shareholders – the latter group were exposed to larger liabilities, falling profit rates and higher legal fees as a result of the board's actions.
- Tackle the problem of excessive CEO pay given that self-regulation has not sufficed. The 'two-strike' rule and shareholder pressure has not been able to restrain salaries that don't align with performance.

Employee representation on boards and specifically company remuneration committees could tackle this issue at root.

- These outcomes would each restore public trust in corporate Australia.
- While employee representatives on boards may slow decision-making processes, because more stakeholders are involved than just shareholders, the quality of decisions would improve and be tailored to the long-term. Codetermination could not alone increase profits and real wages and nor prevent all company collapses and acts of malfeasance but it can certainly create a superior workplace and corporate culture.

Employee representation breaks in part with Australia's historically adversarial industrial relations system. There may be concerns from established labour institutions, namely unions. In particular there are union concerns that not explicitly union forms of employee representation, in the words of scholars Ray Markey and Greg Patmore, "may open up a second channel of communication between employees and management that would weaken union workplace representation". Workers on boards and work councils in this view compete with, or are a substitute for, unions over issues such as wages and hours, and present "an alternative focus for employee loyalty and in an environment of occupational or industry unionism, may improve employee responsiveness to organisational needs in preference to industry-wide employment standards. Fear of these outcomes has motivated a longstanding union wariness, even hostility, towards all forms of representative employee participation not based on the unions themselves, particularly in the Anglo-Saxon countries."³ There are grounds for concern in the situation where representatives are not genuinely independent from management, the most obvious example is the existence of so-called 'company unions' in the United States. Yet Rhineland legislation (Germany, the Netherlands, Austria) specifically separates union activities – e.g. collective bargaining at the industry level – from enterprise works councils.⁴ About 76 per cent of elected works councillors are unionists. In practice unions and councils cooperate extensively. Work councils have tended to complement unions, rather than act as competitors.⁵

Workplace democracy is not entirely foreign to Australia. As Markey and Patmore suggest there have been four waves of non-union based forms of employee

representation previously adopted in Australia: the first two occurred in extraordinary circumstances of mobilisation during World Wars One and Two; the third wave in the 1970s; and more recently from the late 1980s.⁶ As the authors have separately argued, employee participation Australia was not immune from the wave of employee participation that swept the western world in the 1970s. The reasons were manifold but echo the concerns of ordinary people and policymakers today: economic recession and industrial conflict as well as growing technological change, or ‘automation’. Australian federal and state governments developed policies for employee participation, in particular Don Dunstan’s South Australian Labor administration.⁷ The Whitlam government encouraged this by introducing limited representation of employees or union officials on the boards of federal government agencies such as the Australian Broadcasting Commission and Australia Post. In 1975, Labor’s federal platform called for the promotion of industrial democracy.⁸ The Hawke government’s Accord with the ACTU is another example of employee participation. Current Australian Occupational Health and Safety legislation provides that long-term OH&S issues may be dealt with by a joint employer-employee committee, which could be the basis for any expansion to works councils. Most common are Joint Consultative Councils which differ from statutory works councils as products of unilateral management initiative or union/management agreement, rather than statute.⁹ The Australian Public Service operated under the auspices of the Joint Council, with equal employer and union representatives, following reforms introduced by Ben Chifley’s Labor administration in 1948. This historic basis for codetermination was abolished by the Howard Coalition government in 1998.

Adapting codetermination also means taking into account the differing systems of corporate governance in Australia and Germany. While both systems seek to ensure that management decision-making is kept within reasonable boundaries; encourage companies to meet their corporate social responsibility beyond their narrow legal responsibilities of profit-making to their shareholders, there are also important differences. Germany has a two-tier model, while Australian corporate law requires a single board of directors. In large public companies, the board does not deal with day-to-day management, but supervises the executive management, and is composed of varying categories of directors. There is no provision in corporate law or informal ASX recommendations for the directly-elected representation of stakeholders, including employees, on company boards. Allowing for the unlikelihood of moving to a two-tier model, the

requirement of independent non-executive directors sitting on board could be expanded to allow for employee-representatives on existing single boards in the interests of best practice corporate governance, currently provided for by ASX corporate social responsibility recommendations.¹⁰ This tallies with the Swedish model of single-tier board codetermination whereby employees are represented on the boards of almost all companies with more than twenty-five employees. There are two or three employee members chosen by the relevant union who account for around one third of all board members in most companies.

The naysayers will argue that workplace democracy in an age of Uber, rather than mass production won’t work – the glass half empty view. The glass half full view is that employee representation is the very means of addressing such issues. How specifically could the system be implemented? We already have a form of codetermination in place: it’s called superannuation where employee representatives sit on not-for-profit, industry fund trustee boards along with employers. Industry funds were first established in the 1970s as a counterweight to the high fee and commission products common in the then retail (bank) dominated industry. They became the vehicle for workers’ retirement incomes once unions won the first superannuation awards, over strenuous employer opposition, in 1987. These funds have provided above average investment returns to members as well as investing in quality long-term infrastructure investments. Over the last ten years the average retail fund has delivered around \$16,000 less to their members than the average industry fund. Buttressed by industry funds Australia has built one of the largest and most productive pools of savings in the world in just a quarter of a century. And there are many examples of unions working constructively and cooperatively with companies in the interests of the workforce and national interest, such as the role of the leadership of the Australian Workers Union in the sale of the struggling Arrium mining and steelworks at Whyalla, saving thousands of jobs, a de-facto form of codetermination.

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One method of introducing employee representation on boards might be for government-owned entities to lead by example, as per the case of Australia Post. There is no reason that essential services such as water, gas and electricity companies could not be subject to a compulsory model of employee representation given that state governments currently appoint directors to their boards. Monopolies such as public transport are also a logical testing ground. Wayne Swan has rightly argued that the Reserve Bank should again have ACTU representation

at the board level. More creative possibilities exist. In a persuasive essay for *The Tocsin*, Paul Sakkal makes the case for a form of supporter codetermination in our sporting codes, notably the Australian Football League, based on the example of the *Bundesliga*, Germany's top-tier football competition. As he writes: "The Bundesliga, the nation's top-tier football competition, is the envy of European football. It averages over 6,000 more attendees to each game than the world famous English Premier League. Despite recording revenues less than a third of the EPL, its clubs set ticket prices at a far lower rate. Clubs restrict season ticket holders to 10 per cent to ensure wealthier supporters cannot price out those with less capital. The Bundesliga's average cheapest match day ticket is almost three times cheaper than that of the EPL."¹¹

Moving beyond government-owned entities and these examples, the question arises as to how private and public-listed companies might be encouraged to take up employee representation. As a first measure it is proposed that a business, labour and government roundtable be established to explore the possibilities of building a consensus workplace and corporate law fit for purpose in the twenty-first century and specifically consider employee representation. If consensus was reached this could serve as the basis of a mandate to create specific models of representation. It is recommended that two models be implemented for non-government owned entities with at least one elected employee representative sitting on the board of companies defined as 'large' according to Australian Tax Office guidelines (i.e. those with annual turnover greater than \$250m).

- a. Compulsion, whereby Australian corporate law is altered to mandate employee representation. This could be based upon company size according to numbers of employees and/or annual turnover. This is perhaps the least feasible option.
- b. Voluntary, opt-in models contingent upon company size according to employee numbers or turnover. This is the most feasible model, which could be incentivised by offering highly-targeted tax concessions, vocational training subsidies or a phased-in lower corporate taxation for opt-in businesses. Given the current state of the commonwealth budget the latter option is undesirable, however a longer-term conversation about companies taking up codetermination in

return for lower taxation should not be ruled out. It could also be enabled by its allowance in industry-level bargaining agreements. It is not envisaged that either model would apply to small-sized businesses.

Furthermore, codetermination would be best implemented in Australia if accompanied by a more systematic establishment of enterprise-level networks of work councils. Here, too, the opportunities arising out of such a system are beneficial to labour institutions. Employee representation is a perfect means of training future generations of leaders; the best, brightest and most passionate, schooled on the shopfloor and at work in the boardroom.

Recommendation: the Australian Labor Party examine amending its national platform in 2018 to commit to the introduction of employee representation within three years of forming government federally. The implementation should be incrementally made through ongoing consultation with different levels of government, individual businesses and peak business groupings, unions and individual employees drawn from a range of industries. A tax reduction for a pilot group of Australian-owned companies should be implemented.

Codetermination would be a large scale structural reform to our corporate and workplace culture. Its implementation would need to be carefully and systemically pursued through consensus decision-making. Consideration needs to be given to its legal applicability to multinational companies. Vested interests may oppose any movement in this direction, but that should not be cause for delay or inaction. The very rise of vested interests has led to many of the structuralised problems besetting our nation. Employee representation within our corporate governance structures is also good for our democracy. Democracy is not just the way in which we structure our government or vote every three or four years. At its best democracy involves people having a say over a range of matters which directly affect their lives, including the direction of the organisation for whom they work. Codetermination can work to rejuvenate democracy, at a time when democracy most needs it. There is too much to lose from not having employees on company boards – long-term, sustainable economic growth, increasing the wages and purchasing power of working and middle class Australians, protecting working conditions and job security in an age of insecure employment, and maintaining our nation's hard-earned tradition of socio-economic mobility.

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Conclusion

Towards a 21st Century Settlement

Employee representation can help fix so many of the problems confronting Australia: most notably record levels of inequality, and a declining share of profits accruing to wage and salary earners. It might transform a business culture defined by short termism, low productivity and shoddy productive investment. This nation-building reform can help us grapple with the opportunities and challenges presented by the unfolding technological revolution and a new machine age of robotics and automation. It is a new consensus politics led by everyday working Australians – a means of building a policy settlement in the manner of the early nineteenth century, our post-World War Two Keynesian bipartisanship and modernising Accord years of the Hawke-Keating Labor governments – fit for purpose in the twenty-first century.

It is a logical step for a Labor Party which under Bill Shorten's leadership has eschewed small-target politics and moved on from seeking to ape the reform agenda of the Hawke-Keating years. Post-GFC politics, where the national political agenda is not dominated by cutting personal taxes courtesy of a cashed-up government, but a precarious economy and socio-economic immobility, signals that the times might suit Labor. Granted, Labor has formed majority national government twice in the last 25 years: in 1993 when Paul Keating destroyed John Hewson's plans for a GST and in 2007 when the Kevin Rudd-led ALP neutralised the Coalition's advantage in matters economic and

unions mobilised in the unprecedented Your Rights at Work campaign. Moving the economic debate onto Labor's territory by thinking about the nature of the workforce and economy our country needs is a natural extension of Labor's post-2013 policy work and bold campaigning on jobs and economic security.

The times should suit Labor, but only if it grasps a historic opportunity to shape a new settlement, to build a modern, thriving and diverse economy that creates and sustains well-paid, secured jobs in a globalised world. The opportunity to redraw the lines of our national settlement presents to very few generations. The settlements of the 1900s, 1940s and 1980s were spaced forty years apart and responded to events of the decade and more previously. In an environment shaped by the GFC and the twin effects of globalisation and technological change, the time

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for a new settlement is now. This task is not just necessary for the present population, but essential to the well-being of future generations. William Spence's words remain apt: “The best start we can give to our children is the certainty of better conditions; the sweetest memory of us to them the fact that we did so.” Renewing a politics of the common good means drawing on the Australian way – a dynamic market economy underpinned by our traditional ethos of a fair say and a fair go for working people. Yet it's also time to look overseas to refresh our national heritage. Our nation cannot afford to pass up this opportunity.

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**‘The nation looked to Labor,
and it did not look in vain.’**

- John Curtin, 26 July 1943