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Corporate Governance and Workplace Partnerships Case Studies

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RESEARCH REPORT

CORPORATE GOVERNANCE AND WORKPLACE PARTNERSHIPS CASE STUDIES

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Introduction

This research report contains the findings of 10 case studies of Australian companies undertaken as part of a broader 'Corporate Governance and Workplace Partnerships' project. The project is now being conducted by the Centre for Corporate Law and Securities Regulation and the Centre for Employment and Labour Relations Law in the Law School at the University of Melbourne and the Departments of Business Law and Taxation and Management at Monash University. The project was funded by an Australian Research Council Discovery Grant. The broader project aims to better understand the relationships between corporate structure, corporate governance and labour relations in Australian companies. In 2005 and 2006 detailed case studies of 10 Australian companies were undertaken which explored these relationships. During structured interviews with managers and union members, as well as detailed background searches, we gained valuable information about a range of matters pertaining to the interaction of corporate structure, governance and labour relations. Changes have continued in most of the companies studied, and labour laws were changed a year after the case studies were completed, altering the regulatory environment considerably. Accordingly, the studies reported here are snap shots of a particular time in the companies' histories.

The object of this report is to provide those with an interest in the relationship between corporate governance, capital structures and employment relations access to our case study material. Further analysis of particular case studies has been conducted elsewhere and more concise analysis of the case studies will be published in book form.[1]

The 1990s was an important decade for business organisations in Australia. The growing exposure of the Australian economy to much greater global competition had given rise to increasing pressures for economic reform. The relative success of national economies is associated in the literature with the relations between distinctive

[1] Publications produced by the Corporate Governance and Workplace Partnerships project are available on the project website: http://cclsr.law.unimelb.edu.au/go/centre-activities/research/corporate-governance-and-workplace-partnerships-project/index.cfm.

or particular attributes[2] or institutional arrangements which characterise national economic approaches. Two of the most important attributes or institutions are the systems of corporate governance and the types of employment systems utilised within enterprises.

Serious questioning about the nature of the employment model in Australia began in the early 1980s, but legislative reform emerged most strongly from about 1993 onwards. These reforms gradually shifted the premise of labour market regulation away from a class conflict model towards a greater emphasis on growth and efficiency. Traditional labour institutions were weakened and labour was subjected to greater risk. This was accompanied by changes in human resource management thinking which emphasised decentralised management of labour resources and individualisation of employment relations in order to increase flexibility in the use of labour.

At the same time, reforms in the corporations law field allowed for a greater alignment of management and shareholder interests, giving rise to the perception of the ascendancy of a 'shareholder value'-oriented form of capitalism.[3] Additionally, ideas about the 'core business' of both the state and companies led to major business restructuring throughout the 1990s and into the early 2000s. Central to these ideas was the notion that organisations should only conduct that business in which they were most competent, and most competitively placed to conduct. Thus, privatisation of a large number of state- and federally-owned enterprises occurred. Privately owned companies also shed or outsourced those functions which they believed they could more efficiently 'contract in'. The studies presented in this report trace the implications for labour of the corporate governance change or restructuring.

[2] See S. Richardson, 'Regulation of the Labour Market' in S. Richardson (ed.), *Reshaping the Labour Market: Regulation, Efficiency and Equality in Australia*, Cambridge University Press, Cambridge, 1999, at p.17.
[3] See generally, S. Deakin, *Renewing Labour Market Institutions*, International Institute for Labour Studies, Central European University, Budapest, 2004, chaps. 1 and 2; R. Mitchell, A. O'Donnell and I. Ramsay, 'Shareholder Value and Employee Interests: Intersections Between Corporate Governance, Corporate Law and Labor Law' (2005) 23 *Wisconsin International Law Journal* 417; S. Jacoby, *The Embedded Corporation*, Princeton University Press, Princeton and Oxford, 2005, chap.1.

Methodology

The case study organisations selected for this project varied in type and size, ranging from small family held companies to large international businesses with highly diffused shareholdings. They covered a range of industries including mining, financial services, and manufacturing.

Each of the companies was selected because they had undergone, or were undergoing a significant change in corporate structure and/or governance. These ranged from privatisation, listing, change of ownership, merger, a significant restructuring, and so on. Our study used an 'event' methodology, which provided a means for studying changes. In each of these studies we carried out background research on the business history of the organisation. We examined the way that corporations laws and other relevant laws had influenced the nature of the capital structure and corporate governance changes.

We used the Gospel and Pendleton typology to analyse the way in which the various forms of capital restructuring which most companies underwent during the 1990s through into the early 2000s affected the nature of corporate governance.[4] In their 2005 study Gospel and Pendleton, through a collection of national studies, examined the relationship between capital, management and labour in order to understand more closely how companies in different national systems are controlled and in whose interests they are controlled. In pushing this study of governance beyond the more typical concerns with the composition of corporate boards and executive pay, the authors sought to draw another important variable, labour, more centrally into the discussion.[5] Generally speaking, the authors were interested to discover how finance and corporate governance influenced or shaped the management of labour.[6] For these purposes 'management of labour' was defined to include three sets of corporate policies:

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[4] H. Gospel and A. Pendleton, *Corporate Governance and Labour Management*, Oxford University Press, Oxford, 2005. See also H. Gospel and A. Pendleton, *Financial Structure, Corporate Governance and the Management of Labour*, Research Paper No 6, Kings College London, The University of London, October 2001.
[5] Gospel and Pendleton 2005, ibid, pp. 3-4.
[6] Ibid, see pp. 14, 18.

work relations (essentially how work is organised); employment relations (employment rights, recruitment, training and employment security); and industrial relations (voice and representation).

Utilising these basic concepts the Gospel and Pendleton study explored the different ways in which corporate governance and labour management were seen to interact across the 'liberal market'/ 'co-ordinated market' dichotomy.[7] They argue that managerial strategic choice is largely determined according to differences in corporate finance and governance arrangements. Specifically, the 'market/outsider' systems are characterised by dispersed share ownership and strong capital markets, in which an 'outsider' system of governance is supported by relatively strong legal protections for investors and/or an active market (through takeovers and mergers) for corporate control. This, in turn, is said to produce outcomes which are favourable to the short term interests of shareholders over those of other stakeholders in the enterprise.[8] The 'relational/insider' model of corporate governance on the other hand is characterised by forms of ownership and control which are much more concentrated through block-holdings of shares and finance through banks and other sources of relational investing.[9] This concentration allows for a more direct form of monitoring and observation of management performance and decision-making. Minority, or dispersed, investors are correspondingly less well protected than in the 'outsider' model.

Adopting this general argument it is possible to hypothesise that 'shareholder value/shareholder primacy' governance norms will be evident to a greater extent in companies with characteristics that best match the market/outsider model as compared with companies which would appear to more closely fit the relational/insider model. In order to explore this hypothesis, we first sought to assess each of our target businesses according to whether it could be categorised as an 'insider' controlled company or as an 'outsider' controlled company. Although generally we started with the presumption that the Australian regulatory 'style' would reflect the 'outsider' rather than the 'insider' model, we also hypothesised that there might be scope for an

[7] Ibid.
[8] Gospel and Pendleton 2001, above n. 4, pp. 14-17.
[9] See K. Hopt and E. Wymeersch (eds.), *Comparative Corporate Governance: Essays and Materials*, Walter de Gruyter, Berlin, 1997, pp. 151-164.

argument about systemic divergence in the Australian case,[10] and that the position might appear more complex when examined on a case by case basis in particular enterprises. Broad indicators looked for in the case studies in relation to this issue are set out in Table 1.

Table 1. Indicators of Finance/Governance Typologies
(Source: Gospel and Pendleton, 2001[11] (adapted))

Relational Finance/Insider Governance	**Market Finance/Outside Governance**
Finance	***Finance***
Private financing	Public finance – equities and bonds
Intermediated finance	Arms length financing
Thin securities market	Thick securities market
Patient investors	Impatient investors
Stable owners	Fluid owners
Investors generally have small numbers of stock, large holdings maintained over time, interest in firm management	Investors generally have diversified portfolios, relatively small holdings, little active interest in management (exit over voice)
Governance	***Governance***
Board made up of insiders (family, bank, other companies etc)	Board made up of insiders *and* outsiders
Direct discipline (active shareholders)	Indirect discipline (market)
Active but patient owners	Less active and more impatient owners
Weak market in corporate control	Strong market in corporate control
Voice as an instrument of corporate control	Exit as an instrument of corporate control
Top management more stable	Top management less stable

Secondly, we sought to examine in each of our business case studies the extent to which enterprise employment systems could be said to 'complement' the style of corporate governance within the organisation in accordance with the suppositions of the comparative capitalisms literature. The hypothesised correlation between corporate governance and finance structure on the one hand and labour management style on the other is set out in Table 2.

[10] See, for example, A. Dignam and M. Galanis, 'Australia Inside out: The Corporate Governance System of the Australian Listed Market' (2004) 28 *Melbourne University Law Review* 623.
[11] Gospel and Pendleton 2001, above n. 4.

Table 2. Governance/Finance Structure to Labour Management Style
(Source: Gospel and Pendleton, 2001[12] (adapted))

Relational finance / Insider system	Market finance / Outsider system
Employment relations	***Employment relations***
Longer term relationships (permanent over casual)	Arms length relationships
More investment in training	Recruitment and layoff according to demand / more use of contingent labour
Wages fixed according to internal admin principles	Wages fixed by market principles / more variable pay
Firm specific incentives	Less investment in firm specific training
Compressed wage dispersion (smaller gap between executive and shop floor salaries)	Wide wage dispersion
Work relations	***Work relations***
Greater functional flexibility	Less functional flexibility
Product quality innovation	Radical product innovation
Fewer restrictive practices	More restrictive practices
Industrial relations	***Industrial relations***
More employee voice	Less employee voice
Internal representation systems	If union is involved – bargaining at single business unit and will tend to be adversarial
External multi-employer bargaining	

Thirdly, because we were particularly interested in the *quality* of employment systems (beyond their mere conformity with insider/outsider styles) we went beyond the Gospel and Pendleton typology and attempted to identify more specifically what we thought could be said to properly characterise ‘partnership’ style relations at the business enterprise level. Our task was made difficult by reason of the fact that in the extensive literature dealing with the idea of ‘partnerships at work’ there is very little common agreement on what the essential elements of such arrangements might be.[13] The discussion around partnership draws from an array of concepts, including the ‘mutual gains’ work of Kochan and Osterman[14] among others, and the ‘high performance’ ‘high involvement’

[12] *Id.*
[13] See, for example, M. Stuart and M. Martinez Lucio (eds.), *Partnership and Modernisation in Employment Relations*, Routledge, London, 2005; D. Guest and R. Peccei, ‘Partnership at Work: Mutuality and the Balance of Advantage’ (2001) 39 *British Journal of Industrial Relations* 207; P. Ackers and J. Payne, ‘British Trade Unions and Social Partnership: Rhetoric, Reality and Strategy’ (1998) 9 *The International Journal of Human Resource Management* 529; N. Bacon and J. Storey, ‘New Employee Relations Strategies in Britain: Towards Individualism or Partnership?’ (2000) 38 *British Journal of Industrial Relations* 407; R. Undy, ‘New Labour’s “Industrial Relations Settlement”: The Third Way?’ (1999) 37 *British Journal of Industrial Relations* 315.
[14] T. Kochan and P. Osterman, *The Mutual Gains Exercise: Forging a Winning Partnership Among Labour, Management and Government*, Harvard University Press, Boston, 1994; P. Osterman,

‘high commitment’ workplace literature of human resource management.[15] Generally the literature identifies an assortment of ‘principles’ and ‘practices’ which are taken to be indicative, if not definitive, of the presence of partnership relations. In a general sense it is clear that ‘partnership’ anticipates a new approach to employment relations (a new *form* of relations) based around co-operative rather than conflictual modes of regulation and interaction between the parties. It is also clear that there is an assumption to a degree that ‘partnership’ properly involves relationships between employers and trade unions (a form of social partnership), although there are undoubtedly partnership models which focus upon ‘individualised’ relations rather than collective styles.[16]

In seeking to identify broad indicators of ‘partnership’ we felt it was important to distinguish between a commitment to the idea of partnership in principle, or to the belief that the relationship could be characterised as a partnership in principle, and the actual practice of partnership. Asking questions about partnership at the level of principle allowed us to gain insights into whether the *concept* had any purchase in Australian workplaces. Examination of concrete policies and work systems would establish whether or not this principle was followed through into workplace practice.

At the level of principle, our approach was to ask whether respondents believed the idea was relevant as an accurate description of the approach taken by the company towards its employees. In order to gather information about possible partnership relations in practice, we examined material from the public record as well as internal policy documents such as Employee Handbooks, where they were made available or existed. We sought to identify the presence or absence of a number of indicators including the use of ongoing consultative mechanisms and the employment of high performance workplace mechanisms aimed at building trust and functional flexibility. Security of employment was an additional indicator that we looked for on the basis that mutual benefit is a significant aspect of stronger forms of partnership. This information is set out in Table 3.

Securing Prosperity: The American Labor Market – How it has Changed and What to Do About It, Princeton University Press, Princeton, 1999.

[15] J. Knell, *Partnership at Work*, Employment Relations Research Series No. 7, Department of Trade and Industry, London, 1999.

[16] See Ackers and Payne, above n. 13; Bacon and Storey, above n. 13.

Table 3: Indicators of Partnership

Principle
Respondents identify a partnership approach
Practice
Direct participation by employees or employee representatives in decisions about broader organisational policy issues
Alignment mechanisms – employee share ownership, performance pay based on organisational performance
Direct participation by employees or employee representatives in own work/ work processes
Flexible job design
Focus on quality
Participation by employees or their representatives in decisions about personal employment issues
Employment security
Performance management

Different combinations of these indicators may suggest different types of partnership, or different levels of 'strength' of partnership relations. One approach would be to think of two extremes in a continuum of possible co-operative arrangements.[17] At one extreme are arrangements which are based on co-operation that is mutual or reciprocal and involve capital as well as labour making concessions: the aim of such co-operation — or collaboration — is to bring gains to both workers and management. At the other extreme is a form of co-operation which entails acquiescence to managerial prerogative and a restriction of the range of matters which are jointly determined between the parties. Such acquiescence is presumably to further the business interests of the enterprise, in which employees clearly have a stake. Either of these forms might entail individual or collective representation of employees, although the first type is likely to be more consistent with union representation which seeks to advance interests that are at times conflicting with those of capital. There may be occasions in which union representation is consistent with an approach which is based on bypassing conflictual issues in favour of a focus on shared interests which can provide the basis for less adversarial, more co-operative relations. However, in most cases this is more consistent with direct, non-union representative mechanisms.

[17] See R. Mitchell and A. O'Donnell, 'What is Labour Law Doing About "Partnership at Work"? British and Australian Developments Compared' in S. Marshall, R. Mitchell and I. Ramsay (eds.), *Varieties of Capitalism, Corporate Governance and Employees*, Melbourne University Publishing, Melbourne, 2008.

Guest and Peccei[18] provide a somewhat similar categorisation of types of partnership arrangements in their empirical study of partnership in practice. They utilise the relational concepts of 'pluralism' and 'unitarism' to explain approaches based on a 'clear acknowledgement of differences of interest between capital and labour'[19] on the one hand, and those which 'explicitly seek to integrate employer and employee interests'[20] on the other. They add to these two categories a hybrid approach which 'combines elements of the two previous perspectives'.[21] Each of these approaches is associated with a different set of representative and human resource management practices. A pluralist approach would be more consistent with the use of a representative system, though not necessarily involving trade union representatives and often involving directly elected representatives. The emphasis is on various forms of indirect participation designed to safeguard and ensure an independent employee voice within the enterprise. This might include the use of works councils or other alternative employee representation mechanisms. These are sometimes used in combination with direct forms of representation such as work groups or employee surveys. The unitarist approach, on the other hand, might focus on financial incentives and shared ownership as the main mechanisms for aligning and integrating employer and employee interests within the enterprise, perhaps in association with direct employee participation mechanisms. Alternatively, it may also entail the use of human management strategies which focus on individual employee's 'psychic stake' in the organisation, reflected in their overall level of attachment, commitment and involvement in the organisation. Approaches of this nature involve 'high involvement' or 'high commitment' forms of resource management practices.

Far from being an exercise in mapping static characterisations, however, we were concerned with exploring the impact of changes in capital structure and corporate governance on labour relations and work systems. We were interested in whether changes in capital structure and corporate governance, which in most cases resulted in companies more closely resembling the market/outsider type, had any corresponding effects on the management of labour. The Gospel and Pendleton model suggests that companies that underwent a shift from a relational/insider type to a market/outsider

[18] Guest and Peccei, above n. 13.
[19] Ibid, at pp. 208-209.
[20] Ibid, at pp 207, 209.
[21] Ibid, at p. 210.

type would undergo a corresponding change in employee relations. We would expect to see a trend towards employment relations with features such as shorter-tenure for employees, less investment in company-specific training and a higher incidence of contingency-based pay systems. This, it might be anticipated, would be associated with more restrictive practices imposed on unions and greater adversarialism in management/union relations.

However, changes in labour management may also be the result of factors other than capital restructuring and alterations to corporate governance. For instance, we also observed how the changing labour market regulations of the time affected the nature of this labour reorganisation. It goes without saying that exogenous changes in the labour market, too, would impact upon company industrial relations. We would also expect changes in business management and human resource management trends to have an impact upon the employee management techniques employed. Whilst the case study methodology we adopted provides some insights into the relative impact of these, and other, causes of changes in employee management and labour relations within companies, it does not provide a method for measuring the effect of these dynamics. Instead, the methodology allows us to tell a story about the changes and, perhaps, to eliminate some factors from our assessment of the range of causes of change.

We were able to gain access to key senior company personnel (usually the company secretary, the human resources manager and/or other senior management figure) for the purpose of carrying out semi-structured interviews. In relevant cases we also carried out interviews with union officials. Between two and six interviews were conducted in each of our cases, with the greater number of interviews usually being carried out in the larger businesses. Prior to the interviews we carried out background research on each company from the public record, including textual analysis of newspaper articles, the company's annual reports, the company's website, and industrial instruments such as awards and employment agreements.[22]

[22] References to newspaper articles and other materials relating to the case study companies are on file with the authors and are not noted here in order to maintain the anonymity of the case study companies.

Our interviews were organised around a series of questions through which we were able to explore the core matters of our investigation. These included the company's relationship with its shareholders and with its employees, the nature of its employment systems, and the impact of recent changes in ownership or governance structure, or the impact of regulation, on these relationships and systems.

The selection of our case study businesses was made initially on the basis that the company had undergone a recent change in its ownership and/or governance structure. This was with a view to discovering what difference such change might make to the corporate governance/labour management nexus within the one business organisation. We added other companies to our set of studies in order to broaden the range of ownership and governance types beyond the large publicly listed company model. Table 4 describes basic relevant details of our case study companies. To protect the anonymity of the companies we have given them pseudonyms and left our descriptions of the companies unreferenced.

Table 4. Case Study Companies

Company	Type	Listed	Event
ResourceCo 1	Public	✓	Merger
ResourceCo 2	Public	✓	Merger
ServiceCo	Public	✓	Privatisation
EnergyCo	Private	×	Privatisation
CommCo	Private	×	No event
FinanceCo 1	Public	✓	Demutualisation
BiotechCo	Public	✓	ASX listing
FinanceCo 2	Public	✓	ASX listing
ManuengCo	Private	×	No event
ManufoodCo	Private	×	Merger/Takeover

ResourceCo 1 Case Study

1. Introduction

This case study tracks a major Australian diversified resource company as it underwent a significant merger. We consider the changes to the company's governance and ownership structure as a consequence of the merger, and whether there were any subsequent changes to employment systems. Our study took place in 2005. As such the study is a snap shot of the company up to 2005 and does not concern changes within the company which took place after that date. The company is referred to as ResourceCo 1.

The decade prior to ResourceCo 1's merger was a low point in the company's history. Throughout the 1990s, ResourceCo 1's profits were waning, its share price dropped and the company was struggling after a series of bad investment decisions. This lack of profitability was accompanied by turnover in the highest ranking managers, including the Chief Executive and Managing Director. In the late 1990s it began to take stringent steps in order to improve its profitability and competitiveness. It wrote off nearly $14 billion in bad investment decisions around the globe and began implementing an extremely controversial industrial relations policy which is the main focus of this study.

By 2000 the company had bounced back to profitability with a record $1.6bn annual profit helped by strong oil prices and a cleansed balance sheet. In 2001 the company merged with a British diversified resource company using a dual listed structure. The merger terms give ResourceCo 1 shareholders 58 percent of new entity and the other company's shareholders 42 percent. One of the main aims for the merger was to diversify its resource base in order to smooth out the effects of commodity price fluctuations for the company as a whole. A second aim was to gain savings from synergies of US$270 million after tax in 2002-03 and around a 4 percent value increase. A third aim was to increase investment in the company by large investment and hedge funds.

Before the dual-listing occurred, concerns were voiced by a coalition of unions and community groups, and by small shareholders, regarding a range of ethical issues, including human rights and environmental concerns. They were further concerned about the loss of control over the management of the company by Australian shareholders that the merger would bring about. Many – particularly trade unions - were also alarmed by the spectre of ‘savings from synergies’.

The share market viewed the merger in different terms. Between the last day before the merger was announced, and the extraordinary general meeting (EGM) to decide whether to merge the companies, the combined value of the merging companies had risen by $8.1 billion. At the Australian EGM, the merger proposal was supported by 88 percent of Australian shareholders who voted at the meeting after 5 hours of hostile questioning from the 1500 strong gathering.

The merger in itself was a massive undertaking. Contrary to union expectations, because of the complementary nature of the resource bases of the companies, ‘savings from synergies’ related to employment mainly resulted from the loss of managerial staff to reduce the duplication of functions. The company sought to align the core policies of its operations whilst maintaining high levels of business strategy autonomy for the managers of sites. This difficult balancing act between alignment and accountability on the one hand and autonomy on the other appears thus far to have produced good results for the company in relation to its profits and also its reputation. In 2005 ResourceCo 1 posted the biggest half-year profit in Australian corporate history, at $3.6 billion. It is one of the most dramatic turnarounds in modern Australia's corporate history.

2. Implications of a dual-listing merger

ResourceCo 1 chose to adopt a Dual Listed Companies (DLC) structure for the merger. These are effectively mergers between two companies in which the companies agree to combine their operations and cash flows, but retain separate shareholder registries and identities. The legal framework involved contractual arrangements to share the cash flows from each other’s assets. Under the arrangement, the individual companies retain their separate assets but align their operations and have two identical boards composed by the same directors. The companies pay equal dividends to their shareholders, and shareholders have equivalent votes in the decisions regarding the two companies, in line with the relative ‘weights’ of the two companies established at the time of the creation of the DLC. In the event that one company does not have sufficient earnings to pay the agreed dividend to its shareholders, there are arrangements for an equalisation payment from the other company.

The DLC structure was seen to have a number of advantages for ResourceCo 1. Dual listed mergers have been preferred over ‘takeovers’ by several Australian companies for a number of reasons: there are tax advantages because no tax liabilities are crystallised and franking credits can still be paid to Australian shareholders. Shareholders thus gain access to world earnings whilst retaining the advantage of franking credits. There can be significant cash savings in being able to gain the benefit of a merger without the takeover premium. The structure also made it possible to avoid various types of rights being triggered (e.g., options in debt contracts, rights of other companies involved in joint ventures), as would be the case in the event of a takeover or conventional merger. Further, management believed that the merged company would have better access to capital markets if it maintained listings in each market, since local investors were already familiar with the respective pre-merger companies and the companies could maintain their ‘reputational brands’. Indeed, a key advantage of a dual listing for an Australian company is that it gains a listing on a large overseas stock exchange and thus increased attention of research analysts, leading to greater investment by institutional investors.

What were the implications of the dual listed merger for the capital structure and corporate governance of the company in relation to our key questions? One of the major concerns raised prior to the merger was that the DLC structure weakens the position of shareholders and entrenches the position of board and management because the amount of assets they control is doubled, however, their accountability to either set of members is effectively halved. There is not the space here to address this concern in any detail, and we were unable to gain a highly accurate sense of direct shareholder influence before and after the DLC merger. Briefly, however, we can say that compared with other companies studied, shareholder influence was not felt acutely by management interviewees at the time that interviews occurred, which may give some credence to this concern.

We did not find, however, that the lack of direct sense of shareholder pressure was due to the DLC structure as opposed to other factors. For instance, we studied the company when it was enjoying a period of financial buoyancy. Shareholder pressure is likely to be felt more intensely in bad times than good. Commodity prices were on the rise at the time we conducted interviews. The company had been able to pay its shareholders generous dividends a number of times in a row. It may also be the case that the size and international nature of the company acts as a buffer for managers from shareholder pressure and negative publicity in any one jurisdiction from national press or national investors. On the other hand, this is likely to be mitigated by the fact that many of ResourceCo 1's largest investors are also very big and international in scope.

There were also concerns voiced from some quarters that dual listing would result in a lack of accountability to either jurisdiction and was part of a race to the bottom in relation to adherence to corporate governance standards. Lowered accountability would in turn result in lessened shareholder influence. To the contrary, however, we found that ResourceCo 1 has, since its merger, been an early complier with corporate governance standards, as well as an early adopter of Corporate Social Responsibility practices. It demonstrated compliance with all aspects of the Australian Securities Exchange (ASX) Principles of Good Governance early in the life of the Principles. Because of its international cross-listings, it has for some time been exposed to international corporate governance rules. Its Annual Report describes how its corporate governance differs from the New York Stock Exchange corporate governance requirements under s 303A of the Foreign Listing Rules. It adheres to the US Sarbanes Oxley Act regarding corporate governance matters. Indeed, the Chief Legal Counsel of the company stated that he believed that exposure to these international corporate governance standards and to the expectations of international investors due to cross-listings has resulted in reforms in Australia, such as the CLERP 9 (Corporate Law Economic Reform Program Act, 2004) reforms, not being as onerous for ResourceCo 1 as they have been on smaller, solely Australian-based companies. Similarly, the Vice President, Sustainable Development, stated a belief that British institutional investors, particularly Sustainable Investment Funds, have been far more proactive in probing the CSR reports and questioning the company's practices, compared with Australian investors. As a result, the company often undertakes to educate the Australian investment market, rather than reacting to investor pressure. Because of these numerous and complex factors, it is difficult to identify the DLC structure as a cause of diluted shareholder pressure.

Further, even before the DLC merger, ResourceCo 1's corporate governance and ownership structure resembled what Gospel and Pendleton have identified as a 'market-outsider' company, suggesting that it ought to have had a shareholder focussed corporate governance strategy both prior to and after the merger. Before the dual listed merger the top 20 investors were all institutional investors, with no investor holding more than around 15 percent, with thousands of much smaller retail investors holding the remainder of shares. Today, this has not changed markedly. The top 20 investors of the company on the Australian and London stock exchanges are large institutional investors.

It may be, however, that the merger, and the influence of international markets which followed, has had an effect on other factors within the company. In the next section, we examine labour relations in the company's Australian operations prior to and after the merger in order to consider whether the merger had an effect on the way in which labour relations are managed, and whether shareholder expectations in this regard changed over this period.

3. Industrial relations

Prior to the 1990s, the company had enjoyed a relatively stable relationship with unions which involved high union coverage and consultation by the company with unions over a broad range of issues. As part of broader efforts to cut operational costs and increase the profitability of the company, ResourceCo 1 implemented a labour relations strategy which brought it into severe conflict with unions. The deterioration in relations with unions began with the company's closure of a steelworks operation and a significant period of downsizing that occurred throughout ResourceCo 1's coal mining operations (an event not confined to this company). The relationship further declined with the introduction of individual contracts in its iron ore operations in Western Australia and a lengthy bargaining dispute at ResourceCo 1's Queensland coal mining operations shortly after.

However, the relationship with unions has not deteriorated uniformly across the company's operations around Australia. In some cases, the relationship has remained strong, although at times highly antagonistic. This is the result of the devolution of management which means that industrial relations are determined by operational managers rather than by the central bureaucracy. In this section, we contrast industrial relations in ResourceCo 1's Western Australian operations with those of its NSW operations to more clearly illustrate the difference in industrial relations management.

(a) The introduction of individual agreements in Western Australia

In the late 1990s the company's Western Australian subsidiary began a campaign to shift workers onto individual employment contracts and remove them from collectively agreed awards. This was driven primarily by competition with its biggest rival for international sales share and a recent decline in the world steel of price (a decline of 11 percent at the 1998 price negotiations) and declining demand. Until the late 1990s, ResourceCo 1 employed employees on terms and conditions set out by state awards and a collective enterprise agreement negotiated by unions. Only ResourceCo 1's managerial personnel were engaged on individual 'staff' contracts. This continuing commitment to collective arrangements made ResourceCo 1 unique in the region. Following the aggressive implementation of de-unionisation and individualisation strategies by competitors in the Pilbara region of Western Australia, by 1993, ResourceCo 1 was the only unionised operation in the Pilbara's iron ore industry.

In 1999, ResourceCo 1 introduced individual contracts on the ground that:

> [e]xperience with the existing industrial relations system at iron ore, including recent inter-union disputation, has undermined confidence in its ability to enable the ResourceCo 1 to progress the changes needed to increase competitiveness.

It was ResourceCo 1's perception that unions were impeding the implementation of necessary or desired changes. ResourceCo 1 also claimed that inter-union disputation and competition between unions for membership at ResourceCo 1 sites was undermining management's confidence in the unions' ability to work together to implement change. Further, there were minor suggestions by ResourceCo 1 that they would prefer a more direct employer-employee relationship. Despite the negative flavour of ResourceCo 1's stated motivations for the strategy towards unions, ResourceCo 1 was careful to avoid suggestions that the strategy was 'anti-union'.

Changes to state industrial relations laws made this shift to individualised agreements easier than it had been for competitors who had undertaken the shift around a decade earlier. It combined short Western Australian Workplace Agreements (WAWAs), which contained only 6 clauses, with longer contracts to regulate new individual working arrangements. WAWAs had been introduced by the conservative government under the *Workplace Agreements Act* 1993 (WA). Such arrangements were not yet available under federal labour legislation. The WAWAs set aside awards and collective agreements. Employees were offered a significant pay increase as an incentive to shift from collective to individual agreements.

Attempts by the relevant unions to over-turn the adoption of WAWAs through the courts, or to compel the company to bargain collectively were unsuccessful. An initial judgment held in favour of the unions, on the basis that the company's conduct had the effect of inducing employees to stop being members of a union, even if this was not the subjective intention of the employer concerned. In the final instance, however, the court accepted the evidence submitted by senior management of ResourceCo 1 that WAWAs were introduced on the basis that unions were hindering the introduction of necessary workplace changes and that WAWAs were seen as the best way to improve flexibility and efficiency. The court accepted that although union exclusion from the workplace was an objective, the WAWAs were not intended to stop employees being union members. Consequently, it found no contravention of the federal labour law and the unions' claim was dismissed.

By January 2000 approximately 40-50 percent of employees who were covered by the award had signed individual agreements. Many employees who signed staff contracts formally resigned from the union. This included many former union officials and activists, including 12 union delegates. Others ceased to participate in union affairs.

Whilst the Western Australian Industrial Relations Commission later handed down a new award to regulate the pay and conditions of employment of the union workforce, this did not result in widespread re-joining of the union by employees. Today, around 60 percent of workers in the region are employed on individual agreements.

(b) The introduction of individual agreements in the Illawarra region

The strategy put in place in Western Australia can be contrasted with that of ResourceCo 1’s industrial relations strategy in the NSW Illawarra region. The introduction of individual agreements in the Illawarra region has occurred in a very different manner. Individual agreements have only been offered on one site in the Illawarra region which employs a small number of employees. That site was closed around five years ago for cost reasons, and reopened under two years later employing workers on individual agreements. According to the company, these employees were only white collar workers and management. However, the site is surrounded by security and union officials reported that they are not allowed on site. The relevant union remains hopeful that they will be able to intervene to negotiate an agreement for this site at some point in the future.[23] Whilst the pay for workers on individual arrangements may be favourable compared with collective arrangements, the union believes that the lack of permanency and security in the jobs mean that employees would prefer employment at other sites with lower rates of pay. According to the union, the average age of mining workers in the area is 53. Retirement is available to workers aged 55. The union official interviewed argued that the age of workers means that workers are less willing to trade conditions for pay.

Indeed, all other sites in the Illawarra region are operated under collective agreements which provide for advantageous conditions when compared with the individual agreements offered in the Pilbara, for instance. (We were unable to gain access to the individual agreements in the Illawarra region.) These conditions are now compared.

[23] A collective Greenfields Agreement was subsequently negotiated for this site with blue collar workers on the collective agreement whilst management and white collar workers remained on a mixture of common law contracts and AWAs.

(c) Conditions provided for under Pilbara individual agreements and Illawarra collective agreements

Most collective agreements between ResourceCo 1 and the union between the years 2000 and 2005 are relatively similar and provide the union with strong consultation and recognition rights, and limit levels of functional and numerical flexibility. They give the union strong consultative rights over many aspects of the conditions of workers including ‘budget setting’, ‘business type changes that may affect employees earnings’, ‘numbers or rosters’, ‘15 year mine planning’ and ‘safety, environment or training initiatives’. Although a consultative committee or regular planning meetings are not provided for, the agreements provide the union with strong rights to information. Other clauses of the agreement provide for union/employees' rights to jointly determine shift changes, redundancies and other matters.

Although the collective agreements have some of the elements of high performance workplace systems, they are not consistent with human resource management approaches which set incentives for higher productivity rates on an individual basis. Collective performance bonuses are provided for if the mine achieves a certain tonnage rate. No performance bonuses on an individual basis are provided for and this bonus is restricted to permanent employees. Contractors are excluded from the bonus.

Whilst the majority of collective agreements provide for limited flexibility, the agreements at Greenfield sites provide far greater levels of functional and numerical flexibility and less consultation with the union over work arrangements. Whilst the Greenfield agreement provides for consultation with the union over key issues, such as retrenchment, the areas for consultation are not as extensive as in the majority of agreements. Union delegates are also recognised by the company, however, the content of the recognition is limited. The agreement is more concerned with aligning the interests of employees and the company through employee development and an incentive scheme. The terms of the incentive scheme and its operation do not form part of the agreement, leaving it to managerial discretion. Importantly, also, the agreement does not provide for employment security, although there are clauses outlining methods for termination of employment.

Despite the downgrading of union consultation and recognition rights evident in the Illawarra Greenfield agreements, they are much more comprehensive in this regard when compared with the Pilbara individual agreements. As discussed in the previous section, the Pilbara individual agreements provide very little detail, containing only six clauses. In the place of a tripartite instrument, the 'Staff Contract of Employment' and the ‘Staff Handbook’, which can be altered at managerial discretion, provides the bulk of the detail concerning the nature of the employment relationship and the work systems for workers in the Pilbara.

The Pilbara ‘Staff Contract of Employment’ covers employee's duties, hours of work, remuneration, leave entitlements, and so forth. The contract provides for temporal flexibility: 'circumstances [sic] may require you to work outside your normal hours to ensure that the full requirements of your role are met’. This can occur without additional remuneration in order to ensure that ‘the full requirements of your role are met’. It provides for functional flexibility by requiring that employees undertake duties as directed, commensurate with their skills and are liable to be transferred to other positions, operations or locations providing reasonable notice of such transfer is given. The contract also delivers cost flexibility: salaries will be reviewed annually and 'adjusted at the company's discretion' after assessment of company and individual performance. Finally, the contracts deliver greater spatial flexibility: it states ‘in some cases employees may be required to move between Newman and Port Hedland’. Individual annual performance bonuses are also provided for under the Staff Contract. These bonuses are determined pursuant to a salary review at the discretion of ResourceCo 1 line management.

(d) What explains the differences in approaches in Western Australia compared with the Illawarra?

As previously alluded to, the size of the company dictates that industrial relations are managed in a devolved fashion. Senior management informed us that although the company has a general preference for individual relationships with employees, operational managers are welcome to make the argument for maintaining collective arrangements on the basis of business efficacy:

> If an (operational manager) were to come to me and say we're doing individual contracts, as long as you think they've got sound HR and business reasons for doing that, you don't have a particular view one way or the other on that any more than if they decided we're going to work in partnership with the union and have a collective agreement. What they have to do is to have an effective and competitive workforce, and there are definitely ways of achieving that. The reality in that statistics, everywhere, tell us that if you move to individual contracts you'll have a much more effective and competitive workforce, and a happy one too. So if (a manager) said to me, in one of the reviews, 'we're going to collective bargaining, we're going to get rid of our individual contracts', I would question it, but I wouldn't stop it, if they could present… I'd be amazed . . . there might be some strange business where that would work but I don't know where it is, but I would be very open minded about it.[24]

The difference in the industrial relations approach by ResourceCo 1 in the Illawarra compared with the Western Australian subsidiary may be partly due to the different nature of the two commodity markets. Whereas iron ore produced in the Pilbara is entirely for export, coal produced in Illawarra is largely for domestic markets. ResourceCo 1's Illawarra subsidiary has a long-term contract with another of ResourceCo 1's subsidiaries. As a result, ResourceCo 1's Illawarra subsidiary is not operating in the same competitive market as ResourceCo 1's Western Australian operation. Having said that, there was a rise in commodity prices after the period of ResourceCo 1's experiment with the introduction of individual agreements in Western Australia due, primarily, to increasing demand from China. This has meant there is also less pressure on ResourceCo 1 to implement more aggressive industrial relations strategies at its Pilbara operations.

The strength of the union is a likely factor behind ResourceCo 1's industrial relations strategy in the Illawara area. Unlike the Western Australian area, there have never been significant tensions between unions in the Illawarra region. The union, which has the main coverage in the area, enjoys high union density and does not have any major union rivals. This strength is bolstered by its strong relationship with local communities. The towns which surround the mines in the Illawarra region are mining towns. The fact that workers live in the region with their families is a factor which increasingly distinguishes the Illawarra region from the more remote locations in

[24] For all interview references see Appendix.

which most mining takes place, such as those of the Pilbara in which a significant number of workers are now ‘fly-in fly-out’ workers. In those areas, mining towns have been virtually dismantled. Families live in more comfortable locations and contracts now frequently provide for workers to be flown to mines for intensive periods of work, and then flown out again. Unlike the Pilbara region, the workers in the Illawarra region live with their families in proximity to the mine. Managers, too, used to live in company housing next to the mines. This, at times, led to industrial disputes being fought on the streets of small towns. The close proximity of workers' families' residences to mines also has the consequence that workers are concerned with a range of stakeholder issues – such as environmental issues – which they may not be concerned with elsewhere, for the simple reason that environmental standards have a direct effect on their living standards.

Despite these mediating factors union officials believe that the relationship with ResourceCo 1 has become more strained since the merger. However, a union official interviewed for our project attributed current strain more to the impending change in industrial relations legislation than factors related to the merger: ‘Now that the new IR system is ready to come in they are very confident about what they're going to do in the future to us’.

Regardless of the growing confidence of the company identified by the union in relation to its industrial relations strategy, the union remains hopeful that it will be able to intervene in the future to negotiate a collective agreement at the one New South Wales site at which individual agreements for white collar workers and management have been introduced.[25] If the union is successful in re-collectivising, it will be against the global trend for ResourceCo 1, in which, according to its CSR reports, the percentage of the workforce covered by collective arrangements has dropped in recent years. Nevertheless, ResourceCo 1's CSR policy, if successfully utilised by unions and NGOs, may be a factor which could mitigate the individualising trend and preclude de-unionising strategies of the type conducted in the Pilbara. One of the results of the merger, and ResourceCo 1's cross-listing on various international stock exchanges, appears to have been its adoption of a more sophisticated CSR policy which includes ‘social’ indicators. The addition of social

[25] See above, n.23.

aspects to the CSR approach means that the company has opened itself up to greater public scrutiny regarding its human resource management practices. The Vice President, Sustainable Development, described this in the following terms:

> It's been an evolution. If I look back over, say, ten years, it started off very much as an environment agenda. Now I would say the environment for us, with the exception of climate change, [is] a well known and well managed aspect of our business that is not routine, but we have the skills and capabilities to manage it effectively. Whereas on the social side it is very much a new agenda for us. We've obviously always been dealing with those issues but we've not had to be in a position where we can publicly discuss and manage the pressure on those systems like we do now.

The company's internal CSR policy includes recognition of International Labour Organisation's (ILO's) 'Core Labour Standards', and the international sustainability indexes it is listed on assess the company's practices against labour indicators, including recognition of freedom of association and the right to bargain collectively, in addition to more detailed aspects such as 'Human Capital Development, and Talent Attraction and Retention'.[26] It remains to be seen how this potential vulnerability of reputation will be harnessed by unions, or whether the company's CSR policy will have a mitigating effect on the company's devolved, 'business imperative' driven management style, which appears to implicitly encourage individualisation.

In Australia, however, the pro-collective bargaining influence of social aspects of the CSR policy may be diluted by changes to Federal labour law which mean that the company can introduce individual agreements.

4. Conclusions regarding ResourceCo 1

At one level the study of ResourceCo 1 tells a reasonably straightforward story. In a period of poor corporate performance measured in economic terms, economic recovery and the restoration of investor confidence occurred to some extent at the expense of employment losses, job insecurity and very different working arrangements. Much of this was assisted by important systemic changes in labour laws throughout the 1990s and into the 2000s.

[26] Dow Jones Sustainability Index, http://www.sustainability-indexes.com/, accessed 26 October 2005.

However what we also see in the study of ResourceCo 1 is a complex mix of different pressures upon the company. Not all of these pressures are harmonious with the governance of the business for ‘shareholder value’ narrowly defined. The dual listed merger, rather than creating a greater ‘shareholder value’ focus, at the expense of other stakeholders, appears to have ushered in a period of greater commitment to CSR and softer relations with employees, although these may not be more union-friendly. As a consequence of the decentralisation of employee management, a variety of different employment systems are utilised, not all of which can be described categorically as antithetical to co-operative or ‘partnership-style’ relations with employees and their representative institutions. Inevitably these findings require us to look more closely at other issues to do with the presence of autonomy among business sites *within* enterprises, the relevance of regionalisation and its significance for trade union power.

This case study demonstrates the importance of product market conditions in particular. The main cause of the vastly different industrial relations at different sites appears to have been the different product markets of resources mined at the two sites. Where the product market was particularly volatile, labour law changes were more important and created essential opportunities for the company to individualise relations with employees within the scope of existing laws.

ResourceCo 2 Case Study

1. Introduction

ResourceCo 2 is one of the largest mining companies in the world and was formed as a result of the merger of two companies (one Australian and one UK) under a dual listed company structure in the mid 1990s. The company now has operations on every continent and its products include aluminium, coal, copper, gold, diamonds, and iron ore. The head offices are in London and Melbourne.

The dual listed companies' merger was novel, with only six other companies in the world operating under such a structure, and was the first of its kind involving an Australian company. The two companies had a long standing and close association dating back to the 1960s when the UK company had held around 90 percent of shares in the Australian based company. At the time of the announcement of the intention to merge, the UK company held 49 percent. The novelty of the proposal led to a mixed reaction from analysts at the time. However, most believed that over the long term, the shareholders of the Australian company would benefit from the exposure to global opportunities in commodities and from substantial 'hitting power' for making takeovers. The Managing Director of the Australian company said the dual listed merger reflected a global imperative and that mining companies had to 'grow to stand still'. The dual listed companies' structure was said to be the best way to globalise, to increase the companies' capacity for growth and to rationalise the relationship with the major shareholder. In particular, it was thought important that competition for limited resources and global mining opportunities was reduced.

Under the DLC structure, the companies would continue as separate companies, maintaining their own corporate identities, separate shareholder registries and share market listings. There was to be no change in the legal or beneficial ownership of any of the assets of either of the companies but rather a set of contractual arrangements and amendments to articles of association designed to ensure, as far as possible, that the two companies operated together as a single economic enterprise. Gradually the companies developed a common corporate identity, beginning with a name change soon after the merger.

The first major review of operations following the DLC merger focussed on exploration and aimed to cut costs across the operation. Exploration spending was cut in Australia, North America, and parts of Africa. If press commentary is an accurate reflection of general opinion, there seemed to be a fairly widely held view that cuts were more severe in Australia than elsewhere. In asserting the company's still strong commitment to exploration in Australia, the CEO at the time spoke of the commitment to developing coal projects in Australia provided the industrial relations environment allowed major productivity advances.

ResourceCo 2's first annual report as a DLC claimed that the company's main objective was to create long term value for shareholders; not just for the benefit of shareholders but also for local communities and the world at large. This approach to long term shareholder value remains but the emphasis on sustainability, communities and stakeholders has increased. The company's corporate publications report that the primary aim of the company is to create profit for investors by means of sustainable and ethical practice. Large, long life mining operations are the basis of this.

The company's CSR strategy now dominates its corporate approach. This strategy was adopted in response to pressure from a wide variety of activist groups, in an environment of growing opposition to the activities of trans-national mining companies. As one of the world's largest mining companies, ResourceCo 2 became the focus of concern about the impact of its mining activities on the environment and on human rights from trade unions, environmental activists and other groups. This exposed the company to higher levels of risk to its reputation.

The main response to the risks to the company's reputation was the adoption of comprehensive and sophisticated strategies around CSR. The adoption of these CSR policies has in turn led to increased scrutiny of the company's practices in all areas and has meant that the company has had to demonstrate how it is implementing its policies across the group and across the world. This has meant that although the company still operates largely through wholly or partly owned subsidiaries and through joint ventures, a degree of centralisation of control has occurred.

The board of directors is a standard 'outsider' board in composition. It has four executive directors and six non-executive directors. The shareholder register of the Australian arm of the company shows the holding of the UK arm (around 38 percent) but otherwise has no shareholders with beneficial holdings of more than five percent. The register is dominated by large institutional investors.

Regarding the influence of regulation on employment practices it could almost be said that the company has had an influence on regulation rather than vice versa. This is because the company pursued an individualised, direct relationship with employees, based on the use of individual contracts at a time when the regulatory framework provided for centralised wage setting via the arbitration system. The company was a foundational part of the movement away from a centralised system that has resulted in the less regulated, individualised regulatory framework that is in place in Australia today.[27] The company is no longer subject to legal constraints on its preferred industrial relations strategy but other influences can be observed.

2. Employment relations

One of the influences on industrial relations and employment practices in ResourceCo 2, at least at the level of principle, appears to be the dominance of its CSR strategy. The content of the CSR program is set out in policy documents that guide the way operations are conducted across the group. The content of this is, in part, set at the international level because of the company being a signatory to the UN Global Compact, supporting the UN Universal Declaration of Human Rights and the US/UK Voluntary Principles on Security and Human Rights. The rights of freedom of association and to bargain collectively are key elements of these types of regulatory instruments. These principles are translated into company policy in a human rights guidance statement for managers within the group. The company has declared its support for these rights. As a consequence, its earlier position of open opposition to trade union involvement is no longer available.

[27] On the role of the mining industry council, the Australian Mines and Metals Association and its major members in de-collectivising industrial relations in Australia, see S. Cooney, 'Exclusionary Self-Regulation: A Critical Evaluation of the AMMA's Proprosal in the Mining Industry' in *Labour Law and Labour Market Regulation: Essays on the Construction, Constitution and Regulation of Labour Markets and Work Relationships*, Arup, A., Howe, J., Mitchell, R., Gahan, P., Johnstone, R. and O'Donnell, A. (eds), The Federation Press, Sydney, 2006.

This is not to say, however, that the company has re-established collective arrangements in previously de-unionised sites. The union believes that the company is today largely pragmatic rather than ideological and that the company's strategy is one of ignoring the union except in strongly unionised sites. The union claims a degree of success in moderating some of the worst excesses of the de-unionisation strategy by means of activities such as shareholder campaigns. The union organised a high profile shareholder campaign in which resolutions calling on the company to adopt ILO standards of labour practice and to make a number of corporate governance reforms were put to a vote at one of the company's Annual General Meetings (AGM;s). Whilst the resolutions put to the AGM were defeated by the institutional vote, there was a significant degree of support for them and considerable negative publicity resulted. The company denies that the shareholder campaigns had any effect on the company's industrial relations strategies. The union believes, however, that the primary cause of the softer, more pragmatic approach is the moderating influence of the UK arm of the company, which was concerned with the international reputation of the company.

ResourceCo 2 is such a diversified company, operating across the world and across a number of different commodity markets and operational sites that there is scope for considerable diversity in its employment practices. As the information in this case study is based on published corporate information, it is, however, only of a very general nature and relates mainly to overall employment policies, although some distinctive approaches in individual sites are discussed where there is information available. The company discloses significant detail about its employment practices as a result of its commitment to CSR.

As would be expected in a mining company, occupational health and safety is the key focus of the company's 'people' strategy. Significant investments in training and process development are made with the aim of meeting the company's safety targets. The company's safety targets, and the extent to which they were met, are published in annual reports and in the company's annual sustainability reports. Executive bonuses in one of the companies in the group were recently withheld because the safety targets had not been met.

It is difficult to assess the extent to which the company emphasises long or short-term employment relations. By examining the contents of the relatively small number of collective agreements it can be seen that the company has a significant capacity to adjust the workforce to meet peaks and troughs of demand. A recent agreement, for example, provides that the company 'may use contractors, part-time or temporary employees on any work as required to meet the needs of the business'. In the current environment of a booming commodities market and skill shortages, however, the emphasis is on recruitment and retention, rather than workforce reduction. In one subsidiary company that is majority owned and managed by ResourceCo 2, the approach varies between sites. One site is engaged in a process of replacing contractors with permanent employees while another new site is utilising only contract labour. The average tenure of employees in this subsidiary company, according to the company's website, is 13.5 years, suggesting that this part of the company, at least, takes a very long term approach to the employment relationship.

Training is a key component of ResourceCo 2's overall employment policy, which speaks of the company's belief in 'enabling employees to develop to the extent of their abilities' by means of regular performance reviews designed to improve skills and competencies, undertaking education and offering professional development opportunities within the group. The application of this policy will vary across the group but many of the companies appear to have apprenticeship and graduate training programs, which offer a wide range of both specific (such as 'open cut examiner ticket' training) and general (such as effective negotiation skills) training and provide financial and other support for employees' self education.

(a) Direct and individualised industrial relations

ResourceCo 2's overall approach is to emphasise the importance of a direct relationship between the company and its employees. As indicated earlier, the pursuit of this individualised relationship, free from the constraints imposed by regulation or relationships with trade unions has been an important part of the company's industrial strategy since the 1980s. The company pioneered the individualised employment relationship with the union declared a third (and unnecessary) party during the 1980s and 1990s in a number of key sites within Australia.

In the context of lower commodity prices, the company sought to improve productivity through the restructuring of its work practices. Some of the reforms included the introduction of 12 hour shifts, elimination of overtime and other payments, annualised salaries, use of contract labour and multi-skilling. In some sites, the company initially tried to introduce the changes through the established centralised arbitration system but then, in the face of union opposition, proceeded to offer individual contracts with increased salary (sometimes as much as $7000 more per annum) to staff willing to move from the award system to so-called staff employment. In one of the many cases heard by the Australian Industrial Relations Commission about these attempts, the Commission said that the company's actions discriminated against award employees (those who opted to remain within the award system) solely on the basis of their choice to be represented by the union and to bargain collectively. The company made it clear during proceedings that it considered staff employees to be more valuable to the company than those employed under award conditions. The company argued all along that its strategy was about productivity and efficiency while the union declared it to be ideologically based.

The company's in-principle approach has changed somewhat as a result of the pressure applied by local and international trade unions over its de-unionisation attempts and its subsequent adoption of CSR as an overriding corporate strategy. ResourceCo 2's overall policy in relation to freedom of association and the right to bargain collectively is contained within its broad policy statement and asserts that the company recognises the right of employees to choose whether or not they wish to be represented collectively.

In addition, this policy statement contains a list of industry and international instruments that the company supports including the ILO Declaration on Fundamental Principles and Rights at Work and the OECD Guidelines for Multinational Enterprises which contain the strongest statements of freedom of association and the right to bargain collectively. The OECD Guidelines go beyond the right to representation and include provisions about engaging in constructive negotiations, providing facilities to employee representatives as necessary to facilitate collective agreements and providing information necessary for meaningful negotiations. This commitment represents a significant change from the company's earlier industrial relations practices which were focussed on union exclusion and the individualisation of the employment relationship.

Looking at company practice, a review of the company's industrial instruments[28] reveals that of thirteen agreements nine were union agreements. Clearly the company is engaging in enterprise bargaining in accordance with its declared commitment to such. It is noteworthy though, that many of the union agreements provide for the sorts of conditions that were the subject of the earlier disputes. These include twelve-and-a half hour shifts, annualised salaries, company rights to contract out (or in) labour and prohibitions on demarcation in job roles. Some of the union agreements expressly allow employees subject to the agreement to opt for either staff employment or to sign WAWAs. Additionally, because of the earlier activities of the company in establishing a direct relationship with employees, many sites operate in a relatively union free environment. ResourceCo 2 has around thirty operations around Australia and the fact that there are only nine union collective agreements may be telling of company practice in relation to collective bargaining. According to the union, it is only really the coal operations that are unionised in Australia now. The union says that union-busting during the 1980s and early 1990s, combined with a large number of retrenchments, took its toll on union membership.

In terms of voice, most of the agreements have no express requirements that the company must consult with the union or employees about employment matters, although a couple do include obligations to consult with the union and employees about major change. However, the union representative interviewed for the project reported that the company's practice tends to be one of allowing things such as site meetings to occur in unionised sites, even if such things are not explicitly provided for in the agreement.

[28] Agreements examined were concluded during the period 1999 – 2005. These included union and non-union agreements. Only Australian industrial instruments were examined.

(b) Partnership and high performance workplace systems

The company has programs operating at a number of its sites which are aimed at increasing employee voice within the company, either through involvement in teams or involvement in the wider business. It operates a hotline for confidential concerns that individual employees may have.

ResourceCo 2 utilises a variety of work systems and, as indicated earlier, has moved away from the practices that were a feature of the award system. Where collective agreements operate, the company is given a very broad capacity to utilise employees in any role within their sphere of competence, according to company need. Employees may be required to undergo training to enable them to perform new functions. Company presentations to the market often emphasise the flexibility of its workforce.

The company's CSR reports describe an approach that could be consistent with a partnership-style relationship. They speak of mobilising the whole workforce in pursuit of the same goals by involving employees in the business; giving them explicit business information; seeking their views on the best way to achieve work outcomes;and actively collaborating on the achievement of change, whether in production processes or aspects of cultural change. Company publications refer to this mobilisation of the whole workforce in pursuit of common goals as a key to optimal business performance. This mobilisation is predicated on the involvement of employees in the business.

However, there are some elements in the company's earlier strategy that do not appear to be consistent with a partnership approach. The first of these is the way that the company went about uniting the workforce behind its business goals in the early years. A genuine partnership arrangement should be underpinned by a strong sense of employment security. Yet, the company's strategy was assisted in some ways by the deliberate undermining of employment security. Declining commodity prices and greater competition created a sense that change was necessary if the company was going to be able to survive. Secondly, while the company relied extensively on the notion of trust (and this is an element in partnership style arrangements), it has been suggested by academic commentators that this attempt to create trust was undermined by the selective provision of information. Additionally, the type of trust required of employees appeared to be that required of someone completely dependent on another ("I trust that the company will look after me") rather than that underpinning more equal and open relationships.

This does appear to have changed, at least in part, because employment is more secure in an environment of booming commodity prices driven by demand in China. As previously indicated, the company does now emphasise consultation and the provision of information as a key part of its human resources strategy.

A caveat on the question of partnerships is that despite the fact that the notion of partnership plays an important role in the company's overall CSR strategy, at no time has the company ever identified itself as working in a partnership style relationship with employees or the union. The company describes its relationships with the communities affected by its operations as being characterised by mutual respect, active partnership and long term commitment. The company also approaches its relationships with key civil society groups and stakeholders by way of a partnership program. These partnership arrangements reflect the company's approach to CSR, which is to understand the expectations of key stakeholders and to engage with them to ensure that expectations are met. The company produces a significant amount of information about how it approaches partnership and includes lists of organisations with which they work in partnership. References to employees or trade unions do not appear anywhere in these documents. Thus, while aspects of the company's practice may resemble partnership, it is clearly not a term the company would use to describe the relationship it has with its employees.

The company uses a number of approaches consistent with high performance workplace systems. Parts of the company have implemented Six Sigma and lean production methods. Other corporate publications describe programs aimed at establishing 'open communication flows' via 360° feedback mechanisms, and increasing skill development. This high performance approach is not new. The Australian arm of the company had been seeking higher levels of productivity and flexibility from the workforce since the 1980s. The company sought to move employees from an award system that contained many restrictions on work practices to one where employees would be multi-skilled and would work without demarcation of trades (functional flexibility). It introduced annualised salaries and emphasised payment for the job rather than by time. Working hours were increased with a standard shift increasing to twelve hours. Performance review and pay was introduced based on assessment of personal effectiveness by supervisors and the management structures in many operations were flattened. Individual accountability became the paramount value within the company and this, combined with the desire to avoid the restrictions of Australia's centralised industrial relations system, led the company to seek an individual relationship with each employee rather than one mediated through the union.

These measures are very similar to those found in current industrial instruments and reported on in the company's CSR reports suggesting that there has not been much of a change. However, there is one area where the company does seem to have changed its approach and that is in the area of employee consultation and job control. Academic commentary at the time suggested that the reforms were underpinned by a strong belief in leadership and managerial prerogative. The Australian Industrial Relations Commission found that in some sites, reforms were introduced in an environment of controlled and selective distribution of information designed to influence employees' choice.

In the absence of consultation mechanisms and some level of employee control, high performance measures such as those introduced by the company in the 1980s could be characterised as a 'low road' approach that produces productivity increases by reducing labour costs. It does appear that there has been a shift in this aspect of company practice. The company now emphasises consultation with employees. Management systems in all operations must address mechanisms for consultation and dialogue with employees. The latest CSR report notes that communication with employees was one of the key areas in which work across the group was focussed during the previous year. Work systems, such as the lean manufacturing system used in parts of the business, are based around a certain level of job control by, and input from, employees.

3. Conclusions regarding ResourceCo 2

ResourceCo 2 is a typical example of a company with an 'outsider' governance structure. Its board is composed of four executive and six non-executive directors, and it has a highly diffused pattern of share ownership. Prior to the merger with its UK partner, the Australian company had forced through cost re-adjustments by using extremely radical labour relations policies. Subsequently these types of policies were sanctioned through labour law changes by both State and Federal governments. Nevertheless, since the company's merger, its radical approach to its dealings with its workforce appears to have come to an end. The company and its subsidiaries now operate under a variety of work systems, some of which involve dealings with unions and some which do not, but there is no indication of a further rolling out of the company's former de-unionisation strategy.

Once again the complexity of this situation requires further examination. There is some suggestion that the break from the company's radical labour relations approach was due to pressure from its UK partner concerned about the threat to the company's reputation due to negative publicity from union-shareholder campaigns at company meetings and in the media. But there are other possible explanations. Probably the most important of these has been the revival in recent years of high profitability in the resources sector in which the company trades. A second important factor is likely to be the general weakness of trade unions, and hence their willingness to comply with managerial changes to work systems for flexibility and efficiency gains.[29]

[29] This position may be used to describe a 'partnership arising out of union acquiescence with enhanced managerial power rather than a 'maturing' of employer and employee attitudes in the pursuit of 'mutual gains': see Mitchell and O'Donnell, above n.17; and J. Kelly, 'Social Partnership Agreements in Britain' in M. Stuart and M. Martinez Lucio (eds.), *Partnership and Modernisation in Employment Relations*, Routledge, London, 2005.

ServiceCo Case Study

1. Introduction

This case study of ServiceCo centres on the employment and labour relations changes that resulted from its privatisation. ServiceCo's privatisation came early in the string of privatisations of state owned enterprises which occurred in the 1980s and 1990s. In the 1980s the leading role of the state in fostering national development through public investment and the direct provision of many services was significantly, although not consistently, rolled back. The oil shocks of the 1970s put state owned enterprises under strain and caste doubt on the efficacy of Keynesian solutions. There was a new emphasis on the idea that governments do not have superior information to the private sector. Further, it was recognised that interventions designed to overcome the failures of markets could produce their own failures: regulatory failures. As Euan Morton puts it:

> Regulatory failure and the collapse of centrally planned economies engendered renewed faith that competitive markets were (if nothing else) less imperfect than alternative institutional mechanisms for allocating resources. The ideas of classical economists challenged and triumphed the Keynesian orthodoxy. The tide shifted.[30]

The rollback was, in summary, based on the following rationales:[31]

1. Markets are flexible and adaptable. Market signals allow governments to respond more quickly and effectively.
2. Markets coordinate and transmit large amounts of information to individual buyers and sellers.
3. Managed markets can be established by governments to create incentives.
4. Competitive markets are more likely to be efficient and less subject to capture by vested interests.

Privatisation provided an important vehicle for countries to redefine the core business of government and, along the way, substantially reduce public debt levels. The financial lure of privatisation was often reflected in the substantially higher value

[30] E Morton, 'Economic Reform of GBEs' in B Collier and S Pitkin (eds.) *Corporatisation and Privatisation in Australia: A Collection of Papers Examining Legal, Economic and Policy Issues*, CCH Australia Ltd, 1999, at 51.
[31] From M Keating, *Who Rules? How Government Retains Control of a Privatised Economy*, The Federation Press, 2004, at 11.

often ascribed to assets by the private sector relative to their value as state owned enterprises.[32] This was not the case, however, with ServiceCo, which was struggling at the time that its privatisation was first mooted by the Australian Labor Party (ALP) government.

A number of significant factors preceded the privatisation of ServiceCo. The primary factor may have been its increasing levels of debt. At the same time, the governing ALP underwent a major ideological shift which was reflected in the floating of the Australian currency and the corporatisation or privatisation of a number of state owned enterprises. The increasing conflict between ServiceCo and the unions, making the company politically unpalatable, also impacted upon the decision to privatise. These three factors are now considered in turn.

2. Corporatisation and privatisation

Throughout the 1970s and 1980s, ServiceCo's debt levels grew. The 'oil shock' of the early 1970s ended a period of sustained profitability for the company. The company ran at a loss between 1980 and 1984 and reviews of ServiceCo by consultants resulted in reorganisation, rationalisation and increased employee productivity. However, losses continued to be made, and in 1989 an enquiry was held into ServiceCo's debt levels. It was concluded that injections of equity were necessary if the company was to meet the investment programs essential for it to maintain its competitive position.

Reflecting an ideological shift away from state control of the economy, the Labor government enacted a number of changes to the company's governance, which provided it with greater autonomy and greater operational freedom. In the 1980s, the Guidelines for ServiceCo's operation allowed the board of directors increasing autonomy while still involving the Minister in financial target setting and corporate planning. In 1989, commitment to control of financial target setting and corporate planning was, in principle, abandoned by the government. A decision was made to allow the sale of 49 percent of ServiceCo. The decision was conditional upon proceeds from the sale being invested in public infrastructure.

[32] E Morton, above n. 30, at 52.

After its partial privatisation was announced, ServiceCo's financial situation continued to deteriorate. In June 1990, ServiceCo posted an operating loss of A$125.2 million compared with a record profit a year earlier of A$177.2 million. In April 1991, Service Co announced that it would lay-off from 3500 to 5000 employees because of continued operating losses**.** It forecast an operating loss for the fiscal year of $350-million. Whilst its rising debt levels were an impetous for privatisation, critics argued that launching a privatisation program in the middle of an economic slump, not long after a crippling strike, was ill-advised. As a response to these concerns, the privatisation of ServiceCo was delayed.

One of the reasons identified for the company's lack of profitability was its inability to offer domestic services. In 1992, the Commonwealth Government announced that ServiceCo would purchase a domestic service company. The merger occurred in September 1992, resulting in job losses through voluntary retrenchments and redeployments of 1835 positions. The relatively generous outcome of the merger process for the remaining employees, according to one commentator, smoothed the transition in terms of industrial relations but did not result in significant productivity improvements being achieved.

In 1992, also, an Act of parliament was passed that controversially allowed for the 100 percent sale of ServiceCo but restricted its foreign ownership to 49 percent. A British company bought a 25 percent stake in the company in 1993; however, further sales were put off due to the continuing losses being made by the company. In 1995, the sale of the remaining 75 percent of ServiceCo occurred through a Public Share Offer. It was the third largest public float in Australian history and the government's second largest ever privatisation after its gradual sell-off of the Commonwealth Bank of Australia. 500,000 investors registered an interest in obtaining a prospectus, roughly 40 percent of whom had never previously invested in shares. The share price was far lower than that paid by the British company in 1993 to buy a 25 percent stake. However, the British company said it was not concerned, because that stake came with 3 seats on the board.

One of the reasons for this low price was the continued volatility of ServiceCo's earnings. At the time of its float in 1995, it was observed that ServiceCo's earnings tended to be more volatile than those of many of its regional competitors because of its high level of debt to equity. In 1995, if all non-cancellable operating leases were counted as debt, ServiceCo had a gearing level of about 70 percent. This meant that a one percentage point loss of international market share would chop $48 million from net profits. Because of this volatility of potential earnings for investors, the shares were offered at a hefty discount.

Whilst the sale of ServiceCo was a momentous event in Australia's industrial history, it did not significantly change ServiceCo's day-to-day operations. By the time of its privatisation, ServiceCo was already acting in a price sensitive, competitive environment. Thus, the story of ServiceCo's privatisation is the story of marketisation and re-regulation, as opposed to deregulation. ServiceCo has always operated commercially. Because it operated in highly competitive markets, ServiceCo was becoming indistinguishable from its private competitors and it had largely ceased to fulfil any public purpose, except, perhaps, an employment role. The most significant difference flowing from privatisation was the increased ease in raising capital and undertaking new investment.

3. Changes in corporate governance and management

ServiceCo has undergone a transition from a relational/insider company to a market/outsider company. Ownership is now diffuse, with around 30 percent of shareholders holding only small numbers of shares and its larger shareholders holding not more than 6 percent of shares each since the sale of a major interest by the British company. Whether this has any real impact upon ServiceCo's operations is hard to say, however, as according to the Assistant Company Secretary, small investors tend to be less vocal than institutional investors and rarely raise concerns over industrial relations issues. Managers characterised the time-lines for strategic planning and reporting as both short-term and long-term. The nature of the industry in which the company operates is, perhaps, more influential than its ownership structure in determining the time horizons of the company, and any resulting pressures on employees.

On the one hand, company managers appear to feel significant pressure from shareholders to produce profits and earnings in the short-term. Because ServiceCo operates in a particularly volatile market, it presents a challenge to investors. The industry in which ServiceCo operates is highly cyclical: it follows the world economic cycle closely. Recession affects it badly, and the industry is also extraordinarily sensitive to political events. When the Gulf War broke out, it took one of its main competitors just three days to slip into an annualised loss situation. Because of this, listed companies in this industry are highly volatile stocks. ServiceCo's British counterpart, for instance, which is a good performer for the sector, is one of the most volatile stocks on the London exchange; it habitually trades at a lower price-earnings ratio to the London market average. Because of this, investors tend to trade according to the cycle; that is, in the short-term. Our interviews with managers suggested that the managers felt pressure quite acutely to produce results in the short-term. Managers of other companies studied seemed better able to buffer themselves from these pressures through various investment relations strategies.

On the other hand, because of the high cost of operational assets held by the company, as well as the complexity of the regulatory environment, planning must also be long term. Operational assets are ordered months, and sometimes years, in advance of their delivery and are usually purchased using debt finance. Financial planning for their purchase must occur well in advance of delivery. New business opportunities for the company are also highly contingent upon government support and bilateral negotiations with comparable companies overseas and their governments, which take many years to conduct. Thus, the company must have a long-term strategic plan to follow, at the same time as remaining responsive to fluctuating demand and component commodity prices.

As a result of these various, contradictory pressures – short-term pressure from investors, long-term debt arrangements, long-term relations with suppliers of major components, on-going relations with customers - it might be said that the board of directors and senior management of ServiceCo continue to suffer from 'multiple agency problems': the problem of acting as the agent for too many principals. One of the justifications for privatisation was that the managers of state owned enterprises were subject to too many influences. It was said that influence from government distracted them from the task of serving the public or their consumer. Government often required that state owned enterprises serve political goals or broader national economic goals, for instance, boosting employment figures, rather than running an efficient business. It was argued that "[t]he existence of multiple and conflicting goals and the proclivity for political intervention renders … management virtually unaccountable for the achievement of any objectives".[33] One of the impetuses for privatisation was the view that addressing principal-agent relationships is far more straightforward in the private sector where senior management can be compensated on the basis of corporate value. According to this view of the operation of companies in a competitive market, 'private firms are closely monitored by debt and equity markets on a daily basis with the risk of takeover or liquidation for poor performance'.[34]

However, the ServiceCo case study illustrates that where formerly government owned companies remain highly regulated, privatisation does not overcome these multiple agency problems. The peculiar status of the company – it remains somewhere between public and private, despite its formal privatisation - impacts upon its management in ways which are often time consuming and costly. For instance, as a result of the 49 percent limit on foreign ownership two full time people work on the share registry to ensure that the proportion of foreign ownership does not exceed the legal limit. The fact that until 2005, the company's constitution provided for two representatives of the British company on the board of ServiceCo gave rise to concerns from institutional investors regarding corporate governance as this meant that the number of non-independent directors was five. It is unclear to what extent this concern resulted in under-investment.

More so than regulation, perhaps, the status of the company as a 'national flag carrier' also places constraints on management. The Assistant Company Secretary said, 'I don't believe that we make all of our decisions in isolation of the government; we can't. We have to show that we are the national flag carrier'. According to managers, the iconic status of the company places it under the scrutiny of media and the

[33] E. Morton, as above, n.30, at 54.
[34] E. Morton, ibid.

government. This restricts the range of industrial relations and human resources strategies available to management:

> The board is mindful to the extent that we obviously keep jobs in Australia where we could probably be outsourcing 5,000 jobs elsewhere. We needn't [service particular places] but we do because the government wants it, it's not a profitable route. But on the same token a [ServiceCo] board can sit before the government and ask for an aviation security and policy review. It can also ask for some consideration on a specific route. So we obviously try and demonstrate what we can do as a company for the Australian community with the hope that there will be consideration of our needs. On a day-to-day operational basis the government doesn't need to be involved in our strategy, but we obviously do consult with the government over major issues.

At the board level, this results in a high level of monitoring of union relations. The board receives a monthly report on industrial relations, including any bargaining which is taking place. This is a very high level of board monitoring of union relations compared with other case study companies.

This pressure is felt not only by management. The iconic status of the company and the extra attention it receives from government, the public and media is both a benefit and a potential hindrance for union power. On the one hand, unions can use management's sensitivity to negative publicity to their advantage by employing the threat of action as leverage in negotiations. On the other hand, union interviewees felt that industrial action which harms the company is also viewed in extremely negative terms by the public, thus limiting the public support the union is able to call upon in a dispute.

4. Industrial relations changes leading to and following privatisation

Whilst, in the pre-privatisation period, ServiceCo was used as part of a government strategy of boosting employment levels through state employment, this did not mean that relations with the union were always harmonious. The company had a turbulent industrial relations record. It has been estimated, for instance, that between 1978 and 1989 there were 69 separate industrial stoppages, which severely disrupted the companies operations. During the 1980s the company was used to reinforce wage restraint under the government accord with unions. The company's costs exceeded those of many of its Asian competitors, but its salary rates were seen as well below market rates. At a time of international industry expansion, wage restraint was blamed by a new CEO for reducing ServiceCo's ability to attract new management staff. Wage restraint was also blamed by business analysts on overworked engineers and maintenance crews growing increasingly militant. Further employment problems arose from two decisions made in 1982. One was to cut apprentice levels and the other to drop its commercial cadet program, which delivered the present crop of senior executives. As a result, there were problems with succession planning which was partially addressed by the launch of a graduate training centre in 1989. By this time, though, there were complaints of under-management. By 1989, ServiceCo was three times bigger than during its big organisational change in 1981, but still had the same number of top executives and small pool of potential successors.

In 1989, twenty-six unions had members employed by ServiceCo. In the lead up to privatisation, the position of management hardened towards unions. It has been argued that the starkest example of this new attitude was the company's refusal to accede to the demands of a union that represented only a small group of employees, representing a small wage cost. However, the industrial power of the union constituted a significant incursion into managerial prerogative, and thus the company was determined not to give in to union demands. A protracted dispute followed, and in 1989, the government intervened to support management and break the industrial dispute. This marked a significant change in government relations with the company, for although it may have enforced wage restraint, the government had traditionally encouraged harmonious relations with unions.

Despite the perception by management that the strategies available to them are restricted by public expectations, it is our analysis that the biggest effect of privatisation was felt by employees. In 1997, the CEO announced that he would seek to reduce personnel costs by 20 percent over four to five years. (At that time personnel costs were 29 percent of total costs, whereas the industry average was around 30 percent.) The CEO emphasised that the culture of the enterprise had to change. Employees would be required to focus on reducing costs and improving efficiency in a fashion which, according to the CEO, was not required when ServiceCo was government-owned. In the following years, announcements of further staff cuts became a regular event. In early 2001, for instance, ServiceCo's new chairwoman, announced staff reductions, the need for which, it was argued, arose directly from the competitive environment. The staff reductions announced amounted to the loss of approximately 1500 positions over six months. In its 2004 half yearly results ServiceCo announced that a further 3.5 percent reduction in fulltime employees had occurred as a response to the Iraq War and SARS.

In May 2004, as part of this strategy of cost reduction, ServiceCo announced the launch of a new, lower-cost arm of the company. The CEO made a media statement which stated that the new arm would operate at a lower cost than its major low cost competitor based on lower labour and supply costs: "[t]his confidence is based on certified agreements [it] has with its staff and Unions and contracts already signed with suppliers." The creation of a new low cost arm was combined with various other restructuring strategies aimed at reducing numbers in the core workforce. One manager described this strategy as follows:

> By using third party labour hire, third party part timers, a casual pool, you know, we've managed to start to chip away at the rate issues around the core workforce. So now we have this peripheral workforce and we've got, you know, a smaller expensive core if you like. And that pretty much has been the strategy over the last five or six years because we simply cannot maintain that cost base and make a buck.

According to this manager, the purpose of this strategy is not to reduce the bargaining power of unions, but simply to match the constitution of the workforce with the needs of the company:

> It's not about the bargaining process or our ability to put pressure on those employees. It's about us being able to match our workforce with the work that we need to get down. [This strategy allows us to] employ these people on lower base rates but still pay them the same allowances and the same penalty rates and whatnot. So the only differential is the base wage rate. But the double whammy is it gives us flexibility to match resources to assets much better than we were able to do. Before, everyone was a full time permanent employee and you just didn't get employed any other way.

5. Partnership relations

The ServiceCo case study provides a good illustration of the complex nature of partnership relations, particularly in an organisation that employs close to 40,000 workers. Managers of the company said that there was, in principle, a partnership relationship with employees, although the relationship was not perceived to be straight forward. Management appears to be finding the role of unions increasingly frustrating, not so much from an industrial relations perspective, but because it frustrates direct human resource management. Management described the following strategy:

> The company and its employees are almost the same thing, but employees are a component part of the company, obviously. However, I have obligations to contribute to a return on cost of capital which is not necessarily just employee driven.

Management sometimes found it difficult to separate partnership with unions from partnership with employees. For instance, the Company Secretary said:

> It's probably sometimes one and the same given, you know, you've got 38,000 employees, around 37,000 of which are unionised. I think [ServiceCo] tries. I don't think the employees see it as a partnership. I think they see it as them and us. You know, you've got management which sit up here on this floor and then sort of bucket the money and, but they've got poor working conditions. However, there's such a high retention here at [ServiceCo]. Plenty of people have been here for so long that I think that there is probably underlying quite a good relationship.

By 2004, thirteen unions had members at the company and were involved in enterprise bargaining with the company. Relations with unions vary from union to union, depending mainly on the militancy of the union. When asked whether there are partnership-style relations with the relevant unions, the Assistant Company Secretary said:

> I think with some of them there are because some of them are actually quite proactive and they want to, I think they want that outcome for their people . . .

One union official interviewed was prepared to characterise the relationship as a partnership at times, but not at others. For instance, the union would work in partnership with the company to determine training requirements, but not in negotiations over Enterprise Bargaining Agreements. Another union official interviewed, who came from a more militant union did not identify the relationship with the company as a partnership.

Regardless of the opinions of employees, other indicators suggest that the relationship with employees could be described as a partnership. For instance, ServiceCo willingly enters into collective bargaining with more than thirteen unions and has not entered into the same kinds of 'union breaking' activities undertaken by other companies studied. Despite recent attempts to develop a 'dual workforce', ie a 'core', permanent workforce, and a more flexible 'peripheral' workforce, negotiations with unions have continued in 'peripheral' arms of the business. Lower labour costs in the new major low cost arm of the company were negotiated with unions, rather than through union avoidance strategies.

ServiceCo has also introduced a number of measures which come under the auspice of 'high performance workplace systems'. For instance, ServiceCo has introduced a number of employment practices to unify the interests of employees and the company. The employee share ownership plan, first provided for in its 1995-96 Enterprise Agreements, began at the time of privatisation and initially, all employees were entitled to $500.00 worth of free shares; and 'subject to the company reaching a performance target based upon an acceptable return on shareholders funds, a further $500.00 of free shares'. According to one of the managers, this was an attempt by the existing CEO to 'teach employees what being a big publicly listed company was about and also to give them some personal experience of share ownership'. This scheme is now being parred back on the basis that it was not achieving its aims. Performance incentives are also provided to most employees. These differ in nature and extent between segments of ServiceCo's workforce. At the executive level, individual at risk pay varies from 10 percent to 30 percent. For other segments of the workforce, bonuses are set through a group trigger. In other regards, however, there is low individual pay flexibility. Pay increases depend on job and level classifications which are negotiated with unions.

In addition to representation through unions, the company utilises a range of direct communication methods with employees. The company runs an employee engagement survey every two years to gauge the attitudes of employees. The company also communicates the financial results and strategies of the company to its employees through two sets of 'roadshows' a year. This is an opportunity for employees to ask questions and communicate their views about the strategy. Employees can also email their concerns through an email service set up for this purpose. An e-newsletter is sent to employees every Friday.

Other indicators of high performance workplace systems, such as temporal and functional flexibility, were not evident in enterprise agreements or other policy documents examined by researchers for core workers, but were increasingly present for peripheral workers. For instance, all agreements for core workers provide that ServiceCo may only vary shift lengths after adequate consultation and negotiation with the union. Penalty rates for over-time continue to apply and clauses which state that 'if the company varies an employee's hours of work, without agreement with employees or the union, the variation of hours must not result in financial disadvantage to the employee' are common-place in agreements. In comparison, an agreement with unions in a peripheral arm specifies that 'the normal roster cycle may be varied by the company to meet business needs – after consultation with the Engineering Consultative Committee (ECC)'. 'Consultation', here, appears to differ from 'negotiation,' although the agreement appears to bind the company to make some attempt to accommodate an individual's personal needs.

> The Company will consult with Employees and attempt to accommodate preferences for rostered working hours following consideration of an individual's personal needs and impact on family and work life. These preferences must fit within the needs of the workplace, customers and the other members of the team.

Only one 'core' employee agreement made provision for more flexible use of overtime. This agreement details the procedures of a voluntary overtime bank (Flexibank) for heavy maintenance employees. Flexibank may be used to offer staff the opportunity to take annual leave or to stand down staff 'when available labour exceeds operational demands': 'Flexibank has been established to provide staff with more flexible time off, as well as providing the Company with the capacity to operate more efficiently'.

It is difficult to judge the levels of functional flexibility through an examination of agreements. The agreements themselves appear to limit functional flexibility. For example, most agreements contain a clause restricting ‘higher duties’. Low levels of functional flexibility also appear to be provided for through rigid job classification. However, many technical employees at ServiceCo go through lengthy apprenticeships which result in the attainment of a wide range of skills in the specific technical area. It is likely that this increases the functional flexibility of these segments of the workforce.

Whilst ServiceCo is introducing a number of initiatives aimed at increasing numerical flexibility, numerical flexibility at the company appears to have remained low compared with the wider Australian population. Enterprise agreements since privatisation have provided for the promotion of part-time and fixed-term employment, competitive tendering and contracting out. During an interview, the HR Manager estimated that the flexible workforce (casuals, contractors and so on) constituted 16 percent of the workforce, and the aim is to increase it to up to 25 percent. Nevertheless, length of tenure in the company remains long and security of employment, which is a constitutive aspect of partnership relations, appears to have remained relatively high for most employees. The length of tenure at the company is partly a consequence of the company being the major employer in the industry. Because of this, the company is largely responsible for providing specialist training and apprenticeships. There are few opportunities for employer trained employees to be recruited laterally from competitor companies.

Overall, then, we can say that relations between the company and its employees, as well as with unions, can be characterised as one of partnership. Whilst relations with unions are not always harmonious or collaborative, the company does appear to have been committed to an ongoing consultative arrangement with unions since privatisation. More recently it has introduced human resource management techniques aimed at increasing the commitment of employees to the company and enhancing direct communication with employees. For a growing peripheral workforce, however, security of employment has become more tenuous, suggesting that the future of partnership relations at ServiceCo may be fragile.

6. Conclusions regarding ServiceCo

The picture presented in our study of ServiceCo exhibits considerable complexity. Despite its privatisation and consequent exposure to market forces, and the 'outsider' nature of its finance and governance, it would be wrong to suppose that labour-management relations in the company were completely antithetical to the presence or maintenance of 'partnership relations' with employees or unions.

On one hand it is clear, and acknowledged by both management and unions alike, that there is a reasonably high level of conflict; an understanding that the interests of the company and its employees are to some extent opposed. In this context the company's relationship with its resident unions varies according to the different levels of militancy among them. Some managers also attest to a sense of an 'us and them' attitude on the part of the company's employees and express frustration at being unable to deal more directly with employees as 'part of the company'.

On the other hand, however, whilst relations with unions are not always harmonious or collaborative, ServiceCo appears to have been committed to an ongoing consultative and bargaining relationship with unions since privatisation, even in instances where the emphasis has been upon lowering labour costs and introducing more flexible labour practices. Whilst, as we noted, many economic efficiency and productivity measures have been introduced, these have not been of the same order as in other parts of the labour market, and in certain key respects the employment systems operating at ServiceCo retain many of the key characteristics of those in place prior to the company's privatisation. Little attempt has been made to adopt human resource strategies which would seek to alienate the loyalties of employees from their representative unions in favour of direct contracting with the company. Length of tenure among a substantial core workforce probably indicates a good underlying relationship between the company and most of its employees.

As with ResourceCo 1 we may find it instructive to look more widely for explanations of this continued pattern of management-labour relations at ServiceCo. Continued regulation of the particular service market in which ServiceCo operates obviously points to one line of inquiry.[35] Issues particular to the capital market in which ServiceCo is based may point to others.

[35] See generally S. Deakin, R. Hobbs, S. Konzelmann and F. Wilkinson, 'Working Corporations: Corporate Governance and Innovation in Labour-Management Partnerships in Britain' in M. Stuart and M. Martinez Lucio (eds.), *Partnership and Modernisation in Employment Relations*, Routledge, London, 2005.

EnergyCo Case Study

1. Introduction

In this section we consider the corporate governance and employment practices of an electricity company after its creation as a consequence of the privatisation and breaking up of the state-owned electricity monopoly. EnergyCo is now a fully owned subsidiary of an Asian conglomerate after having been sold twice since being privatised and merged with another privatised energy company (referred to as IlluminationCo in this study). This change in ownership, together with the peculiar statutory environment in which it operates, are the two most significant influences on its corporate governance and employment systems. Whilst the statutory system which prescribes its operation was designed to introduce competition to the sector, it cannot be said that the EnergyCo operates in a 'free' market system.

2. Privatisation and a new regulatory system

The history of EnergyCo is tied to the history of the privatisation of utilities in Victoria. Until the late 1980s, electricity was provided through the State Electricity Commission of Victoria (SECV) and eleven municipal electricity undertakings. The SECV was corporatised by the Cain government, and began to operate at a profit. One of the ways this profitability was achieved was by reducing its workforce by two thirds. Corporatisation meant that it operated at arms-length from government, giving managers greater autonomy and severing the utility from the Keynesian employment policies of the 1970s and 1980s.[36] By the late 1980s, however, the SECV was again operating at a deficit after investing heavily in a new generating plant in expectation of increased demand from high levels of economic growth, especially from the aluminium industry. This growth did not occur, and by the end of the decade the industry had significant excess generating capacity.

Federal and state inquiries recommended privatisation. In 1990, the Federal Industry Commission released a report on energy generation and distribution arguing that the

[36] Regardless of this 'arms length' relationship, the one area in which government continued to intervene was in the area of industrial relations. According to interviewees, the government normally quickly intervened in industrial disputes to maintain industrial peace.

Australian electricity industry would become more efficient if it was exposed to market discipline through immediate corporatisation followed by privatisation. The new Coalition State Government carried out an audit of the state's finances (Victorian Commission of Audit 1993). The audit concluded that a key cause of Victoria's financial problems was overspending on government services caused by the undue influence of interest groups. It therefore recommended a restructuring of government activity in order to reduce the influence of these interest groups. The energy industry was identified as the first area of reform because of its centrality in determining Australia's international competitiveness.

In 1992, shortly after its election, the conservative Victorian State government passed the *State Owned Enterprises Act*, enabling the Government to restructure its businesses to focus on economic objectives through commercialisation, corporatisation and sale to private owners. This Act was adopted alongside the 'Community Service Obligation' approach to ensuring some level of social provision. In 1993, the SECV was vertically separated into three segments: generation, distribution and transmission. Accompanying this privatisation of the SECV was the privatisation of municipal energy departments. The Melbourne City Council, for example, had a particularly large energy department. EnergyCo emerged in 1994, when it was corporatised from the 'distribution' section of the SECV. It was subsequently privatised and sold to a US company in 1995. According to the CEO of EnergyCo, it was very easy to sell the energy assets, as they had been undervalued by the state government. There were additional benefits in the form of a Federal government 'competition grant'.

Privatising energy supply and distribution was not a simple matter of selling them off, however. A new system of regulation accompanied the privatisation of these assets. EnergyCo's activities are primarily regulated by the Essential Services Commission. The Commission's general regulatory powers are set out in the *Essential Services Commission Act 2001* (Vic) and are applied to the Victorian electricity industry by the *Electricity Industry Act 2000* (Vic).[37] This Act sets out the Commission's powers with

[37] There are a number of Victorian Acts which together create the regulatory environment in which EnergyCo operates: the *Electricity Industry Act 2000* which regulates the Victorian electricity supply industry and the licensing system; the *Electricity Safety Act 1998*; the *National Electricity (Victoria)*

respect to licensing and price and service regulation. The Commission's primary objective under the *Essential Services Commission Act 2001*, [38] is to protect the long-term interests of Victorian consumers with regard to the price, quality and reliability of essential services.[39] In seeking to achieve its primary objective, the Commission must have regard to facilitating wider objectives which include the promotion of ‘competitive market behaviour’, [40] but also ‘to ensure that regulatory decision making has regard to the relevant health, safety, environmental and social legislation applying to the regulated industry’.[41]

Whilst the object of the commission is to promote competitive behaviour, competition is limited in a number of significant ways. First, companies must have a licence to distribute electricity. The licensing agreements substantially regulate the behaviour of the companies. Secondly, the Commission also has the power to set electricity prices. In a free market, companies determine the price of the commodity they produce/sell based on decisions regarding the cost of production, desired profit margins and demand/predictions regards the amount consumers will be willing to spend. This is not the case with regard to electricity distribution in Victoria. Prices are set through a determination of the Essential Services Commission. This determination is made after a formal consultation period with stakeholders, as well as information gathering and analysis.[42] During this consultation process, companies have the right to submit proposals as to the costs of production (‘price-service proposals’). During the course of our study of EnergyCo in 2004 and 2005 the ESC undertook a review (Electricity Distribution Price Review 2006-10) of the price controls that apply to electricity

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Act 1997 which regulates the National Electricity Market which is a national scheme which gives effect to the National Electricity Law and the National Electricity Code made under that legislation.

[38] Essential Services Commission Act 2001 (Vic), s8(1).

[39] See also Essential Services Commission, Our Role, http://www.esc.vic.gov.au/public/Energy/Our+Role.htm, accessed 7 February 2007.

[40] Essential Services Commission Act 2001 (Vic), s8(2)(d).

[41] Id.

[42] See Electricity Distribution Price Review 2006 Final Framework And Approach: Volume 1, Guidance Paper which set out the final approach and methodology that the ESC would use in making its decision on the price controls, and Electricity Distribution Price Review 2006, Final Framework and Approach: Volume 2, Information Requirements and Templates, which provided guidance to the distributors for the preparation of their price-service proposals:http://www.esc.vic.gov.au/public/Energy/Consultations/Electricity+Distribution+Price+Review+2006-10/Electricity+Distribution+Price+Review+2006-10.htm, accessed 7 February 2007.

distribution services.[43] This review was anticipated with some anxiety by the managers of the company.

Nevertheless, the regulatory regime was viewed in positive terms, overall, by the CEO of EnergyCo, because he believed it sets a significant incentive for long-term productivity increases. Compared with the US system, for instance, which he thought encouraged returns to investors, the Australian system results in a focus on reducing production costs.

Regardless of these regulatory constraints, it is the opinion of the CEO, who previously worked for the SECV, that managers are given a great deal more freedom since privatisation:

> The management team runs the company for the long term benefit of the shareholders. We don't have a policy angle to go through, we don't have 35 people writing letters on behalf of the Minister outlining the good things and achievements in the industry. We're focussed on management and we're given the freedom and space to do that. . . . The shareholder makes it very clear to you what's expected and you're meant to manage to deliver that. Under government ownership that was never the case. You were always expected to fix a problem they held elsewhere.

Whilst for a manager with a long history in the company prior to privatisation the company may now have a great deal more freedom than when it was corporatised under the Cain government, the company is still more constrained than a company operating in a normal market due to the unusual regulation of consumer price. A union official, for example, stated the opinion that pressures on costs was driven much more by the price setting aspect of regulation than by pressures to generate profit for the owners.

3. Ownership structures

Since its creation in 1994, EnergyCo has undergone three ownership changes. It was first acquired by a US company in 1995. It was subsequently sold to a Scottish company in 1999, and finally, it was bought by a Hong Kong consortium in 2000. In

[43] This report can be found at: http://www.esc.vic.gov.au/public/Energy/Consultations/Electricity+Distribution+Price+Review+2006-10/Electricity+Distribution+Price+Review+2006-10.htm accessed 7 February 2007.

the early 2000s it acquired another Victorian electricity distribution company, IlluminationCo, which had been owned by a different set of American owners. IlluminationCo has also changed hands a number of times since its emergence as a privatised company. Both companies were initially sold to (different) American owners when they were first privatised.

As a wholly owned subsidiary of a foreign company, EnergyCo's corporate governance and ownership structures are best described as 'insider/relational'. Whilst currently the board has a number of independent directors on it, as well directors representing the owners, it is clear that the owners wield a strong level of control. Debt finance is raised through bonds. It was the opinion of directors that creditors have very little influence on the company, mainly due to the financial health of the company. The insider/relational profile of the company has not at all times resulted in a more 'patient' form of investment, which might be expected if applying Gospel and Pendelton's typology. Interviewees commented that each owner had a very different set of expectations regarding the returns to their investment and the timelines for that return. According to respondents, the American owners dealt with problems of distance by putting Americans from the parent company in management positions and having a strong focus on short-term financial reports. The Scots required constant reporting. In contrast, the Asian owners require less frequent reporting, but information on a wider range of issues, including health and safety, employee satisfaction, and community reputation.

There was consensus amongst the managers and union officials interviewed that under the current owners EnergyCo's management horizons have been long-term. As one manager put it: '[the owners are] not sort of fly-by nighters. I think they're here for the long haul'. There is now a focus on investment in infrastructure, which was lacking for some time after privatisation. Furthermore, there is a renewed focus on investment in apprentices. In the years after privatisation, very little training of apprentices occurred. It is the view of the union officials interviewed that this was the result of a lack of future planning and an underestimation of future demand. Reflecting a longer-term approach to management, efforts to train the workforce are now being made.

A further shift in management emphasis since being taken over by the Hong Kong based company, has been establishing a known brand and a reputation. According to managers, consumers and the community are now considered to be a far more important stakeholder than prior to privatisation, when the relationship with consumers was mediated via government:

> The Americans always [had] a much narrower sort of financial and business performance focus. Whereas here the current group is broader but when they do focus on the business it's more in-depth. There's much, much more audit. I've never, never been subject to so much audit. The trade off of that is we are performing very soundly financially and employees are rewarded very well. For the Chinese it's, *hey, it's our business and we want to know exactly what's going on from a holistic point of view.* So we conduct employee surveys and focus on our overall community reputation.

Today, EnergyCo runs a number of community engagement strategies in the form of philanthropy and a 'community consultation committee' which functions as an advisory board and includes key community bodies such as the Farmers Federation.

4. Employment changes following privatisation

One of the first tasks following privatisation was labour shedding. Across the industry in Victoria the workforce had been reduced from 27,000 people in 1996 to 9,000 in 2003.[44] The CEO of EnergyCo viewed much of the labour shedding as a matter of streamlining operations and eliminating non-core activities. IlluminationCo, for instance, inherited a number of operational arms which had been created over the years to perform ancillary tasks which were required within the SECV and Melbourne City Council:

> We had a kitchen refurbishment business; we had an electrical contracting company. We had a home renovation business; we had an appliance business. And when you think about it, it wasn't all that illogical. Melbourne City Council used to own the old Lonsdale Street power station. When the power station shut down they couldn't get rid of the staff so they found them some other things to do. So we had a carpenters shop, a cable shop… all these stores. We couldn't get rid of them, because that's how the industrial scene was. So we found other businesses for them.

[44] Whilst this figure was not confirmed by official records (nor was it contradicted) both union officials and managers agreed with this estimate of staff reductions.

Immediately after privatisation, EnergyCo and IlluminationCo were bought by different US-based owners. Whilst both new owners were faced with the same 'over-loaded' workforces, they employed different approaches to redundancies. IlluminationCo carried out the most drastic redundancies, reducing its employees from 1100 to 700 within the first year, leading to a protracted dispute:

> The… Redneck Southerners owning IlluminationCo just wanted to prove that they were tougher than [the union] and it took them 32 weeks to find out they weren't. The other American owners [of EnergyCo] were much more pragmatic. So it didn't have the same kind of dispute and EnergyCo managed to downsize much more peacefully. It's fair to say, though, that IlluminationCo, after that dispute, was generally regarded as the lower cost and the higher performing business of the time.

In addition to a period of making core workers redundant, both IlluminationCo and EnergyCo had a policy of spinning off the non-core sections of the operations by creating new companies. According to the CEO of EnergyCo, approximately 100 new companies were created across the industry through this process. These newly created companies were given guaranteed contracts for the first three years. Following that period, they had to re-tender. This was an incubation period of types, with extra support provided to the fledgling companies from the core company's finance department in the form of start up capital - which had to be paid back over time - tendering advice and accounting advice.

> It was, I'd say, quite successful – I don't think the percentage failure rate would be any higher than the normal background [early failure rate] in Australia and there are some astounding successes. There's one or two companies created out in Latrobe Valley that now are multinational engineer consultants…. Today, [EnergyCo] probably has around 20 or 25 long-term contracts with contracting firms who originally were SECV or Melbourne City Council.

The process of spinning off companies and creating subcontracting relationships was seen as a way to reduce employee numbers and capital overheads:

> The major driver was cost and productivity at the time because we had a lot of remote regional operations and through the history of agreements with unions and whatnot those operations were, in some cases carrying, say, 20 line workers when you only needed eight. And they were operating out of facilities where the capital investment was too high for what was actually being delivered.

It was not only non-core activities that were outsourced. Today, a significant proportion of the business's core functions are conducted by contractors who work under the umbrella of the organisation (known as 'umbrella contractors'). In the networking services section of the company, for instance, the manager of that section reported that at the time of the interview there were around 700 employees and 300 contractors.

For electrical workers – electricians and electrical engineers – who conduct core functions, contracting appears to have been a beneficial arrangement. The main reason for this appears to be related to the fact that there is a labour shortage in this sector. The current labour shortage is a consequence, primarily, of a failure to offer sufficient numbers of cadetships and apprenticeships in the early days of corporatisation and privatisation. In a media interview, the general manager of network services conceded that this could be blamed on the need to maximise shareholder value leading to a de-emphasis on training, in comparison to public enterprises. At the time of our study, this factor was compounded by corporatised electricity companies in other states offering slightly higher rates: luring workers away from Victoria.

A union official described the impact of labour shortages as follows:

> The contractors are certainly – as far as in-house people are concerned in Victoria, you know, generally they're satisfied. [The company is] losing people - one or two every sort of six months with the contractor and resource going into Queensland: that's where the contractors are focusing a lot. [The contractors] want to keep their customer happy down here but they can see where the dollars are in Queensland so they send their people up there, off in droves.

The company is responding to the labour shortage by attempting to attract workers from other countries and states. One media article reported EnergyCo poaching or recruiting workers from South Africa, Canada and United Kingdom in order to fill skill shortages and counter raids on their own workforce by interstate and foreign rivals. Another article reported that nearly 40 percent of workers in the energy sector are older than 45.

Whilst workers who conduct core business functions may have retained reasonable pay and conditions, it is nevertheless apparent that contracting is part of a strategy aimed at reducing labour costs per unit. One union official attributed the current efficiency and profitability of the company to this hard-nosed management attitude. He said: ‘they’ve got contract managers that will squeeze every penny and they will study the agreements that they reach, they will go and audit their books, they will do anything to save a dollar with their contractors’. The CEO of EnergyCo was more ambivalent about the causes of cost decreases:

> We’re probably twice as productive now as we were ten years ago. But what’s driven that? Technology. Certainly contracting out has been part of the reason. We now specialise. We used to do 30 things, we now do 14. We don’t dig holes anymore so we concentrate on the 14 things we do well.

In addition to labour shedding and vertical disintegration, there were a number of consequences for labour relations following the business restructuring thus far explored. The first was that union coverage dropped and the unions were ‘balkanised’. Prior to privatisation, unions had high levels of coverage and conducted well coordinated industrial strategies across the state. Full-time union organiser positions were paid for by the SECV. The CEO of EnergyCo described union power within the SECV as follows:

> Unless you were in the senior executive service you were a union member… People who worked in an office who were divisional managers and section managers were union members: there were accountants, there were engineers… And if the union called a stop work meeting they all went. I think the SECV allowed something like 40 full-time employees to be engaged full-time during the day on union activities.

The second consequence of privatisation and business restructuring was that the nature of management, and the relationship between management and employees, changed. Prior to corporatisation, according to the CEO of EnergyCo, there had been very little effective management. Indeed, in most operational divisions, there were not people called ‘managers’ or who had the range of responsibilities which are today associated with managing. When the company was first corporatised, the new board encouraged the CEO to recruit managers from different backgrounds in order to bring different skill sets, influences and experiences to the job of managing. One of the results of recruiting from outside the state-owned utilities labour market was that the company had to offer higher wages in order to lure good quality managers.

Nevertheless, the job of recruiting from outside the company was difficult in practice:

> It was a good idea, but very difficult to do, mainly because non-utility people don't understand utility. A utility is 99 percent boredom and 1 percent terror. It's when you get into that 1 percent that's when you need experience. It's easy to say 'recruit widely' but there was no utility market. One thing that corporatisation brought about was a fundamental change in the salary structures of the management within the business. So you had the utility managers salivating at the opportunity to participate in what were significant salary hikes. And so you had a big influx of talent from New South Wales and Queensland into Victoria, mainly because there was opportunity to make higher salaries than in those states.

Thus, one of the effects of this re-framing of the role of management, involving external recruitment, was that the gap between the wages of the top tier of employees and the rest of the employees widened considerably.

Regardless of these consequences of privatisation, the wages and conditions of core workers in EnergyCo have remained favourable. The collection of EnergyCo enterprise agreements offer an annualised salary developed to suit particular categories of employees. Overtime can be taken into account in the fixation of remuneration, offered as special additional remuneration, granted as 'special additional leave,' or paid in accordance with an award. A number of other favourable conditions are present in agreements which might be described as part of the promotion of 'partnership relations', as discussed in the next section of this report.

5. Partnership relations

Despite these dramatic reductions in employee numbers, evidence collected through interviews, as well as through an examination of the enterprise agreements between the company and unions, suggest that relations between core workers and the company could be described as partnership. The company's policies might best be described as a 'stakeholder' approach. Consultative and partnership-style relations with employees appear to take place directly, through workplace satisfaction surveys and other direct consultation, and also indirectly, through a joint consultative committee and a commitment to bargaining with and consulting the relevant unions.

A 1997 enterprise agreement first established the partnership principles upon which the agreement is based. It states that the agreement:

> … recognises that the interests of the Company, Employees and Unions are interdependent, and that their future prosperity in the power industry rests with a commitment from all to maintain a competitive edge.

It goes on to say that 'the parties recognise the need for a consultative and participative approach into the future'.

As an example of the 'stakeholder' approach, the company's Mission Statement also presents a commitment to its stakeholders:

> [EnergyCo's] mission is to be an internationally competitive company that builds long term, mutually beneficial relationships with its primary stakeholder groups:
>
> - Shareholders: provide consistently superior returns to shareholders;
> - Customers: deliver high quality energy and energy management services that add value to customers' businesses and to the community lifestyle; and
> - Employees: create a workplace culture that values all employees and encourages and rewards good performance and continuous improvement.

The company's annual reports include a section in which performance is rated against objectives in relation to employees. In 2003, for instance, the company's objectives in relation to employees were to improve employee satisfaction, commitment and motivation, and to improve health and safety performance. The employee satisfaction target of 70 percent was not met for EnergyCo or IlluminateCo: both achieved a score of 68 percent. However, the fact of having a section regarding employees in the annual reports is, in itself, quite novel for Australian companies, and represents a commitment to employees as a key stakeholder in the company.

The company has committed to collective bargaining and collaborative relations with the union in all agreements from 1997 onward. The 1997 agreement states, for instance:

> It is [EnergyCo's] intent to work collaboratively with the unions in order to achieve the objectives set out in this agreement. Through the establishment of this agreement, the parties reaffirm their continued support for the collective bargaining process, a process that is viewed by the parties as having operated successfully for many years.

The agreements also provide for a formal right of entry for accredited union officials during working hours, to consult with union shop stewards, investigate grievances or complaints, observe working conditions, post bulletins, develop skills and flexibility programs and implement agreed structures. The 2002 and 2004 agreements also provide for shop steward education leave, time release to the union for shop stewards, leave for stop steward meetings and adequate time and facilities in the workplace for union delegates. The 2004 agreement even goes so far as to encourage all employees to participate in union meetings and exercise their voting rights in considering employment issues between the employees and employer. Clauses of this nature were highly unusual in agreements made during the 2000’s based on our study.

In addition to representing a general commitment to the principles of partnership, all agreements since 1997 have provided for a Joint Consultative Committee (JCC) whose role it is to improve business performance, ensure local working conditions are adequate, and develop and foster effective communication and improved productivity. According to the CEO of the company, the JCC functions effectively:

> It works very well. Generally, contracting out is the main issue discussed. It’s about – what’s the worker worried about, what’s the union worried about? They’re worried about their remuneration and the future of their own jobs and where we contract out a function and a function goes to a contractor it’s done under a sort of a strict sort of terms and conditions. There’s no changing terms and conditions of the employee. There’s no compulsion on the contractor to take the employee. There’s no compulsion on the employee to go. Generally, though, you can come to a two-way agreement. We rely on the fact that whenever we try to contract out, 80 percent of the staff will see it’s a good deal. They get paid out and then they go to the contractor, 8 out of 10 times. We’re big enough and broad enough to be able to accommodate the 2, the 20 percent, back in our business who still want a job, and not as a contractor. We’ll be fairly flexible in that regard because we’ve been growing too.

Reflecting this emphasis on contracting, the most significant area in which flexibilities have been achieved by EnergyCo is in the area of numerical flexibility.

All enterprise agreements provide for the continued use of contractors, out-sourcing and temporary employment through external agencies. Whilst the use of contractors is non-negotiable, the agreements provide for decisions by EnergyCo to outsource its 'internal functions' to be negotiated between EnergyCo, the workforce and the unions. The agreements also commit EnergyCo to using temporary employees through external agencies only to accommodate workload peaks and short-term requirements. A standard clause in all agreements since 1997 has been as follows:

> The parties acknowledge that the competitive nature of the electricity industry means that EnergyCo will need to increase efficiency in the management of its workforce. Accordingly EnergyCo has subjected its internal service providers to contestability in order to maximise the drive towards improved business performance. This involves examining work with a view to performance within the business by EnergyCo employees or by external contractors.

The 2002 agreement also provides for spatial flexibility by allowing for the relocation of employees (for a maximum of one week) from any location in the event that a workload trough is identified.

> An employee cannot refuse to work in another location unless they can demonstrate pressing personal or other valid reasons, including substantial remote project work in the previous month.

Together with these negotiated instances of increased numerical and spatial flexibility, the agreements show signs of the adoption of high performance style work systems. For example, the agreements provide for some contingent or flexible pay. Pay increases, performance pay and incentive payments, are conditional upon 'the achievement of key business objectives'. The recent agreement, for instance, provides for four productivity incentive payments contingent upon the company achieving certain milestones. These are certification of the agreement; finalisation of the restructure of the company; achievement of agreed business targets; continued maintenance of 1S09002 certification and significant progress towards company wide IS09001 certification. Interview data suggests that the contingent pay is higher than the agreements indicate:

> Every single employee participates in a [flexible remuneration scheme]. They didn't have to give anything to get that because it's extra on top and it's based on 50 percent

> of their performance firstly, at the lower level, and 50 percent performance of the company and the organisation.

Agreements from 1995 to 2004 provide for progressively more temporal flexibility. Earlier agreements provided for a 36 hour week, where hours may be varied only following negotiations between the company, employees affected and the union. Later agreements provide for a 'business-oriented' view of the variation of hours ('the above span of hours may be used to safely and efficiently program work to meet business and client objectives'). However, a commitment to negotiate with the union concerning variation of hours/continuance of shift rosters remains.

Agreements from 1997 to 2004 show evidence of efforts to implement 'family friendly' functional flexibility. For example, they provide for a 'work at home' policy if an employee wants to perform their normal office based work from home (conditional upon agreement between management and employee). Despite this formal agreement, according to one union official the length of working hours are a major problem for both core workers and contractors with EnergyCo. During an industrial dispute in 2004, the union placed work bans on the company which resulted in workers only working the legally required hours. According to the union official, one of the consequences of this ban was that workers realised that they had been working a great deal of unpaid overtime and they valued the extra time that working to rule had given them.

It is instructive to note that whilst the relationship may be described as a partnership, this does not preclude conflict. Union organisers confirmed that the company remains open to discussions with the union, however, major conflict and disputes still occur:

> It's a workable relationship. The people that I need to talk to are approachable. I would say that it's probably not as good as it was six or seven years ago but I think that's more to do with the structure of the company rather than the personnel involved. I mean, all of our debates are amicable. But we had a fairly big dispute last year that went for a very long time and both combatants, if you like, were very determined to get the outcome that they wanted.

Further reductions in employee numbers pose the most obvious threat to partnership relations. Our study finished before the implications of the latest review of prices was known. The union official speculated that a reduction in prices was more likely to impact upon the profits passed on to the owners, and not other stakeholders such community or consumers. Managers stated that the outcome would have the single biggest impact on employees, beyond factors such as investor expectations. Whilst the company would try to meet lower prices through productivity increases, it was seen as inevitable that some reduction in employment costs would have to be achieved, because of the immediate nature of the price changes.

6. Conclusions regarding EnergyCo

As a privately held company, EnergyCo has all the qualities of an ‘insider’ organisation, and appears to offer what might be deemed to be ‘partnership’-style relations with its employees and their representative organisations. Consultation and communication are important instruments for fostering trust and co-operation between the parties whilst recognising that there are genuine conflicts of interest. There is also evidence of high performance work practices in the shape of various flexible employment forms. At the same time, however, there is some evidence that the flexible working patterns have impacted less well upon those who have had their work out-sourced or ‘contracted’ rather than maintained as ‘core’ employees, and that all groups are working much longer hours, some of which is unpaid, as a result of the more flexible work time arrangements introduced under the company’s agreements.

It is apparent that EnergyCo has been able to attain these flexible work practices through a combination of collective negotiations and outsourcing. As a result, it has not taken greater advantage of the opportunities offered through labour law changes to introduce more radical industrial relations policies. However, it may be the case that by taking advantage of the earlier relaxation of restrictions on contracting and casualisation, EnergyCo has not had to introduce individualised statutory arrangements. EnergyCo is, thus, a study of contradictions. On the one hand, it has carried out the most extreme labour shedding of any of our case study companies. On the other hand, however, it has maintained good relations with unions and extended, rather than reduced, the formal consultative mechanisms employed to assess employee opinions about industrial relations changes.

CommCo Case Study

1. Introduction

This case study concerns a communications company which is a wholly owned subsidiary of a Scandinavian transnational company. CommCo is a telecommunications vendor, as opposed to a carrier. The case study tracks the company from the early 1990s to 2005, as it underwent a transition from a highly successful designer and manufacturer of communication devices and infrastructure to a company which does not manufacture or design in Australia, but instead concentrates on communication logistics and infrastructure. This transformation has radically changed the constitution of the workforce, which once had a large 'blue collar' component, working in factories, to a largely 'white collar' workforce with a larger emphasis on contract workers. Over this period, the permanent workforce has shrunk from around 3000 to 1500 people. The change in the constitution of the workforce has bought about its de-unionisation: a process of 'natural attrition' rather than a consequence of a 'union busting' strategy on behalf of the company. At the same time, employment relations have undergone other changes. Whilst employment systems were once characterised by 'high performance workplace systems' along-side generous labour entitlements such as long maternity leave, in-house medical services, and so on, these are no longer features of the company's human resource management.

During this transition, the company has not undergone any significant corporate governance transformations. Its ownership by the Scandinavian company has remained stable and its board structure has remained largely the same. The changes in business strategy, and the consequent changes in workforce constitution, are the result of major competitive pressures following the entrance of new competitors in the global market, as well as greater competition in the domestic Australian market as an indirect consequence of the deregulation of the state-monopoly on phone installation. This has meant that the company has had to redefine its core business and redesign the roles that regional subsidiaries play. For CommCo, this redesign has meant the stripping of its research and design role, which has been relocated to Europe.

2. Corporate governance and parent company control

Using Gospel and Pendelton's framework, we would characterise CommCo as an 'insider-relational' company due to the fact that it is a wholly owned subsidiary of another company and is buffered from the parent company's shareholders by the hierarchy of the holding structures. CommCo's board has only three directors on it. These directors are appointed by the parent company and are all 'insiders'. The board always includes a parent company senior management representative, the Managing Director and the Chief Financial Officer of CommCo. Under that board sits the management team, which makes most significant decisions about the day to day running of the business, and which is made up of senior managers of CommCo. According to the Chief Legal Counsel, the Management Team 'are the effective sort of management team of the company more than the board'.

Because CommCo is not listed in Australia, the company is not burdened by a large number of reporting requirements. Being a subsidiary and a private company, CommCo is primarily subject to the requirements of the *Corporations Act 2001* (Cth), and the *Trade Practices Act 1974* (Cth) regarding its business conduct. Because CommCo is not a telecommunications carrier, it is also not subject to the large number of regulatory requirements that apply to these carriers.

The structure of CommCo appears to buffer managers from direct influence by creditors or shareholders. When the company needs to finance a new acquisition, it normally turns to retained earnings or borrows from the parent company, only occasionally using external creditors. Regardless, in the standard ranking of stakeholder influence carried out in the course of our interviews, CommCo managers ranked creditors higher than was the case for managers of other case study companies. Being a subsidiary also means that the managers of CommCo are one step removed from shareholders. In the view of the Chief Legal Counsel, this reduces the conflicting pressures on managers:

> You're not trying to amalgamate competing interests, so in that sense it does enable you to get your focus a bit. That's not to say there's not differences of opinion within the group, but it is literally a group decision and you haven't got a significant

> shareholder outside the group who’s got a different agenda that they’re perhaps trying to push or they’re trying to block a deal … we don’t have those sort of barriers.

The more significant influence is that of the parent company. The parent company’s code of conduct guides much of CommCo’s behaviour. Beyond this, also, the parent company is intimately involved in business decisions, often directing the nature of relationships with clients:

> The code of conduct is sort of the bible I suppose, well… the ten commandments. [The parent company’s influence] is transposed at various levels to specific directives from each of the business units in the global organisation who indicate to us exactly the basis on which we, what terms we're meant to agree to with customers and everything from financial arrangements, payment terms to whether we put source code in escrow and all those sorts of things.

Whilst CommCo has some autonomy over day-to-day business decisions, it was the view of all managers interviewed that in recent years the parent company had more closely guided the behaviour of its subsidiaries.

> I think [the parent company has] always had a reasonably centralist policy, but I think it's moved even more towards that recently. We're just their arms and legs on the ground here to do business for the [CommCo] world. I don’t think anyone sees this as a separate operation anyway. I think we just view ourselves as part of a group that operates for a global organisation really and we're just representatives of that organisation.

As another manager put it: ‘I think that [the parent company] has become a little bit more Checkpoint Charlie than before’.

An example of this high-level control by the parent company occurred in the early 2000s when the parent company acquired another global communications company with large operations in Australia, and which had to be merged with [CommCo], without first consulting CommCo. The HR Manager said:

> We didn’t know we had purchased [Company X] until we purchased it, so that's not very collaborative really… What that means for us in Australia is there were 200 people we had to take on and integrate.

In the case of that acquisition, CommCo was expected to show profits from the acquisition within one year.

The case of this acquisition demonstrates that the insider-relational structure of the company does not appear to insulate it from short-term pressures. Asked whether she felt CommCo was insulated from the short-term pressures that other companies experience from the share market, the HR Manager responded:

> No, I think that would be nice to say that you did that but I think you are – the reality is you're owned by a parent company and we have accountability at a business unit level and from a functional level as well. So you've got a lot of eyes watching everything you're doing, and while you might have some flexibility about the way you do things, the reality is it's set within a framework.

3. Factors affecting organisational change

Throughout the latter part of the last century, CommCo's major source of income in Australia was through contracts with Telecom to provide phones, design new technology and roll out infrastructure. In 1987, plans to gradually end the 'First Instrument' policy were announced, as part of a national strategy to deregulate and end Telecom's monopoly on installation of the first phone in a subscriber's home. Unions argued that action to deregulate Telecom would severely damage the makers of telecommunications equipment and support industries, such as CommCo. CommCo's director of corporate relations likewise pointed out that Telecom's monopoly in the telecommunications industry had helped manufacturers establish a strong local base and develop technology that was of a world standard. These predictions were subsequently born out, although it took around 10 years for the regulatory changes to impact on the broader industry. In the case of CommCo, the far-spread restructuring which occurred in the 2000s was as a result of global conditions as well as local regulatory reforms.

In 1997, CommCo was spending 15 percent of local turnover on research and development and by 2000 it was reported as having the highest research and development expenditure of any private company in its sector. It also ran a substantial manufacturing concern in Victoria. In mid-1998 CommCo decided to cut manufacturing by closing its Broadmeadows printed circuit-board manufacturing facility. This closure was carried out smoothly from an industrial relations perspective thanks to plans to redeploy 250 employees, where possible, and generous redundancy packages in the event that this was not possible. CommCo transformed this plant into an IT training centre: the global organisation's seventh regional education hub. In the same year, with the (undisclosed) support of the Victorian government it launched a new research and development centre, staffed by 80 research and development specialists, focussing on broadband and internet protocol network design, multimedia applications and mobile data solutions.

In 2001, it further reduced its manufacturing capacity, making more than 90 staff redundant as a consequence of sluggish market conditions reducing workloads. In 2002 it carried out a further round of staff reductions as part of a global strategy to reduce costs. CommCo's revenue in the 2001 year was $752 million, well down on $1.1 billion the previous year.

Later in 2002, CommCo's research and development arm shut down and moved to Europe. The decision resulted in the loss of 450 jobs and the loss of annual research spending of up to $100 million, some of which went to universities and public research centres. The Managing Director of the research lab said that 'governments had failed to offer adequate incentives to ensure that international research and development facilities remained here'. He compared Australia's lack of incentives with those of Brazil, which offers considerable subsidies and tax incentives to companies which conduct R&D.

The decision to remove R&D capacity from Australia was made by the Scandinavian parent company as part a plan to reduce worldwide headcount by 25 percent, or 20,000 people, across the global organisation. Overall, the Australian operations shrank from 2100 staff to 1400 in 2002, making it the most dramatic year of job losses within the company in the period researched. Summarising this labour shedding period, the HR Manager said:

> By 2000 [globally] we'd let half of the organisation, 50,000 people were made redundant (globally). That was for two reasons, that we moved into a new technology and we didn't need them anymore or we were just too fat and happy. We'd been very successful for a long period of time. So we went through some really tough years: three years in particular where we did nothing more than dismiss people, you know,

> and that was awful. But the interesting thing is that the name and the reputation of [CommCo] hasn't been hindered by that; which is surprising. You would've thought that we would've impacted much more strongly, so the name is still strong and globally we bounced back, our best year ever last year.

According to the Chief Legal Counsel, deep frustration was felt by those who had to implement the strategy of labour cutting at the local level:

> Part of the frustration of that was that it was not being directed locally, it was a symptom of declining business because it was a decline in the business globally in the early part of the decade. It did impact across the globe but it impacted on us particularly hard… At a local level there's been a tremendous amount of change, a tremendous amount of change…

4. Employment relations

In CommCo we see a similar story unfold with regard to employment relations to that of EnergyCo. Although mass labour shedding has occurred and the range of 'in-house' services that were once offered has been significantly reduced, the company continues to offer its core workers good conditions and employs a range of consultative arrangements which might be characterised as partnership arrangements.

In the post-war period, CommCo offered a range of in-house services to make employment rewarding and attractive such as medical services, child-care, frequent conferences held in exotic locations, and so on. These services were aimed at encouraging long tenure, and appear to have been successful in attaining that aim. In addition to these high basic standards of employment, the workplace was organised according to 'enlightened' human resource management which aimed to foster 'continual improvement' in order to advance technological change. The industrial agreements that covered a significant proportion of CommCo's workers until the early 2000s reflect this philosophy. These agreements contain two unusual characteristics. The first is that the terms of the agreements remained largely the same from 1993 (allowing for around 5 percent pay increases) to 2001, when the agreements expired. (This suggests that they were formulated primarily by management, and not by unions.) The second is that they concern work organisation or work systems issues, as well as setting conditions and entitlements, with the aim of facilitating high performance workplace systems. After 2001, no further agreements with unions have been made. Substantial sub-contracting has occurred in the post-2001 period, and greater individual incentives have been introduced for core employees.

The 1993-2001 certified agreements provided for the formation of ‘Work Groups’ – self-managed groups of employees – that acted as the main organisational unit within the workplace. Decisions pertaining to the organisation of work, changes in job functions, employment classification levels and employee numbers were to be determined through the Work Groups. The agreements provided for medium levels of temporal flexibility (hours were to be determined by the Work Group within a 38 hour week framework), high levels of functional flexibility (with an emphasis on training), and high levels of numerical flexibility (with increases in labour hire to be determined by the Work Group). However, it cannot be said that they provided for high levels of pay flexibility. None of the agreements provided for individualised performance bonuses.

The agreements thus contrast with those of other Australian companies studied which focus on pay flexibility and numerical flexibility and provide less detail as to mechanisms through which functional flexibility might be achieved. As there is a place for unions in determining change through the Work Groups, it might also be said that these are ‘partnership’ agreements. Whilst this partnership occurs in a decentralised manner, the union recognition provided for in the agreements is strong and a place for unions is provided in the operation of Work Groups. It is not clear to what extent the agreements provide for job security as there are no clauses concerning this issue. Interviews with managers suggest that job security was strong during most of the period that the agreements were relevant.

No further agreements were made after 2001 because of the small size of the unionised workforce within the company. Whilst the unions are no longer negotiating collective agreements, they do from time to time have some involvement in workplace decision making. For instance, in around 2004 a union was involved in negotiations over redundancies. There are two reasons for the shrinking union coverage. The first is the changing nature of the workforce: it is now made up of mainly professional, white collar IT professionals. The second reason is that a significant proportion of the workforce is constituted by consultants or contractors.

Like other companies studied for this project, CommCo now has a small core, permanent workforce and a peripheral workforce. The HR Manager described this as follows:

> We're a much smaller core. We're probably about 1,500 people now locally, and we could have up to 500 to 700 contractors at any one stage. Before we were 3,000 full time people… the shift is significant…

The large numbers of contractors in the labour market resulted from labour shedding in a number of communication companies around Australia in the 1990s and early 2000s. People who were shed from CommCo and Telstra often set up their own businesses and continued to provide services to the communications industry.

Driven by the changing skills required by the company, today, tenure amongst permanent employees is much shorter than that up until the late 1990s. This shorter tenure, in the view of the HR Manager, is not simply driven by the needs of the company but also the expectations of employees:

> The things that people wanted in the past, longevity, a 'family organisation', - we used to have doctors and nurses, we had every bell and whistle you could think of – the young people of today don't want or need that and they're not going to sign up for 20 or 30 years, they're signing up for this year and they want their rewards now. So all of a sudden you have to think differently about the way you manage and reward people, which is a challenge.

As a consequence, the kinds of benefits provided by the company tend to be more immediate and performance based. All staff are now on a short-term, group based incentive plan of between 10 percent to 20 percent of total salary. For sales staff it may be up to 40 or 50 percent.

The HR Manager expressed feeling a tension between the need, on the one hand, to keep costs down because of the highly competitive nature of the global business, but, on the other hand, to attract staff despite the labour supply shortage. Whilst the company may not be able to compete with other employers on the basis of wages, it seeks to compete in other areas, such as providing a family friendly working environment, allowing people to work from home, and so on. This transition to more flexible work practices requires a great deal of training for managers who are accustomed to managing in a direct ‘command-control’ manner. It also entails occupational health and safety challenges:

> We try to encourage people to work from home more but then of course you've got to be careful around all the OH&S issues, and you've also got to be clear about what does that look like? Can someone stay home if they've got four children and the only place to work is on their kitchen table? Maybe not. So we're still working through a lot of those issues as well. And then of course we've got managers who are from the X generation who find it difficult to manage someone that they can't see. [Their assumption is that] if someone's sitting in their chair then they must be working… but maybe not.

Regardless of the ‘family friendly’ policies put in place, one of the most serious problems faced by human resource management is the stress that employees experience due to tight timelines:

> [O]ur own employee survey shows that people are under tremendous pressure… .We can talk flexibility and talk a balance of work and private life - we do all that talking - and yet we have projects with tighter time lines and greater demands than ever before.

The primary reason for this is the fact that clients are demanding that jobs are performed within very short time periods and with very little margins.

Another area which has come under pressure due to shorter tenure and time and financial pressure from clients is training. Whilst the company has traditionally focussed a great deal of resources on training, it is now questioning this investment:

> We generally invest something like anything between $7,000 and $10,000 a head on development. Can we afford to do that now if we're going to continually lose people? There's a challenge about what it is that we should do for people's own development versus what's needed for the organisation.

Competitive pressures appeared to have a greater impact on changes to employment practices than recent labour law changes. When asked whether recent changes to labour laws were likely to affect the human resource management strategies employed by the company, the Chief Legal Counsel replied that the company did not view the *Workplace Relations Act 1996* (Cth) to be highly relevant for the company, as most of its employees were not the vulnerable blue collar workers, who, in his view, the Act primarily covered, but highly skilled workers who were in short supply:

> We’re not embracing the new *Workplace Relations Act*. I think broadly [it] is only going to really impact on low skilled, poorly paid workers. I think that they're going to be the most victimised because they just don’t have the power or the skill base to have any clout or leverage over employers, and employers of those sort of people tend to be more exploitative perhaps than other employers of a more highly skilled workforce. I don’t think the *Workplace Relations Act* is that significant for us, and we've not taken any particular shift in our policies or approach as a result. We are heavily dependant on very skilled people and they're not growing on trees.

An additional countervailing pressure to that of labour law is the parent company’s human resource management policies and philosophy:

> Most of the people’s skills are very specific to the industry, so we're very conscious that we need to look after our staff so we have a fairly Scandinavian, social democratic philosophy that our parent company has had for a long time and I think that translates to a large extent and shapes our HR policies here.

5. Conclusions regarding CommCo

CommCo is evidently subjected to serious short-term market pressures notwithstanding the absence of any direct shareholder demands from Australian investors. The major restructuring of its business which occurred from the late 1990s and into the early 2000s, which was accompanied by an externally imposed drive to contain costs, has led to major changes in the nature of its employment relations and work practices. Importantly these changes do not appear to have been contributed to in any major respect by the strengthening of managerial prerogative through new labour laws, but seem to be due more to the nature of the business itself, and the more intense national and international competition facilitated by Australian government policies towards privatisation and globalisation.

FinanceCo 1 Case Study

1. Introduction

FinanceCo 1 began life as a life insurance provider operating as a mutual in the late 1800s and is one of Australia's largest financial services companies. It now provides a full range of 'wealth management' services and products and has a dominant position in the growing superannuation and retirement incomes markets. In the years preceding its demutualisation, FinanceCo 1 had over 10,000 employees and around 7000 agents in the field, but today has around 3,500 employees.

The transition from a mutual to a public, listed company was a relatively common one in the finance sector in the period between 1985 and the late 1990s, during which a number of major life insurance offices, building societies and credit unions demutualised. A mutual is a form of organisation in which the purchase of a product or service entitles a person to membership. Voting rights are usually assigned on a 'one vote per member' basis regardless of the level of financial commitment.[45] Mutuals were usually established for a social purpose rather than for a purely commercial one, such as the provision of a benefit in the event of the death or injury of a family's breadwinner. This was the dominant purpose in the case of FinanceCo 1 whose founding pre-dated the existence of a government provided, comprehensive sickness and unemployment benefits scheme in Australia. Mutuals may distribute any surpluses as bonuses to members, either as cash or in the form of reduced fees and premiums. They may also re-invest any surplus into the business, thus creating substantial capital reserves.[46]

The rationale for demutualisation is often a need for access to external capital.[47] However this was only partly the case for FinanceCo 1 which had significant capital reserves at the time of demutualisation. The Board stated that the dominant reasons for demutualising were the combination of an increasing need for capital and a decline in the proportion of members with a particular type of policy which had the

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[45] Reserve Bank of Australia, 'Demutualisation in Australia', *Reserve Bank of Australia Bulletin*, January 1999, at p 1.
[46] *Id.*
[47] *Id.*

potential to create inequities.[48] Fundamental changes to the nature of the financial services industry, such as globalisation, the breaking down of traditional barriers between banks and insurance companies, technological change, industry rationalisation and the growth of superannuation, had also radically altered the environment in which the company operated.

2. Corporate governance

In the opinion of the board of directors at the time, this new industry environment called for an ownership structure that would enable the company to continue to grow and change. The directors proposed that the mutual become a shareholder-owned company, listed on the Australian Stock Exchange. In order to facilitate this, each member was offered a vote on the 'conversion resolution' to be put to a general meeting of members and the exchange of their membership/ownership rights for shares in the listed company should the conversion be successful. Existing policyholders' rights and interests as a policy holder remained intact but were to be separated from ownership rights. Ownership rights would become shareholder rights and thus converted to property rights, which could be traded for value. The conversion resolution was accepted by a large majority of the members and the company listed on the Australian Stock Exchange the following year.

Company personnel believed that with demutualisation, there had come a sharper business focus driven by higher levels of accountability. A company history reports that annual reports were, until the 1970s, very blandly presented and almost grudgingly distributed. In the 1970s, for first time, the company distributed a colour version and included information about the shares held by the company, which was at the time the biggest owner of corporate Australia. The higher levels of accountability derive mainly from market scrutiny – 'the market yapping at your heels' was how the HR Manager described it. Membership rights prior to de-mutualisation were actually fairly similar to the rights which replaced them when policy holders became shareholders. These rights included the right to attend and speak at general meetings,

[48] There were two types of policies – participating and non-participating policies. Participating policies shared the 'risks and rewards' of FinanceCo 1's performance over the years. As fewer participating policies were sold, the membership became more dominated by those holding non-participating policies. As each policyholder is a member entitled to a vote, non-participating policy holders could have theoretically voted to change the by-laws in ways that would enable them to share in the rewards.

to vote at general meetings, to elect and remove directors and to requisition general meetings. It has been observed, however, that despite the potential for such control, ownership control in mutual organisations is completely absent and management in many mutual insurance companies is self-appointing and free from any supervision or control by members at all.[49]

FinanceCo 1's current ownership and corporate structure, ten years after the listing, is fairly typical of a large listed, 'outsider' style company. Its top five shareholders are all institutions holding between three percent and thirteen percent each and institutions hold the largest proportion of shares by value. Shareholdings are diffuse. A lingering remnant of its mutual past, however, lies in the large proportion of shareholders who are retail or smaller, non-institutional investors. According to the Company Secretary, they are around 70 percent of the company's shareholders. Many of these so-called 'retail' investors are those who were given shares in exchange for membership upon demutualisation. There is also an unusual overlap between customers, shareholders and employees as a result of employees and policyholders being given shares as part of the demutualisation process. According to the Company Secretary this does have an effect on decision making at some level. In making decisions about shareholders, it must be considered that those shareholders are also customers. Similarly, the company has employees who are also shareholders and customers.

The current board is a standard 'outsider' board, comprised of only one executive director and six non-executive directors. The company was protected from takeover for the first five years after demutualisation by legislation and now the market for corporate control is somewhat muted by the company's size, although there have been reported moves by one of the major banks toward a merger. FinanceCo 1's dominant business objective is now the pursuit of shareholder value. The most recent annual report states that the company's objective is to double the value of an investment in the company over the next five years. This is acknowledged to be an ambitious, albeit relatively long term objective, and the company stresses that it is to be achieved by

[49] H. Hansmann, 'The Organisation of Insurance Companies: Mutual Versus Stock' (1985) 1 *Journal of Law, Economics and Organisation* 125.

sustainable means. Having the ‘right people’ working within a high performance culture is a key part of the company’s strategy for achieving this objective.

FinanceCo 1 is now a fairly typical ‘outsider’ company run for the benefit of shareholders. The transformation from mutual provides the opportunity to compare the effect of these very different corporate objectives on employment practices. Trying to encapsulate the fundamental differences between the culture of the company prior to demutualisation and that existing now, the head of human resources said:

> I remember [the previous company chairman] came out with a comment when [FinanceCo] 1 was a mutual – he talked about it as having an almost monastic culture, you know there was some really deep thinking going on about the business issues. Some great deep thinking, long-term thinking. But what he contrasted it with was the sort of efficiency of a busy surgeon going about his business, where again, (you have someone) equally skilled, but you’ve got to get it done, not as much deep thought. And overall that’s the sort of cultural change it feels like as you move from being a mutual where you can have long-term perspectives. You haven’t got the market yapping at your heels everyday.

As indicated previously, the pursuit of shareholder value is the dominant corporate goal and the human resources strategy in inextricably linked to this. There is no sense of conflict between the human resources function and the pursuit of shareholder value, because the sole function of human resources for the company is this pursuit. According to the head of human resources, describing his response to an exercise undertaken during the interview, in which respondents were asked to rank in order of priority a number of company stakeholders:

> I think as HR Manager, my role is to sort of optimise the output from the human resources for the good of the shareholders so I’ve put the shareholders ahead of the employees.

3. The role of regulation

The company operates in a highly regulated sector. As a public, listed company it is subject to Corporations Act requirements, ASX listing rules and corporate governance principles. The product market is subject to extensive consumer protection type regulation. In recent years, a licensing regime has been introduced for all those engaged in the provision of financial advice and this has had implications for training in the company. The company secretary did not, however, believe that the changes to the regulatory environment had imposed a significant burden on the company and believed that it had, instead, given the company a competitive advantage.

> It's been an extensive process, re-licensing, but I don't think it has changed the way we do things – it's actually given us a competitive edge because our planners were already on an education process. We're actually pleased from a customer perspective because it will mean that the less well-trained and shoddy planners out there will disappear. So that's good for us, it's good for our planners, it's good for our customers and it's good for the industry.

Labour regulation appears to play a role in influencing the company's industrial relations strategy, though clearly others factors, such as the power of the union, are also important influences. As will be discussed in detail below, the company had, until relatively recently, an industrial relations approach founded on collective bargaining and constructive engagement with the relevant union.

4. Current employment relations

The approach now is one of formal consultation with the relevant union on particular matters, such as proposed restructuring or retrenchments, but with minimal engagement. There is a lapsed collective agreement and there is not much interest by the company in re-entering negotiations. The company appears to regard the union as an unnecessary third party in the direct relationship between the company and its employees. In a regulatory environment in which individual relationships between employers and employees are encouraged, it is open for the company to choose to operate on this basis. It is also the case that while previously the union may have exerted pressure on the company to engage in enterprise bargaining, the union's membership within the company has declined and the power of unions generally has been diminished by regulatory changes. The union says that the company has not been a priority area for attention and thus has not attempted to persuade the company to re-enter negotiations for a new agreement.

FinanceCo 1's reputation for much of its history prior to demutualisation was as a generous employer. Employment, for men at least, was secure, with the possibility of gradual progression up through the ranks to the highest level with promotion linked to length of tenure rather than performance. Recruitment for senior positions was internal. It wasn't until the late 1980s that a managing director was appointed who had not spent his entire working life with the company. Salaries were paid at a higher level than required by the relevant industrial instruments and sick leave benefits and long service leave entitlements were generous. The company provided study leave, medical benefits, low cost home and personal loans and 'at cost' meals in the staff cafeteria. According to an edition of the company's staff magazine in the 1970s, the benefits offered went to the heart of the relationship between the company and employees. Loyalty was shown by the company and expected in return.[50]

It was in the 1970s, however, long before the proposal to demutualise emerged, that there began to be a shift away from such practices. Progression became linked to performance and work classification, rather than the age and gender of the employee, became the basis for the salary paid. In the 1980s and 1990s the changes intensified, driven by a downturn in the company's performance, increased competition and an overall slump in the economy. The company began to look to ways of cutting costs. Like many other large companies at the time, this cost cutting took the form of staff retrenchments or downsizing. One consultant employed to examine the company hinted that it was run too much for the benefit of employees, while another group of consultants' recommendations led to changes that resulted in the retrenchment of almost 2000 employees in the one year.[51]

Employment tenure has changed radically in the company. There has been a notable shift away from a culture of long-term, or even lifetime employment where the employment relationship was based on mutual loyalty and trust. Performance is now central to the employment relationship and determines not just pay increases and bonuses, but also tenure. According to the HR Manager, turnover among those rated poorly in performance management processes is much higher than it is among those who rate well:

> …if you look at our stats of people leaving you'd know that they are E-graders, the bottom graders. We're turning those people over very, very quickly whereas the A's

[50] Source: Published history of the company.
[51] Id.

> have around ten percent or less turnover. So, we're getting much better at holding on to top performers, those people aligned to where we are going and much better at having the conversation with the people who are not performing.

The HR Manager noted that this was the sort of change in practice that might have been expected to accompany demutualisation but that it actually took a few years to happen, 'for the company to find its feet'.

As noted, for much of its life as a mutual, FinanceCo 1 had an award based pay system in which age and gender determined rates of pay. This had begun to change prior to demutualisation and changes to the remuneration system were part of the enterprise agreements negotiated with the union in the mid-1990s. A bonus scheme for individual performance was introduced in the first agreement, while the second agreement included a commitment to 'review and modernise' the award. An agreement concluded in the late 1990s introduced a performance pay scheme based on individual 'capability and contribution,' with a commitment to work with the union to monitor the new scheme and to identify ways to reward team performance. This agreement also allowed employees the option of accepting a 'fixed pay package' that offered those who accepted an increase in overall base pay in exchange for overtime payments.

It seems open to interpret the reforms in these agreements over the period leading up to demutualisation as evidence that the company was engaged in a process of preparing the company for demutualisation. The early 1990s was when the organisation first began thinking about the possibilities that might be offered by demutualisation.[52] The agreements from the early 1990s (1993 and 1995) clearly show that change was desired, commitments were made to modernisation, achieving best practice and greater flexibility in pay and hours, all of which can easily be read as a strategy to modernise the organisation and its workforce and make it more attractive to the market prior to stock market listing. However, it is also the case that award restructuring and modernisation was a key part of the broader political and industrial agenda at the time, and most companies were undertaking similar reforms based

[52] Id.

around achieving greater flexibility and productivity.[53] Nonetheless, the union representative described the sentiment behind the agreement concluded after the proposal to demutualise had been released but before the vote, as being one of '… the world is about to radically change. You can be a meaningful part of it or you can reject it and resist it, and we took the choice of engaging as actively as we could so that [demutualisation] was very, very front of mind for us'.

The individual performance based pay system is still in place across the company, but has, according to the company's HR Manager, been 'sharpened up a bit so that the really best performers get outstanding bonuses, and the worst performers get nothing'. This sharpening up was said to be in response to 'a little bit of socialisation of bonuses taking place and a disconnect between the scores people were getting in their appraisals and the bonuses they were getting'. Just as was foreseen at the time of the introduction of the performance pay scheme, the HR Manager acknowledges that individually based reward schemes may conflict with team based work. The company must work to ensure that the rewarding of individual performance does not lead to overly competitive behaviours that may stand in the way of the type of culture the company is seeking to build. According to the HR Manager, this is done differently in different parts of the business but 'team behaviours' are part of what employees are measured on.

Another mechanism for reward is the employee share scheme, which seeks to align the interests of employees with those of shareholders. At the time of demutualisation all employees were offered shares and the company has an ongoing scheme whereby employees can purchase shares out of their pre-tax income and then get one free share for every ten they purchase if they hold the shares for three years. The company also has a scheme whereby:

> 'We picked out 100 people at all levels of the organisation who were identified as real talent and gave them some restricted shares. And these are not all huge amounts, but it makes a difference, it's recognition.

[53] C. Briggs, 'Australian Exceptionalism: The Role of Trade Unions in the Emergence of Enterprise Bargaining' (2001) 43 *The Journal of Industrial Relations* 27, at 37.

In terms of industrial relations and employee voice mechanisms, the company had an active, but by no means militant, in-house union or staff association with high levels of membership since the 1920s. During the late 1950s the association joined the union covering salaried and professional staff but withdrew a few years later as the wider union was too political.[54] The relationship was not a strongly adversarial one – the power of the association was said to be such that strikes were unnecessary.[55] The association would later merge with the unions covering bank employees and other insurance employees as part of the policy of strategic unionism adopted by the Australian Council of Trade Unions (ACTU) which saw the amalgamation of some 300 unions into 20 'super' unions.[56] In the mid-1990s, the company and the union embarked on the newly introduced process of enterprise bargaining[57] and a number of agreements were concluded prior to the company listing on the ASX. Union membership by this stage had declined from the near universal coverage held by the staff association to around 40 percent of the company's employees. These agreements allowed for a strong union voice within the company and included extensive provisions for union involvement in the process of change. By way of example, the 1995 agreement included a statement that FinanceCo 1 and the relevant union commit to work together to establish new pay, job evaluation, job-classification and employee development systems.

The company's relationship with the union is now very different to the relationship revealed by the analysis of the agreements in the period prior to demutualisation. These agreements suggested a strong company and union relationship with both parties entering into the spirit of the enterprise bargaining process. There was an emphasis on achieving productivity and efficiency increases but the sentiment of the agreements was collaborative. However, there has been no agreement negotiated since 2000 and the company, although certainly not hostile to the union, seems to be in no hurry to re-negotiate another agreement.

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[54] Above, n. 50.
[55] Id.
[56] Australian Council of Trade Unions, *A Short History of Australian Trade Unions*, http://www.actu.asn.au/AboutACTU/abouttradeunions/default.aspx, accessed 7 February 2007.
[57] Enterprise bargaining had been part of industrial relations practice in many companies for many years, see C. Wright, *The Management of Labour: A History of Australian Employers*, Oxford University Press, Melbourne, 1995.

> Now we didn't see the need to. We might redo it at some stage in the future but we're sort of saying well, you know, what do we need to change here?

The union representative said that despite the agreement having expired, the company still generally abided by the conditions provided for in the agreement and so there was no tension between the company and the union in that regard. In a similar vein to the HR Manager, the union said that they felt the company was not actively excluding them but that 'we probably don't figure on each others' radars at the moment'.

Rather than voice mechanisms available via the union, or agreement based consultative committees, the company relies on mechanisms such as feedback lines, employee surveys and management culture. Asked what kinds of consultation mechanisms were in place for gathering employee opinion, the HR Manager replied:

> Well I think it is called management. I mean the whole thing is geared up to managing people through their managers. There are a whole heap of HR call centres and things like that… where if there are people who have issues they know they can escalate it outside of their line management, you know, if they are having any harassment from their manager or things like that. But on the other hand, it's all about management. So if the business is going to make any great changes, then the manager who is responsible for that area is obviously going to consult with his people and drive the change through in a way that empowers the people in there. So it's all about good management really.

FinanceCo 1's work systems are based around achieving high performance. The company works with the Six Sigma model for quality assurance, one of the most commonly utilised methodologies for business process improvement. Six Sigma is a process improvement discipline providing statistical tools and management systems designed to reduce variation in output by controlling input and reducing or eliminating errors.[58] It focuses on areas such as process improvement and customer orientation and offers a management system focussed on high return, continuous improvements and significant financial gains.[59]

[58] T. Devane, *Integrating Lean Six Sigma and High Performance Organizations*, Centre for the Study of Work Teams, Pfeiffer, San Francisco, 2004, p. 5.
[59] Ibid, p. 8.

5. Partnership relations

FinanceCo 1 does not have a self-identified partnership arrangement between employees and the company, or between the union and the company. Nor do its employment and industrial relations practices appear consistent with partnership. This does not appear to have changed significantly as a result of the demutualisation and stock market listing.

In relation to how the notion of partnership is perceived, the HR Manager reported that partnership is a term used to describe relationships that the company enters into with other organisations and that those relationships felt different to the relationship between the company and its employees. Asked whether that was because employees were inside the company rather than outside, he said:

> I don't know – I'm just not sure that the word partnership really adds anything to the employee relationship. It's an employee relationship. They've got managers, they've got objectives and their managers are there to help manage them. We want to support them achieving their objectives, making good money, good bonuses out of performing well, growing as people because the company benefits from that. So there are a whole lot of interactions but I don't think I would go as far as saying it's a partnership. At the end of the day, they've got objectives they've got to carry out so there is sort of a command and control structure even though we don't actually adopt a command and control kind of directive approach to management.

While not asked specifically about whether a partnership style relationship existed between the company and the trade union, it was clear from other responses that the union relationship was not viewed in that way. When asked about the extent to which the union would be consulted about major changes, the HR Manager responded that the union would be told what was happening but not involved in discussions about them as 'there were just some things that had to be done'.

The union representative, on the other hand, was more open to the idea that a partnership style relationship between the company and the union was possible, but wary of the implications for the union and its members.

> There is a risk that the partnership happens at the organisational corporate level rather than in reality. So my sense of partnership is mutual respect and understanding of

> each other's goals and not trying to undermine each other's viability, which is one of the things that often happens to the union. …if a partnership is every now and again the chief executive and leaders of the union shaking hands and smiling nicely, well that's one thing and that can be easily achieved, but it's not really anything. I think we are trying to get to the sense [of partnership] where there is a much more embedded problem-solving orientation and a view to try and achieve outcomes and respect each other's needs and all those things.

The union representative was also concerned that a partnership relationship with the company had the potential to undermine the direct accountability a union representative had to members of the union.

> Probably the only easy thing about being a union official is that there's no dilemma. You're there to represent your members. If you are a company, you've got a whole heap of stakeholders you are supposed to be balancing.

On the whole, though, the union representative believed that if a partnership style relationship between the union and a company was possible at all, FinanceCo 1 was the type of company with whom it could engage in such relations.

Looking to the types of practices in place, it remains difficult to identify FinanceCo 1 as adopting a partnership style approach. One of the ingredients of a partnership between a company and its employees is that there is some element of employment security underpinning the relationship. However, for at least the past fifteen years, FinanceCo 1 has engaged in sporadic restructuring, resulting in large numbers of staff retrenchments. While during the depression senior management took large pay cuts in order to avoid having to lay off employees, it almost appeared that the reverse was true during a major financial crisis for the company in the years following demutualisation. Senior executives, who had presided over one of the largest financial losses in Australian corporate history, received large severance payments, while employees were retrenched in an attempt to rein in costs.

As was discussed earlier, there are very few operating consultative mechanisms such as might be consistent with a partnership style approach. It was the case that a couple of the enterprise agreements negotiated prior to demutualisation had elements of a partnership style relationship, providing as they did the opportunity for union and employees to be involved in the change process. However, it appears that there are now very few opportunities for either employees or the union to be involved at the level of the strategic direction of the company.

The company does, however, have a strong emphasis on quality as indicated by their use of the Six Sigma model. This model emphasises team based approaches and involves employees in the process of identifying points at which errors may arise and developing ways to remove the potential for error.[60] This should ensure some level of employee involvement in their work processes.

As previously discussed, the company is committed to the creation of a high performance workplace culture. The company has been measuring its progress toward a ‘constructive culture’ since 1996 and provides detailed reports to the market on this progress. This constructive culture is one of the bases of their high performance strategy. In 2005, the CEO was asked a question about their progress toward achieving a high performance strategy and he indicated that it was a long term strategy and they were probably only a quarter of the way through. The HR Manager also stressed that it is a process in which there are no quick results and that the culture varied at different levels of the organisation. He indicated, as do recent investor presentations, that progress has been made and that the company is ahead of other financial services companies but only marginally. It is clear, however, that ‘people and culture’ are used by the company as a key selling point to the market. Part of what is used to differentiate themselves from other companies is their sophisticated culture measurement and management techniques. This represents a significant change in strategy since becoming a listed company. In the words of the HR Manager:

> So it was clear to me that the whole nature of our business was shifting from having huge dollops of capital invested for long term, which was the mutual model, to taking a lot more of the capital out of the business and becoming much more of a fee based business, in which case your key differentiator, your only differentiator, is your people.

[60] K. Henderson and J. Evans, ‘Successful implementation of Six Sigma: benchmarking General Electric Company’ (2000) 7 *Benchmarking: An International Journal* 260 at 268.

The union representative’s assessment was somewhat more cynical. The emphasis on high performance was attributed to a need to re-build the ‘brand’ and counter the effects of patently bad performance in the years after demutualisation.

In addition to the company’s adoption of the language of high performance, it is clear that the sorts of employment systems utilised are fairly consistent with those one would expect to find in a high performance workplace. As indicated by analysis of enterprise agreements concluded in the late 1990s between the company and the union, they have significant pay and temporal flexibility, with performance based pay set at market rates, and a broad span and spread of hours. The company has moved away from the rigid classification of work and has functional flexibility within a system that allows movement within particular job families. As has been previously outlined, these agreements include provisions for employee involvement in matters such as pay systems, job classification and establish a number of consultative forums. However, interviews with company representatives suggest that the emphasis may have shifted from formal employee involvement structures to a less formal approach based on managerial strategies designed to empower individual employees.

6. Conclusions regarding FinanceCo

FinanceCo 1 is a very good example of the ways in which both corporate governance and labour management regimes within enterprises may change markedly in response to a substantial restructuring of capital and ownership arrangements. The company’s transformation from an ‘insider’ controlled business with highly protective conditions for employees to a market-oriented organisation with much less employee security is clear from the facts presented in the study. During the period of its re-orientation FinanceCo 1 seems to have been assisted, especially in the early and mid-1990s, by the changing labour law framework. However, unlike some other companies examined in this study, the company does not seem to have required the use of more radical labour law policies introduced in the second half of the 1990s in order to shift from a collectively regulated to an essentially managerially regulated workplace. That transition seems more to have come about in circumstances of large-scale reductions in employee numbers prior to and since demutualisation, and the decline in union membership which occurred contemporaneously with those developments.

BiotechCo Case Study

1. Introduction

BiotechCo was founded as a private company in 1995 by three scientists to support further development of a discovery they had made. The company's first product is still in the approval phase and is expected to go to market in 2008 or 2009. The company has other products in the development stage. The company has manufacturing and marketing partnerships with US companies. It employs around 40 employees, most of whom are scientists.

In 2003, the company listed on the stock exchange and in 2006, it merged with another company. This merger was well received by financial analysts. Analysts had been concerned that the share price momentum created by the successful commercial release of the company's first product would be lost because the next product was still in the clinical trial phase. This problem was potentially solved by the merger creating a company with a 'full product pipeline' with a range between the discovery and approval for market stages.

Prior to stock market listing, the company's dominant source of finance was venture capital. Venture capital is capital invested in innovative, often high technology companies, with the aim of assisting a business to grow. Venture capital organisations are willing to invest in high-risk ventures and the literature suggests that more than just capital may be provided. Venture capital financing may enable a company to draw on other resources such as the venture capitalist's acquired knowledge. Venture capital provides the fledgling company with a sounding board for ideas, assistance with the development of strategy and access to other networks.[61] There is some evidence that venture capital financing is correlated with the presence of a high level human resources manager.[62] As a form of finance, venture capital appears more closely to resemble relational finance typically found in insider systems, than market

[61] L. Cyr, D. Johnson and T. Welbourne, 'Human Resources in Initial Public Offering Firms: Do Venture Capitalists Make a Difference? (2000) *Entrepreneurship Theory and Practice*, Fall, pp.77-91 at 77; N. Wells, B. Coady and J. Inge, 'Spinning off, cashing up and branching out: Commercialisation considerations for bio-entrepreneurs in Australasia' (2003) 9 *Journal of Commercial Biotechnology* 209.
[62] L. Cyr et al, ibid, at p.77.

based finance found in outsider systems. In the US, venture capital organisations typically engage in more detailed monitoring, via mechanisms such as board membership and relationships with management. However, in Australia board membership is rare[63] and in BiotechCo some venture capital organisations had observer status rather than membership of the board.

In Australia, the pool of venture capital funds is relatively small but increasing; venture capital investment in the Australia health and bioscience sector increased from $26.54m in 1996/1997 to $116.14m in 2000/2001.[64] This means that firms are competing for funds and each company may require the support of more than one venture capital organisation. BiotechCo had raised funds from most of the venture capital organisations operating in the biotechnology sector. According to the Chief Financial Officer (CFO) of BiotechCo:

> Prior to that [the company's Initial Public Offering (IPO)], they had raised something like $26 million from seven separate venture capital organisations. I think there are nine venture capital organisations in Australia that deal in the biotech and I don't think anybody had raised that much and from all those people.

BiotechCo has undergone a transition then, from being a private company funded predominantly by venture capital to being a public company listed on the Australian Stock Exchange with institutional investors providing the bulk of the company's finance.

2. Current capital structure

At the time of the IPO, the proportion of shares held by venture capital was around 60 percent. It is now down to around 15 percent. The finance and governance structure of BiotechCo now reflects its status as a listed company and it is a fairly typically 'outsider'company. The board is comprised of two executive directors and four non-executive directors. Four of the top five shareholders are large institutional investors. The largest holding by a single shareholder is around 13 percent and only two shareholders hold ten percent or more. There is very little merger and acquisition activity in the biotechnology sector and therefore the market for corporate control is

[63] N. Wells et al, above, n. 61, at p. 216.
[64] Ibid, at p.215.

weak. However, as noted, BiotechCo recently acquired another listed biotechnology company in the first 'public to public' takeover in the Australian biotechnology sector. The CFO reports that the volume of trading in shares is very low with the *annual* turnover of shares equivalent to the *daily* turnover of some of the larger companies on the stock exchange.

As noted, venture capital appears from the literature to be a form of investing that is closer to a relational, than a market, form of investing. However, it is apparent from interviews with personnel from BiotechCo that their experience was somewhat counter to this. The CFO believed that the venture capital organisations' main contribution was its cash and that the resources it provided other than finance were minimal. On the other hand, the institutional investors that replaced them were perceived to provide stability and an understanding of business processes that allowed the company's management and governance structures to develop.

BiotechCo's experience was that while the venture capitalists were prepared to wait for a return on their investment, it was a very rigid form of finance. The CFO says:

> There's an understanding that it takes some time, but there seems to be an understanding, which seems to be relatively common in the sector, that *I put a dollar in and okay, I'm willing to wait three years for that to be $1.30 but don't come back to me and ask me for another ten cents on the basis that you've got something that's going to make it $2.00*. And there seems to be a very narrow outlook and I think the fundamental issue is that in all of the cases for the VCs, they're looking for an exit; they're all looking for an exit so nobody's saying I want to build a sustainable business. Everybody's saying *I'm putting in a dollar now, what's the quickest way I can get that dollar to $1.30 and get out of here?*

The CFO went on to say that this approach, combined with the limited number of venture capitalists, forces companies into the public arena before they are ready.[65] The CFO of BiotechCo did not find the institutional investors who had largely replaced the venture capitalists to be particularly driven by short-term objectives. There is, however, a short termism built into the market that creates pressure to have 'announceable milestones' because that is good for the share price. He went on to say:

[65] This view is supported by Wells et al, see above n. 61, p. 211.

> What drives it, I suppose, is that biotech is one of the 15 sectors that are listed on the ASX; it's a relatively small sector; it hasn't been particularly successful. There are very few analysts… And it really comes down to how do stockbrokers make their money; they make money by buying and selling shares therefore they want to create activity, therefore they want to have people who have been successful, therefore if they can say *follow BiotechCo because they've got ten milestones that are going to add value, okay sure, it's not earning profits yet.* So yes, there's a short termism in the market.

This short termism has been overcome to a certain extent by BiotechCo being very clear to prospective investors that it would be years before their first product comes to market and that the need to clear all the regulatory approval hurdles means that it is not possible to speed the process up. The CFO believes the institutions that have invested in BiotechCo understand this and have a long-term view of the company's prospects for success.

The relationship between the company and its shareholders is primarily conducted via meetings between the CFO, the CEO and major shareholders. Such meetings are usually quarterly. The CFO noted that the venture capitalists tend to prefer to deal with the Chair while institutional investors prefer to deal with executive management. Particular attention is paid to the relationship with the company's largest shareholder.

The HR Manager interviewed did not cite the need to strive for shareholder value or to reduce costs as a major constraint on his capacity to develop and implement a human resources strategy. Rather, the dominant source of pressure is the fact that senior managers are already stretched to capacity. Any initiatives by the human resources function which require time to be dedicated by managers are likely to be given a lower priority because of this fact. This pressure has not changed significantly since listing and is just in the nature of being a start up.

> I mean, when you're a start up its pressure, the pressure changes but there's always pressure.

3. The role of regulation

The company operates within a highly regulated product market with very long lead times between discovery and getting a product to market. The long-term nature of this process is stressed in presentations to market analysts and shareholders. The timeline set out in one of the presentations shows a span of six years between the filing of a provisional patent in the research phase, to process development and then to regulatory review and finally to the sales and marketing phase accompanying the market launch following regulatory approval. Despite this, asked whether the regulatory environment operated as a constraint, the CFO answered:

> 'No, not really because I don't think that we've ever come across anything that we wouldn't have thought was sensible and prudent anyway.

Similarly, the human resources representative interviewed did not believe that the regulatory framework provided by labour law operated as a constraint, but rather provided bare minimum standards that the company exceeded. The company operates in a non-unionised sector and has few, if any, union members. Its approach to industrial relations is individualised and there is no regulatory or union pressure on the company to adopt a collective approach.

4. Employment relations

Employment tenure in the company, while not formally measured, tends to be longer term. The company is in its establishment phase, with a small, highly specialised workforce. Nonetheless, during its relatively short history the company has had one round of retrenchment during which the company reduced its workforce by 40 percent. This was necessitated by:

> Money. Basically the biotech market totally bottomed out. It was so hard to raise extra capital and so we had to say if we're going to survive, we need to cut costs.

This episode was not easily forgotten by remaining employees and the HR Manager reports that a shadow of this episode remains. While rounds of such retrenchments are common place in the US biotechnology sector, there is less understanding among the Australian biotechnology workforce of the potential perils of the market environment. This suggests that achieving cost savings by adjusting workforce size on a regular basis would, to some extent, be counter-productive. This is also partly because of the nature of the workforce at BiotechCo. As explained by the HR Manager, scientists are particularly sceptical and 'especially with chemists, unless you have constant positive proof, they will always think the worst'.

The labour market is an influence on the pay system in BiotechCo as might be expected in an 'outsider' company. The company subscribes to a number of salary surveys and then benchmarks different positions against these to ensure that their salaries are competitive. In the case of the scientists, this need to compete has meant that the company has adopted an incremental pay system similar to that used in the university sector, the company's main competitor in relation to its scientists.

Scientists generally have their salaries pegged to certain university levels, with an adjustment made to take into account the fact that the university sector pays a higher rate of superannuation. The company uses adjustments to salaries in the university sector and any relevant market salary surveys as a general guide to the amount by which salaries in the company increase beyond incremental rises.

Interestingly then, in the case of BiotechCo, using the market as the reference point for determining salaries has led the company to adopt a pay system that in some respects more closely resembles an 'insider' than 'outsider' system; that is, a system in which fixed administrative principles are the dominant factor determining base salary rather than performance. The company does have a performance bonus tied to company performance. If the company has positive shareholder returns and the employee has met all of his or her performance criteria, the employee will receive a five percent bonus and $1,000 worth of shares. Executive and senior management can receive as much as 30 percent. This, according to the HR Manager, created some morale issues and management bonuses have become much more rigorously controlled as a result.

As this suggests, the company is sensitive to the impact of wage differentials between management and staff. The salary levels of senior management at the company appear to be relatively low compared with other listed companies, with the CEO earning less than $300,000 as a base salary according to the 2006 Annual Report.

Training and professional development are important and the company uses a combination of in house and externally provided training. Professional development is particularly important to the scientific staff and used partly as a motivational tool, though the company tries to balance the needs of employees with the company's needs. The company has a budget for conferences and associated staff development but the extent to which the particular interests of their scientists can be catered for depends largely on the resources available at any point in time. As the HR Manager says, 'when the coffers are full, you're more generous'.

Recruiting and motivating scientific staff and competing with the relative security offered by the university sector emerge as key challenges for the human resource function at BiotechCo. As noted, the pay system is structured primarily to compete with the university sector and strategies that undermine security and trust, such as the retrenchment of staff, are avoided if possible. Scientists who are 'primarily motivated by doing interesting science' are not necessarily motivated by traditional human resource management techniques such as performance pay.[66]

The employee share scheme works as both a differentiator from the university sector and a motivator, as well as performing an educative function. According to the CFO:

> Remember most of the people we employ are scientists and for the vast majority of them, this is the first and possibly only commercial job that they've had. Therefore it's about trying to get them to understand that and I'd have to say that it's very, very, very – it's a positive thing to do for our people. It's good and we keep trying to improve it all the time. …. It makes them more questioning about the company as a whole and more involved. Okay, I mean it's a little bit like supporting your favourite football team, but I mean that's good.

However, the HR Manager noted that in some cases, the sceptical nature of scientists was such that without evidence of a direct causal link between the company's performance and their work, they would remain unconvinced, thus undermining the motivational force of the share plan.

The company has no relationship with a trade union and the HR Manager did not believe that any employees were members of a trade union. The company utilises common law individual contracts as the mechanism for determining and recording the

[66] On HRM in science-based organisations generally see D. Finegold and S. Frenkel, 'Managing people where people really matter: the management of human resources in biotech companies' (2006) 17 *International Journal of Human Resource Management* 1 at 4.

terms of employment. There are no collective voice mechanisms in place. The company does not have any formal employee consultation mechanisms in place apart from the annual performance appraisal process. The company that has recently been acquired uses external consultants to gather employee opinion and the HR Manager would like to extend this consultation mechanism to the whole company.

Regarding work organisation, methodologies such as the ‘just in time’ system are not entirely appropriate for the nature of work undertaken by BiotechCo. Chemistry, the HR Manager noted, ‘is not an exact science; you can do the experiment but you’re not guaranteed it will work and so there are only so many things you can do’. The company works with a workflow plan and management by objectives. Radical innovation is the key to BiotechCo’s success, as would be predicted for an outsider company. The company was founded to further develop a particular discovery and has since made further discoveries. However, it does not appear to be a case in which the radical innovation is a product of the company’s form of finance. While venture capital supported the early stages of the development of the company prior to its IPO, the company now has institutional investors as its dominant shareholder base. However, rather than the radical innovation being driven by the demands of shareholders for a high rate of return on investment in the short term as is suggested by theory, it is actually the case that the company must actively manage shareholder expectations of such short term gains. This is because of the previously identified fact that the discovery cannot be transformed into a marketable product in the short term.

5. Partnership relations

The company does not self identify as a partnership company in any corporate publications and the HR Manager sought a definition of partnership when asked if the company worked in partnership with its employees. The HR Manager believed that the company’s goal was certainly:

> to all work together and work towards the one common goal and to make sure that everyone knows that they are a part of it, that all feedback is – provided, it’s constructive rather than destructive – that it’s taken seriously and valued and it’s the only way that we can progress and improve. So that’s what we strive for. Whether that’s always the case at the moment, no, I don’t think so.

Within that broad concept, there was considered to be space for separate interests in the sense that employees are not expected to be prepared to devote a lifetime to the company. It is recognised that, for some employees, the company will not provide the opportunities they require. The company utilises the performance development and review process to ascertain individual employees' future aspirations either within or beyond the company. Where it is clear that a particular employee feels constrained by the opportunities offered by the company, attempts are made to find other opportunities within the company that will keep them motivated and assist them to move into other areas. The approach taken by the company appears to be one which emphasises mutual gains; the company believes that it gains by having motivated employees with broad opportunities for skill development even if they have aspirations beyond the company and employees gain by having the company assist them to find positions suitable for their skills and interests.

Looking at the overall relationship between the company and its employees at BiotechCo, it does appear to have a partnership style approach at the level of sentiment but does not have firmly embedded practices to support that approach. There are no direct participation mechanisms for employees to be involved in decisions about the strategic direction of the company, but the employee share scheme may operate as a mechanism for aligning the interests of employees with those of the company to some extent. Opportunities for voice are limited to performance appraisals, but the company believes that any feedback received is valuable and important for the development of the organisation.

As previously noted employment security, considered to be a feature of a strong partnership relationship, was undermined by the need to retrench staff in the face of a financial crisis. This is indicative of the difficulties inherent in trying to build a secure partnership in a company dependent upon the good opinion of the share market.

BiotechCo does not currently describe itself as being a company with a high performance workplace system in place, nor does it operate explicitly with any of the standard high performance methodologies. The skilled nature of the work does ensure that most employees have a high degree of control over their work, which is consistent with high performance work systems. As indicated above, there are no formal employee voice mechanisms beyond the annual performance review, however employee involvement and co-operation is facilitated to some extent by the employee share scheme. A performance based component to the pay system provides some pay flexibility.

The implementation of a high performance workplace culture is, however, being explored by the company. Acknowledging that many of the ‘off the rack’ type cultures, such as customer focussed cultures would be inappropriate and that the skills and qualities of the management staff must be considered, the HR Manager says:

> you have to be realistic about what you can achieve - ideally, a sort of team and performance culture where you get rewarded for your achievements but you have to be pulling together.

The nature of the industry is an important consideration, as is the ownership structure of the company. The HR Manager believes that a high performance culture is generally a good fit in a listed company where the shareholders have clear expectations of performance and shorter term objectives.

6. Conclusions regarding BiotechCo

BiotechCo presents an interesting case in which the nature of the industry and the stage of the company’s development within it produce an unusual set of relationships between corporate governance, capital and labour. The company is widely exposed to market forces, but the speculative nature of this market type, and the active management of shareholder’s expectations of short term returns, reduces pressure from this source and permits longer-term relations with major shareholders. On the labour side, the company in a number of respects is unable to offer the security and professional advancement which might attract scientists to other (principally public sector) employers. Nevertheless problems of labour turnover, motivation and long term commitment to the company appear to be ameliorated somewhat by the fact that the company’s employees prioritise a commitment to their profession over and above the commercial and financial rewards associated with it. At the same time, the company is careful to avoid actions which may undermine the trust and security of its workforce.

To all intents and purposes then, despite its diffused capital structure BiotechCo operates in some ways as an ‘insider’-type company featuring a collaboration between management and the principal shareholding institutions. In this arrangement labour works in an individualised and non-oppositional relationship with management, and has few formal legal protections. But at the same time, the skilled nature of the workforce, its accumulated know how and the long term nature of capital’s commitment provides a form of implicit security.

FinanceCo 2 Case Study

1. Introduction

FinanceCo 2 is an Australian based provider of share registry, employee share plans, shareholder communications and other services. It was founded in 1978 by three people who had developed a new software system for share registries. The company began with one client and grew steadily so that by the time of the company's listing on the Australian Stock Exchange in 1994, it had 80 percent of the market. The company has grown into a business with established markets in the UK, US, Europe and growing markets in Asia using a business strategy that combines organic growth with strategic acquisition. At the time of the float, the company employed around 40 employees but currently has a global workforce of over 10,000, with around 1600 employed in Australia. Our study took place in 2005 and does not concern changes which took place after that date.

2. Capital structure

FinanceCo 2 listed on the ASX in 1994. It had five shareholders at the time. The listing was primarily motivated by the need to achieve greater flexibility and the funds to support future expansion, according to the Company Secretary. The float also aimed to broaden employee share ownership, to return funds to the vendor shareholders and to finance the move into the UK market. Another issue was referred to by the CEO and founder who said at the time:

> We process 80 percent of share transfers. We are successful, but owned by five shareholders. Institutions were getting a bit nervous that if something happened to [FinanceCo 2] financially, the whole market would stop in a week.

The float coincided with the introduction of the Clearing House Electronic Sub-register System (CHESS), which facilitated the computerised settlement of share trades and the company was able to develop software for companies shifting to the new system. This contributed to their $2.6 million profit in the first six months of trading as a listed company.

Over the next few years, the company made acquisition after acquisition as it sought to gain strategic footholds in the UK, NZ, and US markets as well as cementing its position in the Australian market. Just four years after the initial listing, the company was reported to be Victoria's fastest growing company with revenue growth of over 500 percent and had become one of Australia's 100 largest companies. Reporting in the financial pages was voluminous for a number of years, as constant global and local acquisitions kept the markets interested and drove the share price seemingly ever higher. In 2000, the company had secured 50 percent of the UK registry market and had a five percent hold in the US. It began to diversify with the acquisition of a major US shareholder communication company and continued this strategy with the further purchase of a German based company that analyses data and provides companies with information about key stakeholders, including shareholders. In 2004, in what was described as 'the most momentous acquisition in [FinanceCo 2's] history' the company acquired a US based company for just under $400 million. This acquisition was touted as giving the company the potential to increase its US market share from five percent to over 25 percent. The acquisition paid off; with FinanceCo 2 now the largest provider of investor services in the US and US profits contributing substantially to the group's profit in the last financial year. The company continues to engage in strategic acquisitions with seven major acquisitions in the past financial year.

The directors of FinanceCo 2 held a large proportion of the shares (over 40 percent) at the time of the float and have only gradually reduced their level of holding. The proportion of holding by the management, directors and staff has remained fairly large, estimated at between 30 and 40 percent in an interview conducted in 2005. The most recent annual report shows that the founder, who is now Executive Chairman, having been CEO for the entire history of the company, stills holds close to ten percent of shares. This combines with holdings by other founders to make a significant holding of around 25 percent. As part of the float, employees were given a large portion of shares and the company continues to offer shares to employees as part of the remuneration and incentive scheme. While the company also has a significant number of institutional investors on its share register, this relatively high level of internal holding differentiates FinanceCo 2 from the typified 'outsider' company to some degree. The level of influence and control exercised by these directors lessens the extent to which there is a separation of ownership and control in the company. It also provides a level of protection from the threat of takeover.

The company also differed from the typical outsider company as it had a US venture capital organisation with a ten percent shareholding for a number of years until this was sold in 2005. The venture capitalists had bought in when FinanceCo 2's share price had plummeted as a result of the 'dot com' crash. As is common in the US for venture capitalists, they had a representative on the board (who remains on the board) and the literature suggests that such investment tends to be more relational than arm's length. A senior manager from FinanceCo 2 who was interviewed says of the relationship:

> They've been excellent because what they do is bring a lot of expertise in purchasing businesses. … they know how to do the analysis, they know how to do the deals.[67]

The board has a majority of directors who are independent (five out of a board of nine directors) in line with the ASX Principles of Good Corporate Governance.[68]

To a certain extent, FinanceCo 2 has been protected from competition by the fact that they created the market. As the first providers of computerised share registry services, they had a significant advantage. Initially, even competitors were dependent on FinanceCo 2's technology. Nonetheless, competitive pressures have been important at particular times in FinanceCo 2's history but the company now has only two major competitors; one in the US and one in the UK. Former intense rivalry with its only local competitor seems to have subsided with FinanceCo 2 now in a dominant position. There were reports of a 'price war' between the rivals in around 2002 but recent reports suggest that any revival of such a strategy is unlikely as the major rival has now been bought out by a private equity firm and is therefore, now, fairly highly geared.

FinanceCo 2 has undergone a significant transformation, from small private company providing computerised registry services in the Australian market to a listed company providing a full range of services to a global market. While the change to the

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[67] See case study of BiotechCo for a very different experience of venture capital.
[68] ASX, Principles of Good Corporate Governance and Best Practice Recommendations, Principle 2, http://www.asx.com.au, accessed 21 February 2007.

ownership and governance structure which occurred with initial stock market listing provided the impetus and funding for the subsequent expansion, it is not really possible to isolate this event from the many acquisitions that followed it as a cause of any changes which might have flowed to the labour management practices of FinanceCo 2. It is also true that the changes to ownership were not as dramatic as may have been the case had the founders and directors not retained a large parcel of shares and effective control of the company. When asked to identify the major differences between the company pre- and post-listing, interviewees tended to focus on the changes such as increased size and global reach of the company rather than changes that resulted specifically from the changes in ownership.

The dominant business strategy is one of growth. While the pursuit of shareholder value is also important, it appears to receive a slightly different emphasis in FinanceCo 2 than in other 'outsider' companies. A senior manager says:

> Well, look [FinanceCo 2's] business strategy is clearly one of growth. … Strategically at the moment, sure the idea is to ensure we look at shareholder returns and to also ensure that we look after our staff and I think the company has a good history of loyalty to its people and getting them involved in the sharing of the growth and the market pretty much drives us now.

This appears to be a factor of the entrepreneurial spirit of the founder/CEO who only recently stepped aside as CEO to become Executive Chair of the Company. During the years of the rapid increases in share price and profit, there were various reports of shareholder unrest about the low level of dividends paid. At the AGM in 2000 when shareholder concern was raised about the dividend stream, the Chair stated that the company's view was that shareholders were better rewarded through capital growth than dividend payouts. This view, according to a senior manager, is attributable to the dominance of the founder/CEO and his capacity to drive his vision for the company. His freedom to do so stems largely from his controlling interest in the company.

> You've got a big chunk of the shares owned by [names of CEO and other executive directors] and a few others. Yeah, I think it does change the way a business operates because at the moment that particular shareholder group would still consider the company as a private family company and they believe that their actions are the way the business should be run. So I think he [CEO] still thinks *this is my company and this is the way I'll run it*. Is that good or bad? Well, it's good at the moment. I think

> over the years, though, he sort of takes a bit more advice now from other people as the business has started to grow as well.

The pressures from institutional investors, who want returns and increases in capital value and 'retail' investors who want a dividend stream are still there and considered, but there is a degree of freedom provided by the controlling interest.

The business strategy and the human resources strategy are interrelated. As identified above, 'looking after our people' is a key part of the business strategy of the company. The Human Resources manager interviewed reports that the human resources strategy is very 'business driven'.

> 'In terms of strategies, we have very, very much taken on a business driven HR philosophy. It's kind of like the engineering group of a manufacturing company. So just trying to get that perfect circle where if you do the right thing by the people, you get the right thing out for the company and the right thing by the shareholders, but at the end of the day, HR in this company works for [FinanceCo 2], it doesn't work for the staff members.

3. Role of regulation

The company, being public and listed, is subject to the usual regulatory constraints of the Corporations Act, ASX listing rules and voluntary Principles of Good Corporate Governance and Best Practice Recommendations. The company secretary and senior manager interviewed reported that this regulatory regime did not create any compliance difficulties for the company, although changes to corporate governance regulation did sometimes affect their market, particularly in the area of shareholder communications. The industry itself is largely unregulated, according to the company secretary. The HR Manager reported that occupational health and safety regulation, in particular the differing State requirements, created some difficulties for the company in keeping up with its obligations under these laws. Labour law itself was not cited as a source of pressure on the human resources function. As will be described in more detail below, the company does not engage in collective bargaining and the workforce is, for the most part, not unionised. As a relatively new company in the non-unionised, growing services sector of the economy, the company was able to establish its chosen mechanisms for employing and engaging with staff free from internal or external pressure for collective arrangements. There have been some attempts by the union to engage with the company and the acquisition of a more highly unionised company has increased the number of union members employed by the company. Nonetheless, there remains an absence of significant pressure from either internal sources or from the external regulatory environment such as would be necessary to persuade the company to abandon its preferred individualised approach.

4. Industrial relations

In terms of employment relations, the company appears to use a combination of 'insider' and 'outsider' practices. The company tends to value longer term relationships with employees rather than seeking strategies that allow them to adjust the workforce to peaks and flows in the market. Many of the company's founders are still actively involved in managing the company and, according to interviews with company managers, many of the staff who were employed at the time of the listing are still there. However, one of the areas in which the workforce must be adjusted to match workflow demands is the customer contact centre or call centre. Here, the company prefers to draw on a pool of casuals, using labour hire agencies only when necessary. Turnover in the call centre is two to three times higher than in other parts of the company but is, according to the HR Manager, still lower than the industry standard for call centres. The company has won awards for its call centre, based on criteria such as the physical environment, staff participation, reward and recognition, employee satisfaction, training, turnover, and absenteeism.

The company is also careful to avoid large scale retrenchments. The one occasion of significant retrenchments compared with the company's general approach is explained by the HR Manager as:

> That was this process of centralising and consolidating the businesses - it's unfortunate but inevitable. The rapid growth – there was a breathing space there – *hang on, we've now got two of these and three of those*. But the rest of the time there is a great deal of care. We're not a company that just increases head count dramatically, we're pretty cautious in that respect. But also the growth as well has obviously helped a great deal.

Employee-friendly policies are used by the company as tools for recruitment and retention. Benefits such as flexible working arrangements, gym, cafeteria and salary packaging are offered because:

> It's treating people well. It's making people want to stay here. We don't seem to have much trouble attracting people.

The company places a great deal of emphasis on training and professional development. It employs ten in-house trainers and has a number of training, mentoring and professional development schemes, including a graduate development program, technical training, and global assignments. Graduates are recruited from a range of disciplines and given the opportunity to work in a number of different parts of the business.

There is a performance based pay system in place across the organisation, described by the HR Manager as:

> individually performance based and market driven of course. We do pay bonuses when company performance warrants it and that's obviously individually performance based as well.

The employee share scheme, which has recently won an award, is considered to be a fundamental part of the employment relationship at FinanceCo 2. Employees were all given shares at the time of the listing and the company has had a share scheme for employees since then. The HR Manager reports that participation in the scheme is widespread with around 80 percent of employees owning shares. The senior manager interviewed reports:

> It means that they, first of all that they're showing a commitment to the company – by buying in the company, they are interested in what we're doing. Two, they get a reward. Should we be successful, the share schemes enable them to get a reward. So that's pretty good.

Wage dispersion is relatively compressed for a large, listed organisation. In the late 1990s, when shareholder return was at its peak at around 220 percent, the CEO was on a relatively modest salary of $300,000. In interviews, the company secretary reported that the company regards itself as having sensible and modest remuneration structures for executives.

In terms of its approach to industrial relations, FinanceCo 2 does not have a relationship with a union and nor does it engage in enterprise bargaining. The HR Manager reports speaking to union representatives once or twice a year but has a sense that that is 'almost kind of like a scheduled knock on the door'. Asked whether it was a philosophical position of the company to remain non-union, the HR Manager replied:

> No, it's more to me that given that we are currently non-union that if people now feel the need to seek assistance of the union if we are doing something ordinary, then we've got something quite wrong. I'm sure the unions would be offended by that. But if you had a history and a background, then it might be built up over time but if people all of a sudden decide that they need to join the union it's because they feel disaffected in some way with the organisation.

There are formal employee voice mechanisms that do not involve unions at FinanceCo 2. The company has employee forums at different times on particular issues that arise or when there is a perceived need to conduct a 'temperature check to see if there are any underlying issues'. The HR Manager believed, however, that the most effective voice mechanism was that which flowed from the fact that:

> People know [the CEO], for instance, and they feel they can walk up to him and talk to him and ask him a question, they really do, anywhere in the world. And my immediate boss, a regional Managing Director, they know him. …. And they can talk to him, they can ask questions, they can challenge things that are being done, they can email.

The senior manager interviewed believed that the company could improve its communication strategy and attributed lapses to the fact that managers are often too busy and forget about communication. He reported that the company was developing a couple of groups below senior management level with the aim of 'trying to stimulate some different thinking as to where the business should go and how we can change things'. Other opportunities for voice exist via the staff surveys which the company conducts annually combined with quarterly 'climate check' surveys.

The company does not use any particular system of work organisation, such as just-in-time or Six Sigma and the HR Manager was sceptical of such standardised approaches. However, quality management is vital to the success of the business and there are a number of processes and procedures based around quality control and improvement. Staff involvement in this is encouraged, because 'it's a bit of the same old chestnut but it's usually the people doing the job that know what's wrong with it'.

5. Partnership relations

FinanceCo 2 does not self-identify as a company that works in partnership with its employees. It does, nonetheless, appear to be a company whose employment practices are largely consistent with a partnership style relationship with employees.

Asked whether the company works in partnership with employees, the HR Manager was puzzled and found the term a bit broad but did, nonetheless, identify aspects of FinanceCo 2's approach as being partnership based.

> It's a confusing concept I think but I'll go back again to the shareholding (by employees). If you've got people that feel like they own the company then yes, you work in partnership with them because they will want to know and understand why we've acquired a business in town X. You'll get feedback from them about what they think about us buying the business.

The senior manager believed that the company does work in partnership in the sense that it considers employees in what it does. However, it appears that he believed that this may change as it becomes a 'more financially driven' organisation. In particular, the capacity to offer a commitment to employees may be affected as the organisation comes under increasing pressure to perform and to 'drive efficiencies'.

Putting aside any potential changes and looking to the company practices, it is clear that the company's capacity to offer employment security marks it as having one of the elements of partnership style relationships with employees. As previously identified, the company has not engaged in large scale retrenchments on a regular basis and takes care with recruitment in order to avoid making this a necessity. The company generally takes a long-term view of the employment relationship and wants employees to share in its success over time.

Employee involvement is another aspect of partnership. At FinanceCo 2, while there are no formal structures to support direct participation in decisions made at the organisational level (such as board representation), the company does appear to value input into strategic decisions by employees. The HR Manager says:

> Yeah, and we have acquired businesses as a result of staff suggestions. So people have seen opportunities and said, you know, you should – these guys are stepping on toes or we're running into them every five minutes or we know they've got a good product or we should look at them. And that's happened quite a few times and that, literally, is from all levels.

Quality is an important part of the business and the quality control processes, discussed earlier, also support and encourage direct participation by employees in decisions about their own work practices. The company also facilitates employee input into decisions about their employment arrangements where possible and the HR Manager reports that options such as job-sharing and part-time work are available to employees who wish to work that way.

As indicated by the HR Manager, the employee share scheme is viewed as a mechanism by which the interests of employees and the company are aligned. The performance based pay scheme also aligns these interests by rewarding employees not just for their own performance but for company performance as well.

Overall voice mechanisms seem to be informal rather than formal but there is a sense in which the culture of the company is such that employees are able to and encouraged to speak up. The company does have a number of consultation mechanisms such as surveys, forums and the like.

The company does not explicitly refer to itself as operating with a high performance workplace system in corporate publications, such as the annual report. The HR Manager reported that the company did not use any specific 'high performance' methodologies such as the just-in-time system, which were regarded as somewhat faddish. However, despite the lack of explicit language, there is some evidence that the employment practices at FinanceCo 2 can be fairly accurately characterised as being consistent with high performance workplace systems. As previously discussed, there does appear to be a fairly open culture which emphasises employee involvement in both the direction of the company, and in particular work systems. The employee share scheme is designed to motivate employees and provide them with a sense of involvement in the success of the company.

The emphasis on quality suggests a ‘get it right first time’ approach which is consistent with high performance workplace systems. The quality control team encourages employee input into work systems, underpinned by a philosophy that the person doing the job knows the job best.

A performance related pay system provides an element of pay flexibility as it enables the company to vary individual employees’ pay based on their performance and the company’s performance. Numerical flexibility is evident in the company’s call centre where a core group of staff is supplemented with a pool of casuals and agency workers when required by the demands of particular projects. In terms of temporal flexibility, the HR Manager distinguishes between the need for flexibility driven by the business and that driven by particular needs of employees and reports that the company caters for both. The call centre must have the scope for 24 hour operation when needed, for example and so has employees on flexible shifts. The employee driven flexibilities include part-time work and job-sharing arrangements.

6. Conclusions regarding FinanceCo 2

FinanceCo 2 has many of the characteristics which would tend to categorise it with the ‘outsider’-type corporate governance model: it is a listed public company, with quite dispersed shareholding and an independent board. Yet on the other hand, in terms of its *modus operandi* the company exhibits ‘insider’ tendencies, including strong leadership and control from the company’s founders, close commitment to employees and a fairly long term relationship with capital. The case of FinanceCo 2 thus suggests much greater complexity in the ‘styles’ of corporate organisation than the ‘insider/outsider’ dichotomy would suggest.

ManuengCo Case Study

1. Introduction

ManuengCo was founded in the late 1800s in a country town, as a blacksmith and wheelwright, and then became an iron foundry. Over the next forty or so years, the company passed down through generations of the same family and began to diversify and modernise. During the 1990s, galvanizing plants were established at other sites in other towns. The company is now a diversified metal manufacturing and engineering company and has around 180 employees. The company has been owned and run by descendants of the original founder for its entire history and is currently managed and owned by a fifth generation of the family. Unlike most other companies in the case study series, there is no ‘event’ in the governance or regulatory history of the company which we wish to examine. Rather, we seek to explore the effect of this stability on employment systems in the company. The case of ManuengCo also gives us an opportunity to examine employment systems in a private, family owned company.

ManuengCo is a private company, which means it cannot offer its shares for sale to the general public. The company has been in the same family for five generations and the current managing director holds a majority shareholding. The only other shareholders are family members and employees (through the employee share scheme).

The board is an ‘insider’ rather than ‘outsider’ board, comprised as it is of a majority of executive directors, with only one non-executive director. Senior managers are generally recruited from inside the company and many have progressed through the company from the lowest levels.

The company is very customer and employee focussed and these two stakeholder groups appear to be given priority. The company’s mission statement describes the company’s objectives as being the supply of metal products with a vision of providing solutions to the customer. In interviews, the Managing Director (MD) made it clear that the company also exists, to a large extent, for the sake of the provision of employment to its employees. Asked about how the company balances the interests of stakeholders such as employees and shareholders, the MD replied:

> We like to think that we're a very people based company, so our employees are right up there in terms of, you know, what we're here for and what we're good at. We like to think at least part of what we're here for is the provision of employment. We're obviously here to make money and not just provide employment but it represents a big part of where the company is at and what it does.

With the major shareholder in control of the company, there is no separation of ownership and control. The concept of shareholder value as a dominant management goal does not emerge from either corporate publications or interviews. Of the shareholders other than himself, the MD says:

> The shareholders are pretty hands off. The family member ones haven't bought the shares in most cases, so they don't actively seek information. And the employee shareholders are really probably more concerned about the day-to-day management stuff, so they have got a fair understanding of the business. The point I was trying to make is that there is not a lot of, a huge amount of regular interest from the shareholder group. They're not a group that you mentally have to think, 'oh goodness, hang on, how do we keep the shareholders happy?'

The MD believed that the shareholders were realistic about the prospects for financial gain in holding shares in a family business in the manufacturing industry and had other 'intangible' reasons for holding the shares. Perhaps because of the lack of shareholder pressure for returns, the company tends to operate on longer term planning cycles.

While being almost entirely family owned and a private company relieves the management of any pressure from outsider or institutional investors, the weight of family history is felt. The MD described this pressure as 'just an awareness that the business has been owned for 140 years and you don't want to be the last generation - that weighs on the shoulders a bit'.

2. The role of regulation

The fact that ManuengCo is in the manufacturing industry brings occupational health and safety regulation to the fore of the dominant legal constraints operating on the company. The demands of occupational health and safety regulation ensure that a large part of the training budget is spent on meeting its standards. The implementation of the goods and services tax (GST) was noted as being ‘big hurdles for small business’ and the demands of the taxation regime were mentioned as influencing the operation of the employee share scheme.

Labour law was not perceived to be a constraint. While the company’s employees are covered by a federal award, the company is not unionised and employees are on individual contracts (not Australian Workplace Agreements (AWAs)). The MD reports that there was some pressure by an employer group to develop a non-union enterprise agreement in the late 1990s. However, the company decided to continue with its existing individual arrangements.

Not being a listed company, corporate governance regulations such as the ASX Principles of Good Corporate Governance and Best Practice Recommendations don’t apply to ManuengCo. However, the corporate governance debate of recent years has not gone unnoticed within the company. The board is, in the words of the MD, ‘very dominated by executive directors’. The MD reports that the non-executive director has an increased focus on ‘areas of particular legalities, things like Workcover, than he might have five, ten years ago’. In light of the reforms, the MD has thought about the board and how it could be restructured to get the best value out of it, but believes that there exist distinct monitoring advantages because ‘being a smaller business we are much closer to the action anyway as an executive board member’.

3. Industrial relations

ManuengCo is a very small company and has no distinct human resources function beyond a payroll officer. The MD reports that while most of the directors are very involved in human resources in the company, this involvement comes through their roles as executive directors, directly managing staff rather than through the involvement of the board in determining the strategic direction of human resource management.

The company has a long-term view of the relationship with its employees and the majority of employees are permanent full time employees. The company has a minimal casual workforce, this form of employment being used only in response to peaks in demand. Wage increases are negotiated individually as part of an annual process of performance and salary review. The MD reports that in relation to individual wages, the size of the company means that ‘there is no such thing as confidentiality. People know what other people are on and if they don’t know exactly, they know pretty well’. This ensures that to a certain extent, the relativities between workers must be considered in negotiating particular increases.

The company’s main investments in training are in occupational health and safety, which, as already indicated, draws substantially on the training budget due to the extent of regulation in the area, and in the company’s apprenticeship program, which is large. At the time of the interview, the company had nearly 30 apprentices enrolled across the four years of the apprenticeship. The MD reported that those apprentices are the most significant source of new tradespeople for the company. The company takes pride in its training and skill development program and the MD has been reported as saying that the best thing produced by the company is its tradespeople.

The employee share plan is significant in the employment relationship. Employees who qualify for the employee share plan are those based in the business located at the site of the company’s main operation (around 140 staff). Of those, about half are a part of the employee share plan scheme. The MD reports the plan was devised by his father who wanted employees in the company to be able to have the opportunity to share in the overall profit and also to ‘feel the pain’ when things weren’t going so well.

The scheme operates so as to give ten percent of profit back to eligible employees in the form of a bonus with which they can purchase shares in the company. They can’t purchase the shares with real money. They buy an employee class share ‘which is linked to the share value of the company and there’s a figure that we put in there for goodwill’. It is an overall profit figure and there are no adjustments for individual or work unit performance, merely eligibility requirements related to tenure (‘to ensure that Joe Blow who turned up two days ago didn’t get a share of the profit’). The shares must be sold if the employee leaves the company and those shares go into a pool and can be purchased (with real money) by other interested employees.

The MD reports that it works very well in mainly intangible ways. It contributes to good relationships between staff and management, to the provision of information to staff that would not otherwise be provided via an AGM, and the scheme encourages an interest in the business overall rather than just in the particular part in which the staff member is employed.

ManuengCo has no current enterprise agreements and has never engaged in enterprise bargaining. They are covered by an award but the employment relationship is basically regulated by individual contracts (not AWAs) with each employee. That said, as indicated above, there is an unofficial enterprise bargaining that goes on around the individualised system of performance and pay review as a result of the fact that most employees are aware of what other employees are paid.

The company has never been a highly unionised site or had on-going relationships with a trade union. This is not because they are particularly anti-union, says the MD, but rather, having always dealt directly with employees, they are 'just happy about the fact that we don't have it because it just means we don't have a third party involved in our relationship. Our relationship with our staff we believe is really good and we'd prefer to be dealing with them one on one'. There is a sense in which, having been union free, becoming unionised or engaging in collective bargaining would be a sign of a breakdown in the relationship between the company and its employees.

The MD reports some pressure at one stage to get something 'locked up'. The pressure came from an employer group rather than from a union and it was pressure for a non-union agreement. His response was suspicion and he believed that the employees would treat the initiative with suspicion as well. The MD attributes the lack of a trade union presence partly to the employee share ownership scheme and its 'good touchy feely' intangible effects.

A union representative had a different perspective on the company's approach and took the view that the company was an environment in which union membership was frowned upon, though not actively discouraged. Contact between the company and the union has been minimal but visits aimed at recruiting members, facilitated under previously existing right of entry provisions, were uncomfortable and fruitless according to the union representative.

As would be expected in a family company without human resources infrastructure or a trade union presence, there are few formal employee consultation mechanisms. The MD reports that they have tried a few things over the years but beyond obligatory safety committees, few remain. However, the employee share ownership scheme appears to play a significant part in this regard in terms of the information flow from the company to employees, as an AGM is held each year as a result of the existence of the scheme and this gives employees access to information that they wouldn't ordinarily have access to in a small private company.

The company has toyed with the notion of having employee representation on the board but struggled with the prospect of finding the right person to represent all employees. They do have the production manager on the board as a way to make sure that the workshop is represented at the most senior level of the business.

There are informal means of communication. In such a small company where the management are all well known to the employees, the MD believes that any sort of feedback won't be long in reaching his ears.

> So we're able to be aware perhaps where there are problems, staff are unhappy or have concerns and you try and fix them, and usually on a personal level.

Work organisation appears to be determined mainly by demand from the product market and, to a certain extent, by health and safety legislation, rather than from factors relating particularly to ownership or management in ManuengCo.

Being a manufacturing company, quality plays an important role in the way that work is organised. The company advertises itself as working to the ISO 9001 standard and the MD reports that this had an enormous impact when it was first introduced. The main motivation initially was customer satisfaction and now the standard plays a large part in their safety quality management system. The MD reported that the company introduced the standard in an environment of hysteria over the prospect that ‘you had to have the tick (the tick is the mark of compliance with the standard) and if you didn’t get the tick you would never get any work from anyone’. This hysteria has now calmed down and is viewed with ‘a bit more sense and a bit more calm’.

The company does not have a particular brand of work organisation system that it utilises. The MD views the various systems with some suspicion but regards none as being right or wrong. Rather, they are regarded as ‘just a management tool box’ to draw upon in running the company.

4. Partnership relations

‘Absolutely, yeah’ was the MD’s definitive and immediate response to the question, ‘would you say that the company works in partnership with its employees?’ The partnership is envisaged as extending through all levels of the company and seems to be particularly founded on the familiarity made possible by the ‘family business type stuff’.

> We try and make it a habit of getting out and walking around the place and saying g’day to people and knowing their names and their last names, all that sort of stuff – that family business type stuff and that goes a long way. It just means that when push comes to shove generally speaking you’ve got the right of reply. And generally speaking if people are pissed off they won’t just go and resign, they’ll come and say listen and we’ll sort something out. So that’s the nice part of a small family business.

On the more objective indicators, ManuengCo also appears to be fairly accurately described as a company in which the relationship between the company and its employees is one of partnership. The security of employment, which is believed to be important for a partnership between the company and its employees, is certainly present in ManuengCo. The extent to which the company invests in the training of apprentices and then employs them in the business underlines a long-term approach to the employment relationship. The employee share scheme operates as a mechanism by which the interests of the company and its employees are aligned and the MD believes that this intangible benefit is one of the strengths of the scheme. Employee voice mechanisms are, with the exception of safety committees, not formal, but again the ‘family business type stuff’ allows employees to communicate their ideas and concerns when they arise.

ManuengCo does not describe itself as working with a high performance workplace system. Nonetheless, its certification under ISO 9001 means that elements of the company’s work practices will be consistent with a high performance work system. ISO 9001 is based on eight quality management principles[69] which include:

- A customer focus (‘organisations should meet customer requirements and strive to exceed customer expectations’);[70]
- The involvement of people (‘people at all levels are the essence of an organisation and their full involvement enables their abilities to be used for the organisation’s benefit’);[71] and
- A process approach (‘a desired result is achieved more efficiently when activities and related resources are managed as a process’).[72]

This emphasis on the customer, employee involvement and the use of processes which facilitate quality output is similar to the emphasis in Six Sigma or ‘just in time’ high performance work systems.

However, ManuengCo does not operate with a full range of flexible work practices such as temporal flexibility, pay flexibility and numerical flexibility as are sometimes used to support high performance systems. The company operates, according to the MD, with a ‘remarkably traditional sort of working environment’. Generally, employees work either a nine-to-five day for office staff or seven-to-three in the workshop. The majority of employees are permanent, full time employees. The company appears to operate within this traditional structure because it suits the employees (who want to ‘come to work, do their work and then go, on the set sort of hours and fit in with the rest of the community’) and because there has not been an

[69] International Standards Organization, Quality Management Principles, http://www.iso.org/en/iso9000-140000/understand/qmp.html?printable=true, accessed 27/09/05.
[70] International Standards Organization, Quality Management Principles, Principle 1, http://www.iso.org/en/iso9000-140000/understand/qmp.html?printable=true, accessed 27/09/05.
[71] International Standards Organization, Quality Management Principles, Principle 3, http://www.iso.org/en/iso9000-140000/understand/qmp.html?printable=true, accessed 27/09/05.
[72] International Standards Organization, Quality Management Principles, Principle 4, http://www.iso.org/en/iso9000-140000/understand/qmp.html?printable=true, accessed 27/09/05.

overwhelming business need for changes to that model. Without significant pressure from investors or the market for change, the managers are free to decide what works best for the company and its employees.

5. Conclusions regarding ManuengCo

ManuengCo is typical of many small businesses. It is ‘insider’ oriented and governed, with strong commitments to both employees and customers. Several factors beyond market forces appear to act as a regulatory constraint upon the company’s strategy for growth and profit. These include the company’s physical location in a small local community, and its lengthy ‘family owned and controlled’ status. The extent to which the business operates as a partnership between the family and its employees is less certain. Unions have no direct role in the regulation of the company’s employment systems, and it is unclear whether the ‘informal’ methods of employee consultation act as a brake upon managerial prerogative in any real sense. The general conclusion to be drawn is that management largely operates in this business without serious constraint from either capital or labour – fitting more the model of ‘personal capitalism’ discussed by Berle and Means[73] and others.

[73] A. Berle and G. Means, *The Modern Corporation and Private Property*, Macmillan, New York, 1932.

ManufoodCo Case Study

1. Introduction

ManufoodCo is a meat manufacturing company which was created through the merger, in 2003, of two smaller companies which had each been operating since the early 1900s. One company was based in Queensland, and the other Victoria. The aim of the merger was to enable the new, merged, company to control the market along the entire Eastern seaboard. This case study of ManufoodCo centres on one of its enterprises, located in a Victorian country town.

The two pre-merger companies have historically been ‘insider-relational’ companies and this characterisation continues to be accurate of the post-merger company. There have been a number of major corporate governance changes since 2002. The first was the change of the Queensland concern from a co-operative to a company. At that time the cooperative was in significant debt. The second was its subsequent purchase by an Asian investor in March 2002, although the company remained registered in Australia. The third was the merger in 2003. The fourth was the retirement of the family who had owned and run the Victorian company from a management role in 2003, leaving sole ownership with the Queensland based company, now owned by the family of the Asian entrepreneur. This resulted in further management changes.

The company was of interest to our study because the new management of the company attempted to change workplace practices to create high performance workplace systems through a collective agreement with the relevant union. In this case study, the role of the HR Manager appears to have been particularly important.

The company produces meat products and is one of the biggest producers in Australia by volume and market size. A large proportion of the products are supplied to supermarkets and branded under the supermarket’s brand. Only part of the company’s products are branded as ‘in-house’ products. The increasing market concentration amongst supermarkets has had a large impact on the company’s business. The large market power wielded by supermarkets means that it is important for the company to maintain good relations with these key clients by delivering goods on time and that are of the required quality. However, the supermarket industry is also volatile, as it is subject to frequent mergers and acquisitions. The company perceives that there is an increasing move towards in-house brands amongst supermarket chains. This is to the company's advantage, as a large part of its production is already unbranded and therefore appropriate for supply of this nature. However, the increasing proportion of supply for supermarket in house brands also means that supermarkets are likely to demand greater control over the content of the products and the timing of supply. Regardless of these extra pressures, however, the primary pressure felt by the company appears to be that of price. The HR Manager commented that:

> They can choose who they use; they can set the parameters in terms of pricing. Pricing is the fundamental competitive issue.

This has a direct flow-on effect for human resource management as a key strategic aim of the company is to reduce production costs:

> The price we can put in the market depends on two things, how well we can advocate that up in the marketplace but it also is very directly related to what production cost is. The worst possible position to be in is where you're unable to produce product for the price that your competitors are selling it at and so, one of the key drivers in our strategic plan at the moment is to reduce operating costs. Now that is to do with production efficiency, but the labour costs are a huge component of that so one of the key drivers of getting an EBA [enterprise bargaining agreement] is to say we must reduce labour costs. How do we effectively do that? It is much better to do it in an association with our employees rather than any other way.

The decision to engage with the union over changes to workplace organisation and pay changes was strategic rather than a requirement driven by union coverage or union power. Whilst there had been a collective agreement with metal workers for some years, there had never been a collective agreement with meat workers. When asked why the company decided to develop a collective agreement, the HR Manager said:

> Again . . . that's a strategic call. We have a situation where historically the [x country town] end of the business has not had a lot to do with the union; it's almost been an active discouragement in earlier days of the company.

As will be explored in the following section, union coverage has traditionally been low in the company. Whilst this has changed in recent years, the membership is not highly active or militant.

2. Unionisation and collective bargaining historically

Union membership has grown in the last 10 years. During the early nineties, union membership in the Victorian country town plant was around 15 percent and membership was primarily amongst metal workers. In comparison, there was low union density amongst meat workers despite concerted efforts on behalf of the union representing meatworkers to recruit members. According to a manager, the company discouraged membership and workers were extremely loyal to the company:

> It's a country community built around people who by and large worked here for a long time and had generations working here. So the level of loyalty to the company was very strong.
>
> You had the family tradition, you had a management and [the owner] who was the Managing Director was very much literally into the business. You were just as likely to see him playing around with a machine as sitting in his office. The feeling of loyalty to family and company in the early days was very, very strong. The union were irrelevant. The union was seen as external to the business.

Union organisers concurred with the view that low union membership or militancy was a result of loyalty to the owner. One union official said that employees have often told him that if they met the owner in the supermarket he'd always know their name and stop and have a chat. The company was the largest employer in the town. That the company was established by a local family and remained in the same hands for 100 years appears to have generated considerable local allegiance. As one union official put it, 'The fact that they thought he was a good bloke counted for a lot'.

As a consequence of this loyalty, the resistance of the family owners towards unions appears to have acted as a barrier to the union gaining a foothold in the past. The family owners refused to negotiate with the union despite numerous attempts. Gaining right of access had been difficult but more recently meetings have been allowed in the lunchroom. The award system allowed the union to engage in wage and condition setting without directly engaging with the employer until recently. Traditionally, the union has created state-wide awards for the industry with the relevant employer association. The union also negotiated above award collective agreements at other similar plants around Victoria; however, it was never successful in negotiating a collective agreement at ManufoodCo. This has meant, according to the union, that the employees at ManufoodCo have received slightly above award - but below the industry average - wages for many years. The collective agreement which is the subject of this study was thus seen as a way to gain a solid foothold within the company and bring wages closer to the industry average. The HR Manager agreed that wage rates were lower than some other companies but pointed out that unlike other companies, most employees had permanent status and augmented their wages with overtime payments.

Today, following a lengthy recruitment drive, there is closer to 50 percent union membership in the Victorian country town plant (100 percent of metal workers and just over 50 percent of meat workers). This has occurred as the proportion of employees who live in the country town has diminished, with employees now travelling from around regional Victoria to the plant. According to the HR Manager, it is also an effect of increasing employee numbers, making the relationship between the company and its employees less personal:

> As the numbers of employees have grown, the ability to personally influence the workforce and build relationships at a level [with] the Managing Director obviously diminishes, and so two things were happening. One was that the company was getting larger and more remote from the [owner] family and also that the catchment area was getting increasingly broad and increasingly mobile. And so slowly over time you were getting people who were coming in who didn’t have the unquestioning old country work ethic where you simply do your job and you’re grateful for a day’s work. That has changed over time. The modus operandi of how the company has looked after its people wasn’t changing in the same way and so you have an increase in influx of people who believe they have rights and therefore will look to unionism as a way to pick that up.

Since union membership has increased, there is seen to be a much greater impetus to negotiate with the union to increase productivity and change working patterns. The relationship may have for a time been described as a partnership. This was driven by the personality and commitment of the HR Manager whose position is illustrated in the following statement:

> My view, which others wouldn't necessarily agree with, but my view is that if what you're doing has integrity and makes sense and is going to be done in an appropriate way then the union is not going to have a problem with it. And therefore are they not better as allies rather than adversaries? I mean, why set them up in a position where they're going to necessarily have to do battle when they may well agree with what we're doing anyway?

3. Attempted introduction of high performance workplace systems

In August 2005 the union met with management of ManufoodCo in Melbourne to create a framework agreement to form the basis of negotiations over an enterprise agreement. It was agreed that negotiations would take place incorporating the following principles:

> 'That the overall purpose of the agreement is to enhance the long term viability and profitability of the business, thereby increasing job security for employees'.
>
> The parties are committed to the following principles:
>
> 1. Development of a workforce with sufficient flexibility to meet the changing needs of the business in the most efficient and productive way, while not compromising the quality of life of employees.
> 2. Improvement of labour efficiencies and work practices efficiencies in order to maximize business performance, and the consideration of all practical and reasonable options for achieving such efficiencies.
> 3. Establishment of a 'culture of common purpose,' where both employees and the company are committed as joint stakeholders in business improvement.
> 4. Enhancing employee satisfaction and well being.
> 5. No agreement which may be reached will operate or cause any employee to suffer a reduction in ordinary time earnings.

In late 2005 and early 2006 the HR Manager drafted an enterprise agreement which the company subsequently presented to the union. The agreement provided for a number of arrangements which increased numerical, functional and temporal flexibility at the same time as increasing wages and consultation with employees. This section examines the draft enterprise agreement.

Whilst the draft agreement provides for numerical flexibility, this is not a new characteristic of working arrangements at the company. The award has not, historically, placed any limitations on the number of casual or contractors used. As the HR Manager said:

> Somebody can be a full time casual - if I can use terms that sound conflicting - for years and without contravening the award.

Unlike other companies, however, the company has been decreasing, rather than increasing, its dependence upon a casual workforce. Whereas in the mid-1990s it employed a large number of permanent casuals and increased the workforce size at Christmas by employing more casual employees, today it only employs a small number of casual employees. According to the HR Manager this was in order to reduce costs arising from overheads when employing casual employees. Union officials also attributed the ability to reduce dependency on casual employees to the low base wage for permanent employees.

One of the main purposes of the draft agreement was to maintain and increase functional flexibility by introducing a competency based classification system and maintaining managerial control over the functions or roles to which employees can be allocated. Under the relevant award, employees can only work on machinery or in positions in the plant within their ‘skill, confidence and knowledge’. In other similar companies there is far greater rigidity with regards to employees moving from one function to another based on enterprise agreement provisions. According to the HR Manager, the draft agreement sought to avoid this form of rigidity and ensure that, ‘Managers must retain the right to manage, over and above the EBA’. The agreement also sought to increase temporal flexibility by changing shift times. For some workers, these shift time changes were likely to be incompatible with child care or family responsibilities. While this change to shift times could have been made within the current award, the decision was made by the HR Manager to include the shift changes as part of the overall package to be presented to employees, so they could assess the overall impact and benefits.

As well as aiming to increase functional flexibility, the purpose of the competency based classification system, which is a 'skill specific' classification based on a matrix of skills, was also to create a career path for employees. Under the current job classification system, there is little in the way of career paths for employees, and thus the company has trouble retaining and rewarding high performing employees. The HR Manager sought to increase employee retention and lessen churning through the agreement:

> One of our goals is to become an employer of choice. How do we attract people if we don't offer something that is attractive to them?… You can actually start here working on the floor literally handling meat; you can progress through to supervisory roles; you can move across into the quality stream and that will also be part of the career path structure; and from there you can go through and do your sort of technology and university qualifications. I think that we need to make it clear that everybody who works in this sort of organisation is not actually standing there packing meat, that we have people working in laboratories, in customer service roles. My goal is that we have local youths lying in bed at night hoping for the day when they can work here.

Alongside these increased flexibilities, the HR Manager also hoped to establish greater teamwork amongst employees in their work systems and increased consultation with employees over work methods and workplace changes. As such, the HR Manager had planned to hold a series of focus groups in order to design consultative structures in collaboration with employees and the unions. The HR Manager explained that consultation and teamwork are new for the company:

> Teamworking is a new concept; Toolbox Meetings in their true essence probably don't happen at all. In some areas there are occasional meetings, in some areas there are weekly meetings but they're more didactic than interactive.

Because of the novelty of these methods for the plant, it was anticipated that training would be provided in teamwork and consultation.

In the area of wages, the draft agreement significantly increased the base wage while removing additional allowances. One of these was meal allowances, the majority of which were being paid in excess of the award entitlement. This may have resulted in a reduction of take-home pay for some employees. The union was willing to negotiate over decreased meal allowances due to its perception that the agreement was otherwise beneficial for employees. In particular, the union was happy with employee-centred flexibilities such as potential rostered days off and a promise that supervisors would be trained in management techniques and occupational health and safety. The union saw the agreement as a way to usher in a new culture of consultation and better management.

4. Partnership relations

This case study clearly demonstrates that sustained partnership relations require a commitment at all levels of management. Ultimately, the fact that the HR Manager was committed to conducting change through a partnership relation with employees and the union was not sufficient to create an EBA in the face of changing business conditions. In July of 2006, a train of events began which halted the negotiations and implementation of the collective agreement.

First, significant changes were made at senior management level. A number of significant internal changes then followed. There was a decision to relocate all processing to the Victorian plant. Effected employees were offered relocation to Victoria. Those who did not choose to relocate received redundancy payouts and help by the company with some State Government support to transfer to other industries. The decision to relocate processing was made on the basis of the economies of scale to be gained from consolidating production, as well as the fact that the existing processing machinery in the Victorian plant was of a higher quality and efficiency than the Queensland plant. The relocation of production from Queensland to Victoria had major implications for the Victorian plant, which was required to quickly enlarge its processing capacity by adding machinery transported from Queensland and purchased elsewhere, as well as employing extra workers to meet production needs. This relocation of machinery and renovation occurred during the busiest seasonal production time for the company.

Two months later the distribution function of the business was outsourced to a company with which ManufoodCo had an existing relationship. Shortly after that the company's abattoir was closed and meat sourced from another company. In both situations, workers were offered ongoing employment in the processing section of the plant, but many chose not to stay. Union interviewees explained that because the pay and status of abattoir workers is higher than processing workers, very few of these workers chose to stay within the company in processing work.

A decision was initially made to continue with collective agreement preparation and negotiations whilst these major changes were being conducted. A series of presentations to staff were arranged. The response of the employees was not positive. A number of employees explained that the new shift times would place great stress on work/family balance and would make child care arrangements difficult. The company sought to deal with these issues by negotiating directly with child care providers to extend hours. Changes to weekend rates also became a significant issue as a result of a decision to present an ambit claim on these rates. The potential loss of meal allowances and these ambit claim weekend rates compounded employee dismay, leaving many employees thinking they would lose around $50 to $60 per week on their total take home pay.

In summary, then, the collective agreement was introduced to the workforce at a time of considerable disruption and insecurity for employees. They were uncertain of their future with the company and had lost trust in the negotiation process because the combined impact of the shift times, the reduction in meal allowances, and the ambit claim regarding weekend rates would have resulted in many of them being worse off in overall terms. Despite the disgruntled sense amongst the employees, there was no industrial unrest and relations with the union remained reasonably harmonious. This can be attributed to a number of factors. The short tenure of many employees is probably the most significant factor. As one union official explained:

> [The company's behaviour] bolsters union membership because people are disgruntled, but they won't do anything. They say 'I'm going. I'm not going to stay and fight'. They don't say, 'Let's take them on!' Anyway, there is very little we can do under the law these days.

According to the union, those employees who had been with the company for a long time lacked transferable skills and possibly felt some enduring loyalty to the company. Importantly, also, the union did not want to lose its foothold in the company, as a stronghold of its regional union membership, and was determined to maintain both its coverage and its relationship with the company. Processing workers had not previously been covered by a collective agreement, and the agreement was important to the union. Negotiating an enterprise agreement was seen as a way to avoid the introduction of AWAs in a hostile labour law and policy environment.

The result of this range of factors was that the presentations to staff were abandoned when they were only a quarter completed and negotiations with the union over the collective agreement were postponed. A pay rise was subsequently awarded in order to pass on the Fair Pay Commission's pay increase (though the increase could have been absorbed into over award rates). This was done without implementing any of the other productivity improving changes envisaged in the draft of the collective agreement, including the competency based classification process. A short time later, shift changes and a return to award only meal allowances were undertaken under the provisions of the award and outside the enterprise bargaining process.

At the time this case study was conducted enterprise agreement negotiations had been postponed until 2008. However, union officials were not optimistic about the likelihood of successful negotiations given the events of the preceding year. It was the opinion of officials from the union that the company is choosing a 'low road' approach, instead of the high performance workplace systems approach envisaged in the draft enterprise agreement. They voiced the view that because of inefficiencies, the company was employing more people than were required. They are able to do this and remain competitive because of the low wages they pay compared with the industry average:

> I've not got the slightest doubt that they could take 100 workers away, rearrange the place and get more production out of the place on higher wages. Because they employ people on low wages, workers are expendable. They'll keep on rotating people through as long as people are cheap.

5. Conclusions regarding ManufoodCo

ManufoodCo is a further example of a relatively small regionally located business enterprise, historically locked into a local community, and essentially ‘insider’ controlled. The company has undergone a merger with another business and subsequent further changes in ownership. There have, historically, not been high levels of union coverage or activity within the company. This was attributed to the loyalty that the workers felt towards the owners, who generally lived in the same country town. Whilst there was a brief period when it appeared that relations with the union would become more favourable and high performance workplace practices would be put in place, this was not to be. The company, under its new management, has continued the previous practice of holding the union at arms length and dealing with employees directly. According to the union, its tactics here appear firmly locked into what has been labelled a ‘low road’ to success. This entails competing within markets on the basis of low wages and conditions, outdated work practices, and managerial unilateralism rather than modernised employee management systems such as performance incentives, employment security and employee involvement in workplace strategy.

Outcomes and Implications

What do these studies tell us about the relationship between corporate governance and labour management? In particular do they suggest a recent pattern of development which links changes in ownership structure with a more market-oriented, shareholder-oriented, form of corporate governance accompanied by adverse or negative outcomes for employees and workers generally?

A preliminary observation can be made. The closer one empirically investigates business enterprises, even within common systems, the more one becomes aware of the overwhelming complexity of business practices constituted by the heterogeneity of styles in corporate governance, labour management systems and much else besides. Not surprisingly there is an associated difficulty in drawing major conclusions linking governance, labour relations and capital structure. For that reason the case study findings should be viewed cautiously: in many important respects they tell us more about difference than uniformity, and even where certain similar orientations appear, it does not follow that these necessarily characterise Australian regulatory style and business practice as a whole.

In most of our studies, in the time period under review ownership change or capital reorganisation occurred which could be said to have exposed the relevant business corporations to greater 'market' or 'outsider' pressure. In some cases these changes merely exposed what were already classic 'outsider'-type governance models to larger capital markets. These companies (ResourceCo 1 and ResourceCo 2 for example) could be said already to have had 'shareholder-oriented' outlooks in their style of corporate governance and nothing occurred to vary that approach. But there were, on the other hand, examples among our studies where the greater exposure to market pressures had obviously resulted in a reorientation of the corporate governance outlook away from a more 'stakeholder' inclined model towards a 'shareholder-primacy' approach. The two most outstanding examples of this are seen in the privatisation of the former government-owned ServiceCo, and the demutualisation of FinanceCo 1. In each of these instances the change in business orientation was seen to have directly negative implications for employees and trade unions in much the same way as was the case in ResourceCo 1 and ResourceCo 2, although there were also some important complexities in these arrangements as we note below.

However, not all cases favoured an 'increased market-exposure/increased shareholder orientation' interpretation. For example, in the case of both BiotechCo and FinanceCo 2 share market pressure appeared to have little relevance to corporate governance following upon the public listing of each company. In the case of BiotechCo this was in large part due to the type of industry in which it was engaged. However in the case of FinanceCo2 the existing owners continued to manage the company with more 'insider/relational' strategies than with 'market'-oriented strategies notwithstanding the company's changed financial structure. In other instances we found that existing owners would continue to exercise governance strategies oriented towards consumer and public interest notions in addition to share market considerations even after a privatisation/listing process (EnergyCo). Shareholder primacy might also be restricted in the case of relatively small businesses operating in local communities.

What role did the regulatory framework play in these changed governance structures? Whilst it is the case that in Australia, as elsewhere, legal and regulatory measures were introduced during this period to give greater protection to investors,[74] generally speaking whilst the regulatory environment may have stimulated certain orientations and approaches in corporate governance at this time, it does not appear that particular corporate behaviour towards shareholders in our studies was stimulated by any statutory or other legal obligation in any highly specific sense. Thus, whilst it may be the case that corporations law reforms such as those introduced through the government's Corporate Law Economic Reform Program resulted in a number of changes it is less clear that they were the precise stimulus for the various strategies associated with greater decentralisation of management or vertical disintegration of corporate structures in the cases we observed.

This does not mean to say, though, that regulation was irrelevant to the governance approaches of companies during this period of change. For example in the case of our

[74] See R. Mitchell, A. O'Donnell and I. Ramsay, above n. 3.

studies of privatised businesses, specific government regulation, and forms of self-regulation, were associated with, and in some instances survived the marketisation process, placing boundaries around the corporation's ability to pursue shareholder-oriented strategies by maintaining public standards and expectations deemed appropriate for leading Australian service providers. Other kinds of regulation which must at least be acknowledged as relevant are those labelled as standards of 'corporate social responsibility' or 'corporate social accountability' in the literature.[75] Some of our studies featured companies which had widely adopted voluntary regimes of self-regulation designed to contain their corporate governance practices within a framework of ethical conduct towards non-shareholder constituents (for example, ResourceCo 1 and ResourceCo 2). However, as important as these might seem to be, the literature in this general area suggests that self-regulation of this type in Australia is embryonic and mostly concerned with the formulation of policies and processes. As a consequence it has little real purchase on corporate decision making in practice.[76] For these reasons we cannot assume that all forms of socially-oriented governance regulation operate equally effectively.

Marketisation or greater market exposure, then, does not always lead to simple shareholder primacy, or perhaps even heightened shareholder preference, as an objective of corporate governance, but nor, too, do socially-oriented policies, particularly of the voluntary kind, necessarily inhibit a shareholder-oriented approach. It follows that changes in ownership structure/governance type (say from an 'insider'-type to an 'outsider-type') do not necessarily alter the nature of the relations between the company and its shareholders, and, where relations are affected, they may not change in ways that are predicted. For example in some of our studies, as we have noted, change in ownership structure barely altered the style of corporate governance in any formal sense, though, as we will see, the pursuit of shareholder value was more clearly pronounced than under the previous governance regimes in those companies (ResourceCo 1 and ResourceCo 2).

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[75] H. Anderson, 'Corporate Social Responsibility: Some Critical Questions' (2005) 24 *University of Tasmania Law Review* 143.
[76] For example see M. Jones, S. Marshall and R. Mitchell, 'Corporate Social Responsibility and the Management of Labour in Two Australian Mining Industry Companies' (2007) 23 *Corporate Governance: An International Review* 57; Anderson *ibid*.

Other studies indicated more of a formal shift from what we have described as ‘insider’-governed to ‘outsider’-governed as a result of important changes in ownership style (principally in cases of privatisation or share market listing). Sometimes when this occurred there was a noticeable accompanying change in the relationship between the company and its shareholders, whereby management indicated a greater awareness of, or reacted more readily to, shareholder pressure (FinanceCo 1, ServiceCo, EnergyCo).

Frequently these developments translated into labour shedding and associated cost reductions through the adoption of such practices as casualisation, labour hire under contract and so on (ResourceCo 1, ServiceCo, EnergyCo, FinanceCo 1), but this was not always the case. In the cases of BiotechCo and FinanceCo 2, other influences such as the particular type of industry in which the company operated and the particular type of growth strategy adopted by management meant that greater exposure to capital markets did not translate into higher shareholder-oriented governance. In these two companies, despite public listing, management of shareholder expectations continued to exhibit more ‘insider’ than ‘outsider’ qualities.

As noted earlier, the greater exposure of business to market pressure is perceived to have implications not merely for management-shareholder relations but consequently also for systems of labour management. One key issue in this respect is how companies choose to improve shareholder value, assuming that such an orientation always has some purchase in adjusting to market pressures from capital. To some extent we have answered this question by pointing out that adjustment for shareholder value is not always an immediate or necessary response. But if it is, corporations still have some choices about how to respond to this pressure, between strategies based on cutting labour costs (wherein labour is principally treated as a fixed external expense to the company), and those based on some form of high-value approach in which the company invests in labour and treats its labour force as one of its stakeholders.

Here again our case studies indicate a mixture of predicted and some unpredicted outcomes. In virtually all of our studies (the most obvious exceptions being the two small family-owned businesses) there were substantial changes made to labour management or employment systems arising from, or coinciding with the noted changes in ownership structure and increased market exposure. This held true even of instances where there was no apparent emergence of a hard 'shareholder primacy'-orientation in governance nor a major shift in company-shareholder relations as a result of the change of ownership. However the type and degree of these changes in labour arrangements varied considerably from business to business.

Some companies, including those which already resembled the typical 'outsider'-governed model, and to some degree those which were privatised and/or listed for the first time underwent important, sometimes systemic, labour adjustments which included job shedding, de-unionisation, individualised agreements and relations with management, increased levels of casualised and contracted (as opposed to employed) labour, and the return to a high degree of unilateral (rather than joint labour-management) managerial power (ResourceCo 1, ServiceCo, ResourceCo 2, EnergyCo, CommCo, FinanceCo 1). Even in instances where management continued to deal with their workforces collectively through unions, and where some degree of collective power was still in evidence, labour concessions to managerial demands over broad aspects of the employment system were common (for example ServiceCo and EnergyCo).

It appears from this summary that in the chain of development purportedly linking changed ownership structure with a more shareholder-oriented style of corporate governance, and in turn with a changed approach to labour management, it is the less protected and secure role of labour in corporate employment systems which is the most pronounced and uniform characteristic of our ten case studies. Again, however, the position is not without some complexity. The degree to which de-unionisation, or weakened unions, has occurred may depend, as we noted in the case of ResourceCo 1 and ServiceCo, on a variety of factors including the particular product or service market in which the business operates, and even on geographical location. As we observed in the instances of management decentralisation which occurred in several of our companies, attitudes to types of employment systems may even vary *within* business organisations according to the choice of individual managers at different work sites, and differences in the strength of unions in different regions (for example, ResourceCo 1). Consequently the level of impact of a shift in corporate governance strategy upon labour may reveal strong variations between and within businesses according to all of these sorts of factors.

In our studies we attempted to examine empirically how employment systems were readjusted in each case to deal with the greater market exposure to which most of our companies were subjected. The important point to note here is that just as management in these companies did not uniformly seek a fundamental ‘shareholder value’ approach, nor were their responses to their labour systems uniform, even though, as we have noted, they were generally negative for labour as a whole. The change in the labour law and industrial relations environment we thought offered management a choice in *how* they readjusted (a choice between the so-called ‘high road’ and ‘low road’ to success) and we sought to establish which of these approaches was being pursued in the cases we examined through the use of the ‘partnership’ metaphor.

One development that is clear is that in the large majority of our cases control of workplace organisation and systems had more or less decisively shifted away from unions and workers to management, a point commonly noted in the wider Australian literature.[77] This meant, in some cases, a shift from collective bargaining and negotiation systems between management and unions to non- or weakened-union systems (for example, ResourceCo 1, ResourceCo 2, EnergyCo, CommCo, FinanceCo 1). Generally, where unions remained important within negotiated systems they were nevertheless under pressure and forced into concessions bringing them more into line with less regulated companies. But, as noted, unions might still continue to exercise more traditional levels of power and influence in industries which were competing in less volatile markets (for example ResourceCo 1), and in some instances industries with strong union traditions were able to a degree to maintain those for special reasons we have outlined (for example in some formerly government-owned privatised companies ServiceCo and EnergyCo).

Most of these developments had overall negative consequences for labour in both remunerative and systemic senses. Generally there was downward pressure on wages

[77] See R. Mitchell and A. O’Donnell, above n. 17; M. Bray and P.Waring, ‘The Rise of Managerial Prerogative Under the Howard Government’ (2006) 32 *Australian Bulletin of Labour* 45.

and conditions, though it would appear that in some cases the shift to more flexible, less regulated, employments systems has secured appreciable financial benefits for some workers in the form of higher wages. However, this has come at the cost of much less control by workers over their working lives, and much less employment security with the shedding of jobs (ResourceCo1, ServiceCo, FinanceCo 1, CommCo) and the 'vertical disintegration' of some industries (EnergyCo) common among our set of company studies. Those made particularly vulnerable in these developments include non-core groups hired back in as contractors, casual employees or associated-businesses. These non-core groups are now much more exposed to labour market fluctuations than was the case under earlier labour laws.

On the other hand it was difficult for us to find any real or substantial indications of alternative moves to more 'partnership-style' relations among our case study companies, either between management and unions or between management and employees directly. Various forms of high performance workplace systems were in evidence in some instances (for example ServiceCo, ResourceCo 2, FinanceCo 1) but these appeared to rely more upon flexible employment and employee involvement directed through managerial prerogative rather than genuine worker empowerment. Very few formalised employee involvement practices (such as joint committees or works councils) were found. Possible exceptions to this general picture include EnergyCo and FinanceCo 2 where there were at least some indications of meaningful joint arrangements. However, in the case of EnergyCo, these partnership relations were limited to 'core' employees. The position at ResourceCo 1 appears mixed as between its Western Australia sites and those in New South Wales. Partnership arrangements as defined for this project seemed not in evidence in the smaller family-owned businesses. Again these results appear to bear out the general findings in the academic literature, though it must be emphasised that this research work has relied on the content of formal and informal agreements and other human resource documents rather than case observation of work performance on the ground.[78]

[78] R. Mitchell and J. Fetter, 'Human Resource Management and Individualisation in Australian Labour Law' (2003) 45 *Journal of Industrial Relations* 292; S. Marshall and R. Mitchell, 'Enterprise Bargaining, Managerial Prerogative and the Protection of Workers' Rights: An Argument on the Role of Law and Regulatory Strategy in Australia Under the Workplace Relations Act 1996 (Cth.)' (2006) 22 *International Journal of Comparative Labour Law and Industrial Relations* 299.

Finally it is necessary for us to consider the role of labour regulation in influencing these outcomes. As we have noted earlier it does not appear that recent changes in the corporations regulatory framework have contributed in a highly specific sense to the generally observed shifts in our case studies. But has the changed labour law framework impacted decisively on the way that companies have been able to restructure their labour management, or their employment systems, and if so how? Our starting point for analysis on this point is that whilst there may be scope for argument about the character of the Australian labour law system viewed historically, generally speaking it was more consistent with a 'market/ outsider'-based model of corporate governance than otherwise. Moreover the trend in labour law reform over the past decade-and-a-half has been unwaveringly consistent with the 'outsider' model.[79]

We can characterise the impact of Australian labour law by looking at it in two stages. In the late 1980s and in the early 1990s various regulatory changes occurred which altered the role of the state authorities and introduced various legislative amendments to the core regulatory scheme. These changes heralded a new outlook from both sides of politics towards Australian labour market regulation, though this was perhaps not immediately apparent at the time, and had a long-term effect in shifting the core values of Australian labour law.[80] The new approach included a period of award restructuring,[81] a less regulated approach to irregular forms of employment, initial moves to enterprise bargaining, and restrictions on the legitimacy of trade unions. Declining union membership and changes in the social climate further undermined union industrial power. These combined events served to create a new environment which both questioned the legitimacy of regulation external to the enterprise and also questioned the legitimacy of trade unions in regulating workplaces.

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[79] See M. Jones and R. Mitchell, 'Legal Origin, Legal Families and the Regulation of Labour in Australia' in S. Marshall, R. Mitchell and I. Ramsay (eds.), *Varieties of Capitalism, Corporate Governance and Employees*, Melbourne University Press, Melbourne, 2008.

[80] For details of this process of debate and regulatory change see R. Mitchell and M. Rimmer, 'Labour Law, Deregulation and Flexibility in Australian Industrial Relations' (1990) 12 *Comparative Labor Law and Policy Journal* 1; R. Mitchell and R. Naughton, 'Australian Compulsory Arbitration: Will It Survive into the Twenty-First Century? (1993) 31 *Osgoode Hall Law Journal* 265.

[81] For discussion see *Progress at the Workplace: Workplace Reform and Award Restructuring – Private Sector Services*, and *Progress at the Workplace: Workplace Reform and Award Restructuring – Public Sector*, Reports to the Department of Industrial Relations, National Key Centre in Industrial Relations, Monash University, 1992.

When the non-labour Liberal/National Party government regained office at a Federal level in 1996, these accumulated changes had served to pave the way for far more radical reforms which legally consolidated individualised bargaining and non-unionised bargaining, weakened the role of unions in pursuing industrial action, and, critically, shifted industrial power from labour to capital decisively.[82]

The gradual emergence of a non-union or weakened-union industrial relations climate in which managerial prerogative over employment systems has been radically reinforced appears to have been important in the adaptation of a number of our case study companies to the business environment. That is to say that whilst it is not easy to point to specific legal provisions in stimulating particular managerial initiatives among our studies, the general regulatory environment has clearly empowered corporate management in the systemic adjustment of the employment systems under its control. In a number of our studies, the fact that unions were already in a weakened position presented opportunities for managers to pursue direct relationships with employees, without union intervention. For instance, new businesses BiotechCo and FinanceCo 2 were established in a period of union weakness and in sectors in which there was traditionally low union activity. They were thus able to by-pass unions when they were established. Whilst a union has occasionally made approaches to FinanceCo 2 since its establishment, its strategies have largely been ineffectual and have not resulted in larger union coverage. In CommCo, union coverage has declined with the process of restructuring of core business activities which has meant that the workforce is now mainly white collar whereas it was blue collar. In FinanceCo 1, also, de-unionisation followed listing, but occurred some time afterwards and without a battle with employees over this issue. In both these companies terms and conditions are now largely regulated through common law agreements, whereas in an earlier era they are likely to have been regulated through awards and/or collective agreements.

The general easing of regulatory controls over numerical and temporal flexibility has also had an evident impact. This has been particularly stark in the case of increases in numerical flexibility resulting in greater deployment of casual and contracted labour.

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[82] *Workplace Relations Act 1996* (Cth.). These Federal laws were also matched on occasion by important legislation introduced at State government level, e.g. the *Workplace Agreements Act 1993* (WA).

In EnergyCo and CommCo, for instance, the proportion of employees to contractors has shifted considerably in the last 10 years. Contractors now outnumber employees in many worksites. In EnergyCo, whilst there are clauses in the certified agreement which regulate this issue, and one of the purposes of the company's Joint Consultative Committee is to make determinations on the increase of contract labour, the numbers of contractors have nevertheless continued to increase, suggesting that the purpose and outcome of these regulations is not to stop or stem the increase but to gain union consent. In ResourceCo 1 and 2, even where union coverage is high, unions have agreed to terms which are not unlike those introduced through individualised agreements with regards to the introduction of more flexible work organisation and work-time.

In other instances, however, specific legal change has created the conditions under which some businesses have been able to move towards more radical labour management systems. Unlike ResourceCo 2, which chose effectively to de-unionise its employment arrangements through the use of common law contracts, ResourceCo 1 apparently waited until individualised agreements became available under legislation before making the same transition in its labour management strategy, even in areas where it was in direct competition with ResourceCo 2. Subsequently ResourceCo 1 has also begun to utilise Greenfields Agreements, a form first made available in the 1996 Federal labour legislation, to give effect to non-union strategies elsewhere.

One of the major aims of this study was to examine and better understand the connection between corporate restructuring, corporate governance, and systems of labour management. In particular we have been concerned to ascertain the extent to which changes in corporate ownership structure and corporate governance have produced heightened shareholder primacy and a corresponding decline in the interests of labour. Taken as a whole our studies confirm that where companies underwent listing or structural change leading to greater exposure to shareholder pressure, their corporate governance strategies became more shareholder focussed. The extent to which the corresponding observed changes in labour management were *caused* by this heightened shareholder orientation is less straightforward, however. Most companies underwent increased exposure to market forces during the period of our study, and were subject to increased competitive pressure for a range of factors. The limitations of our specific focus meant that we were unable to investigate all of these factors in detail. Whilst it might be the case that increased pressures arose from concerns to retain the support of investors, it is likely to be the case also that the global integration of consumer and product markets, the entry of companies from low cost, developing countries into product markets, and so on, are equally important variables affecting competitiveness. It is difficult to identify the extent to which any of these has contributed to changes in the employment systems of affected companies.

Overall the most decisive and profound change affecting employment systems among our case study companies has been the rise of managerial prerogative and the corresponding decline of union power. When we looked more closely at what types of employment relations systems might be emerging in this non- or weakened-union climate we found little to suggest the creation of new 'workplace cultures' involving workers and their representatives, at least in the terms of workplace agreements and written policies. With increased managerial prerogative came widespread reduction in employee representation and consultation across the broad cross-section of enterprise regulatory instruments (awards, agreements, policies and so on). Put another way, as companies moved more towards the 'outsider' form they tended to abandon those features of their relations with employees which might be characterised as partnerships. This pattern of development very much fits the pattern of the Anglo-American model generally, where, the research suggests, cultural change in workplaces, incorporating various worker involvement strategies, have been both difficult to implement and difficult to sustain over time.[83]

There are broader questions remaining concerning what all of this evidence tells us about the role law has played in the formation and shaping of particular corporate governance and labour management approaches in Australian businesses. Is it accurate to say, for example, that change in corporations law and labour law has been responsible for the way in which corporations have re-directed their governance strategies, re-aligned their relations with shareholders and re-adjusted their relations

[83] See S. Deakin and F. Wilkinson, *The Law of the Labour Market*, Oxford University Press, Oxford, 2005, pp. 331-332.

with employees and other workers? Or is this to put too strong an emphasis on the importance of law in regulating business practice?

Recent scholarship on the relationship between law, the process of ‘legal evolution’, and the adoption of particular business and social forms and practices has stressed both the highly complex nature of the relations between legal institutions and economic and social development, and also the indeterminate and open-ended nature of legal change.[84] Law is not merely a functional response to economic and social developments, nor does law determine social and economic developments. Rather, the process is one of ‘mutual influence’ between the two spheres, the legal and the economic.[85]

Following this line of thought, our analysis of the trajectory of corporations law and labour law in Australia over the past two decades or so suggests certain responses from regulatory systems to economic developments and certain opportunities arising from them for further economic reorganisation. However, we should be careful not to draw overly simplified conclusions from these changes. Changed business approaches to the management of labour were evident well before the dismantling of the Federal arbitration model began in the early-to-mid 1990s.[86] In some cases these changes were facilitated or encouraged by legal reform at State government level, but this was not always the case. In some well known instances radical employment practices appeared both to have preceded legal change, and probably to have stimulated it.

This complex interplay of legal change and business trends appears most prominent in large companies which have the capacity to act as trend setters and to influence policy at the highest levels. For example, among our case studies both ResourceCo 1 and ResourceCo 2 had the financial resources to monitor global unionising and bargaining trends, and to develop and adopt new business practices, sometimes against considerable political and industrial opposition. Some of these practices flowed

[84] Deakin and Wilkinson, above n. 83, pp. 26-35.
[85] Deakin and Wilkinson, above n. 83, p. 32.
[86] See ‘10 Deals that Shook the World’ *Workplace Change*, Issue 1, March 1996; M. Rimmer and C. Verevis (eds.), *Award Restructuring: Progress at the Workplace*, Industrial Relations Research Centre, The University of New South Wales, 1990.

through into new legislative measures,[87] and were subsequently adopted by smaller companies. These larger internationalised companies sometimes are also observed to have adopted trends in international corporate governance well in advance of the adoption of such initiatives by Australian regulatory agencies. For example both ResourceCo 1 and ResourceCo 2 acted to change their corporate governance structures and reporting methods prior to the introduction of the government's Corporate Law Economic Reform Program and the Australian Stock Exchange Principles of Good Governance reforms by virtue of their need to meet the requirements of international stock exchanges on which they are listed. On the other hand, continuing 'public interest'-type regulation in the privatised industries we examined, at least initially, probably obstructed a more extreme approach to the labour management systems in those industries which might have been engendered through the more radical labour laws of the mid-1990s.

[87] For example, in the terms of the *Workplace Relations Act 1996* (Cth.).

Appendix: Case Study Interviews

Company	Interview Subject	Date of Interview
ResourceCo 1	HR Manager	9 March 2005
	Chief Legal Counsel	1 April 2005
	Vice President, Sustainable Development	8 September 2005
	Union Representative	22 September 2005
ResourceCo 2	CEO	20 October 2005
	Union Official	13 May 2005
ServiceCo	Assistant Company Secretary	23 September 2005
	Assistant Human Resource Manager	23 September 2005
	Senior Manager	23 September 2005
	Union Official	24 September 2005
EnergyCo	CEO	15 June 2005
	Union Organiser	19 September 2005
	Manager Network Services	21 June 2005
	Company Secretary	15 June 2005
CommCo	Chief Legal Counsel	20 March 2006
	HR Manager	20 March 2006
Finance Co 1	HR Manager,	13 May 2005
	Representative of Trade Union	28 July 2005
	Company Secretary	13 May 2005
BiotechCo	HR Manager	20 September 2006
	Chief Financial Officer	20 September 2006
FinanceCo2	HR Manager	9 August 2005
	Senior Manager	28 February 2006
	Company Secretary	9 August 2005
ManuengCo	Union Official	8 March 2007
	Managing Director	29 July 2005
ManufoodCo	Union Official	13 July 2007
	HR Manager	12 September 2005 and 6 July 2007