

Reflections on the intersection between labour law and corporate law

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Introduction

Academic scholars in Australia and internationally have been observing the intersection and potential merger of corporate law and labour law for some time.² The fields have had varying degrees of impact on each other in the areas of corporate governance and labour management. “[L]abour law structures and limits what management can do in its relations with employees.”³ How labour is managed also impacts on shareholder value.⁴ International and domestic scholarship has observed that the pursuit of shareholder primacy has been linked to “deteriorating outcomes

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² see K W Wedderburn, *Companies and Employees: Common Law or Social Dimension?*, (1993) 109 LQR 220; H. Hansmann *Worker Participation and Corporate Governance*, (1993), 43 Uni of Toronto Law Journal 589 and Gospel & Pendleton *Corporate Governance and Labour Management*, Oxford University Press, New York, 2005 for an international perspective; Australian Scholars include J. Hill *At the Frontiers of Labour Law and Corporate Law: Enterprise Bargaining, Corporations and Employees*, (1995) 23 Fed. Law Review Vol 23 at 204; more recently see R. Mitchell, A. O’ Donnell and I Ramsay *Shareholder Value and Employee Interests: Intersections between Corporate Governance, Corporate Law and Labour Law* publication of CCLSR and CELR, The University of Melbourne 2005

³ R. Mitchell et al above n2 at p 38

⁴ Ibid p6 also see Gospel & Pendleton above n2.

for labour”.⁵ The fields also intersect indirectly during the collective enterprise bargaining process. Trade unions have resorted to corporate law as a means of pursuing employee concerns in order to obtain favourable employment benefits on behalf of employees during a collective bargaining period. These means have also been used outside the collective bargaining period. This method has had mixed results for unions. It may however increase in importance since the weakening of the ability for trade unions to use the *Workplace Relations Act 1996 (Cth)* to collectively bargain introduced by the work choices reforms in 2006.⁶ The fields of study also intersect in the area of trade union regulation. The new provisions effectively corporatise trade unions. Many of the provisions in the *Workplace Relations Act 1996 (Cth)* have a striking similarity to the *Corporations Act 2001 (Cth)*. For example, trade union officials are now subject to the same legal duties as corporate directors and office holders as outlined in Chapter 2D of the *Corporations Act 2001 (Cth)*.⁷

⁵ Ibid

⁶ *Workplace Relations Amendment (Work Choices) Act 2005 (Cth)*, No 153 of 2005, was assented to 14 December 2005. The bulk of the legislation came into effect 27 March 2006. The amending act entirely replaced the existing *Workplace Relations Act 1996 (Cth)*. The *Workplace Relations Regulations (2006)* entirely replaced the 1996 regulations.

⁷ The regulation of Trade Unions are found in the *Schedule 1 of the WRA called the Registration and Accountability of Organisations Schedule for Conduct of Officers and Employees* see *Chp 9 of Schedule 1*. Also see A. Forsyth *Trade Union Regulation & the Accountability of Union Office-Holders: Examining the Corporate Model* (2000) 13 *Australian Journal of Labour Law* p1-22. The article is written prior to work choices however the government proposals noted in the paper have been replicated in work choices.

The fields are however still considered to be “separate fields of legal scholarship and regulatory policy”⁸, domestically and internationally.⁹ This was acutely illustrated in Australia in the area of insolvency in the infamous 1998 industrial dispute at the Melbourne docks. The dispute involved the Maritime Union of Australia (MUA) and Patrick Stevedores group of companies.¹⁰ The dispute arose when an entire workforce was sacked due to a company restructure. All the employees who were predominantly union members lost their jobs and their accumulated entitlements. The dispute was eventually settled out of court. The litigation is complex however observations were made by the High Court regarding the intersection between corporate law and labour law, essentially maintaining the separation between the two fields.¹¹ Further, the recent reforms to labour law introduced by the work choices amendments has ignited this debate towards a merger of the two fields as the *Workplace Relations Act* 1996 (Cth) is now almost entirely enacted under the corporations power in the Constitution, s51(xx).¹²

⁸ Mitchell et al, above n 2 p 4

⁹ see Gospel & Pendleton, above n 2 p1

¹⁰ for a description of the dispute R. Morris, *A watershed on the Australian Waterfront? The 1998 Stevedoring Dispute* (2000) 27 *Maritime Policy and Management* at p 107

¹¹ *Patrick Stevedores Operations No 2 Pty Ltd v Maritime Union of Australia* (1998) 195 CLR 1; 153 ALR 643 at [42]

¹² This was held valid by the High Court *State of NSW v Cth* (S592/2005); *State of WA v Cth* (P66/2005); *State of SA v Cth* (A3/2006); *State of Qld v Cth* (B5/2006); *Australian Workers' Union & Anor v Cth* (B6/2006); *Unions NSW & Orsv Cth* (S50/2006); *State of Victoria v The Commonwealth*(M21/2006) [2006] HCA 52 14 November 2006

From a policy perspective how companies “are governed and how labour is managed are central issues for all industrial societies. Both have implications for economic wealth and for the broader welfare of nations”¹³ How companies are governed and what affect that has on labour management and standards is of great public concern. Arguably the pursuit of shareholder value to the exclusion of other stakeholders such as employees has caused a deterioration of labour standards in Anglo-Saxon, countries where, despite the influence of corporate social responsibility principles,¹⁴ shareholder primacy is still the foundation of corporate governance practice.¹⁵ This concern should lead scholars to examine the impact the fields of study have on each other. This inquiry should be of relevance to corporate lawyers as well as labour lawyers.

It is apparent that this is a relevant field of inquiry to the Commonwealth government. It is the subject of a significant ARC Discovery project grant titled “Corporate governance and workplace partnerships” run by the *Centre for Corporate Law & Securities Regulation* and the *Centre for Employment & Labour Relations law* at the University of Melbourne. It is also an area which merges disciplines outside of the law including

¹³ Gospel & Pendleton see n 2 p1

¹⁴ see M. Jones, S Marshall, R. Mitchell *Corporate Social Responsibility and the management of labour in two Australian Mining Industry Companies* Corporate Governance Vol 15 No. 1 Jan 2007 at p57 – 67 Blackwell Publishing.

¹⁵ R. Mitchell et al see n 2; see The Age NAB article (23/1/07) Business Section by NAB Chairman on CSR

management, economics and human resources. The paper will draw upon scholarship from these disciplines.¹⁶

Structure of Paper

The paper will focus on the relevance to corporate law from a labour lawyer's perspective. It will outline the Australian labour law system and discuss the changing redefinition of labour law. It will then examine certain aspects of corporate governance that have an influence on labour law.

A Brief History of Australian Labour Law

Australia inherited the British labour master and servant laws and other associated laws relating to labour and trade union regulation upon settlement. However by federation Australia had given birth to its own unique brand of labour law which survived up until work choices which came into operation in 2006. Labour lawyers have and will probably in the future speak of this period with some nostalgia.¹⁷ A brief explanation of the system which pre-existed work choices is related to the present discussion, as it is helpful to illustrate corporate law's relevance to

¹⁶ see Gospel & Pendleton above n 2

¹⁷ see Isasc & Macintyre *The new province for law and order; 100 years of Australian Industrial Conciliation & Arbitration*, 2004 Cambridge University Press, Melbourne

modern labour law.

1901- 2006; The Birth and Death of the Award system based on Conciliation & Arbitration

From federation the federal regulation of labour law in Australia was governed by the conciliation and arbitration power in the Federal Constitution s51(xxxv). This power gave the federal government the power to make laws with respect to conciliation and arbitration for the purpose of settling interstate industrial disputes. The Australian Industrial Relations Commission (AIRC) up until 2006 had the exclusive power to settle industrial disputes of this nature. The awards determined by the commission were binding on the parties to the dispute. Effectively through the award system Australia had a centralised wage fixing system. The award system gave trade unions a significant role in this process as they were given standing to institute proceedings in the commission and represent employees. The resolution of industrial disputes by way of conciliation and arbitration was an international trend. Conciliation statutes were enacted in Britain, the United States and Canada at about the same time as in Australia.¹⁸ What was unusual about Australia was

¹⁸ R. McCallum *The New Work Choices Law: Once Again Australia Borrows Foreign Labour Law Concepts* (2006) 19 Australian Journal of Labour Law p 98 at 100. In the article he also notes that the current reforms are in line with international developments in labour law

that the system of conciliation and arbitration was compulsory.¹⁹ The terms and conditions of labour management were not determined by the parties at enterprise level but as determined by the commission. This constrained what management could do across many unionised sectors in Australia resulting in inflexible and standardised working arrangements. Labour law was focused on the activities of the Australian Industrial Commission and its determinations as this was the structure of the Australian labour system. Corporate governance did not appear to directly affect the determination of workers' rights through the award system. It was the process of conciliation and arbitration and the central role played by trade unions which influenced labour outcomes. Throughout this period trade union membership in Australia was high.

From 1987 onwards the commission “placed increasing emphasis on the need to improve the international competitiveness of the Australian economy.”²⁰ This reflected the economic reforms of the Hawke/Keating government. In the late 1980s and early 1990s the Hawke/Keating governments deregulated the Australian economy and the Australian labour market. In order for Australia to compete globally it was considered that the ability to negotiate flexible working arrangements had to be introduced. At the same time trade union membership in Australia

¹⁹ Only New Zealand emulated Australia's system of compulsory conciliation and arbitration

²⁰ Breen & Creighton *Labour Law*, 4th Ed, The Federation Press, 2005 Sydney

continued to fall. This trend was also mirrored internationally.

“In 1999, 26% of all employees (1.9 million people) were members of a trade union. Levels of trade union membership have dropped considerably over recent decades, especially through the 1990s. In 1976, close to half (51%) of all employees were members of a trade union. By 1992 the membership rate had fallen to 40%. After a slowdown in the decline around the early 1990s (possibly associated with the 1990-91 recession), membership rates have plummeted.”²¹

In 1993 the Keating government introduced reforms using the corporations’ power to allow collective bargaining at enterprise level which by-passed the commission’s involvement. This signalled the beginning of the end of the compulsory centralised labour regulation system that had been in operation in Australia since 1901. The Howard government continued this reform process. Today the commission has been stripped of its centralised wage fixing power and it can no longer make new awards. Our labour system today is deregulated and it relies on the parties at enterprise level to make agreements relating to the terms and conditions of employees. This system is now reliant upon the corporations’ power in the Constitution. There are today relatively few

²¹ Australian Bureau of Statistics; Australian Social Trends 2000.

constraints on management's power to set the terms and conditions of employment. It largely depends on the bargaining process between the parties. There is a "general recognition that the shift to enterprise-based arrangements coupled with the weakening of the authority of the AIRC and trade unions has considerably strengthened managerial prerogative".²² Employees are still able to be represented by trade unions in the collectively bargaining process. However the ability of trade unions to effectively bargain with employers has been weakened by work choices.²³ In effect Australian labour law now places little restraint on management's ability to weaken employee benefits and entitlements. Managerial prerogative has been strengthened to such a degree that there is no compulsion at law upon employers to bargain in good faith or to negotiate with trade unions.²⁴ The Australian work force today is subject to management's powers and their pursuit of shareholder value which is often applied to the detriment of labour interests.

These changes have arguably been the cause of the shift in focus in labour law. No longer is the structure of the labour system based on conciliation and arbitration and award-making. The focus of labour regulation in

²² R. Mitchell et al above n 2 p 35.

²³ S McCrystal, 'Shifting the Balance of Power in Collective Bargaining: Australian Law, Industrial Action and Work Choices' (2006) 16 Economic and Labour Relations Review 193.

²⁴ *Sensis Pty Ltd v Community and Public Sector Union* (2003) 128 IR 92; A full bench of the AIRC held that there was no duty on parties in the WRA to bargain in good faith. It is considered that this position has not changed in the act in its amended form

Australia is now upon enterprise bargaining. The driver of labour standards is the bargaining between single enterprises²⁵ and its workforce. The agreements are made collectively in the form of collective agreements or individually in the form of Australian workplace agreements. The principle difference in today's labour system is that the terms and conditions of Australia's workforce are generally determined without the intervention of a third party. This changes the bargaining process significantly and means that labour law scholars must search to other areas of legal regulation to protect workers' rights.

The Role of Labour Law and its place in Corporate Law

Much has been written both in Australia and in the United Kingdom examining the redefinition of labour law.²⁶ The traditional focus of labour law is to regulate the contract of employment. Its principal purpose has been to "act as a countervailing force to counteract the inequality of bargaining power (between employer and employee) which is inherent...in the employment relationship."²⁷ However this focus has shifted since the 1980s due to the changes in labour market policy and regulation, some of these changes were highlighted in the previous

²⁵ The *Workplace Relations Act 1996 (Cth)* generally prohibits agreements to be made across multiple businesses. It only allows such agreements in specific and rare circumstances. See ss 322 & 332

²⁶ In Australia see R. Mitchell *Redefining Labour Law* (Centre for Employment and Labour Relations Law, University of Melbourne, 1995) and in the United Kingdom see Bob Hepple *The Future of Labour Law* *Industrial Law Journal* Vol 24. No. 4 Dec 1995 and Barnard, Deakin & Morris *The Future of Labour Law* Hart Publishing, Oxford, 2004

²⁷ Kahn-Freund O, *Labour and the Law*, Stevens and Sons, London, 1972, p8

section. Many labour law scholars have argued that the role of labour law should be redefined to be the law of market regulation.²⁸ This reorientation of the role of labour law brings it into line with the labour market reforms which have taken place in Australia since the 1980s. This then changes and opens up the parameters of labour law to include all aspects of labour market regulation. It would then “incorporate into the analysis...Certain features of commercial, competition, and company law may be relevant since they serve to define the legal form of the business enterprise.”²⁹

This redefinition also leads to a change in the objectives of labour law. The traditional focus on the protection of workers’ interests would not be ousted however it would require a “compromise of sorts with other economic and social goals and the state of labour law was thus always conditional on particular economic and social contexts.”³⁰ However underlying most of the academic inquiry in this area is the search for adequate protection of workers’ rights within the corporate model and regulatory regime. In the writers’ view this traditional focus has not been altered by the redefinition of modern labour law. It is only the arena in

²⁸ R. Mitchell *Redefining Labour Law* Centre for employment and labour relations law, University of Melbourne, 1995 and Arup, Gahan, Howe, Johnstone, Mitchell & O’Donnell, *Labour Law and Labour Market Regulation, Essays on the Construction, Constitution and Regulation of labour markets and work relationships*. The Federation Press, Sydney , 2006

²⁹ Deakin & Wilkinson *The Law of the Labour Market* Oxford University Press, Oxford, 2005, p2

³⁰ see n 23 Arup et al p 10

which the inquiry is conducted that has changed. The redefinition to labour market regulation does increase the complexity of labour law to include areas such as welfare, taxation and family law and most probably leads to confusion as to what the proper parameters of labour law should be. This however does not mean that the redefinition is inadequate or wrong. It enriches the study of this area of law and more significantly may come closer to providing solutions to larger problems which affect the economy and the labour force of our society.

Labour law is not often the key focus of corporate law scholars.³¹ Much of this inquiry has been driven by labour scholars in their examination of the conditions and rights of workers in companies. The focus of corporate law is multi-faceted however it does not appear to include examination of labour management and regulation within the corporate structure. Even with the advent of employee share ownership schemes the areas of law seem to be segmented.³² Perhaps the reasons are that it has generally been understood that corporate law and labour law are separate fields of scholarship and regulatory policy.³³ Some scholars have argued that a continued separation between the two fields is not even

³¹ see r. Mitchell et al n 2 at p38

³² the Corporate law and Workplace Partnerships project at University of Melbourne have published some papers on the area see J Lenne, R Mitchell and I Ramsay, 'Employee Share Ownership Schemes in Australia: A Survey of Key Issues and Themes' (Research Report, Corporate Governance and Workplace Partnerships project, Centre for Corporate Law and Securities Regulation and Centre for Employment and Labour Relations Law, University of Melbourne, May 2005).

³³ see above n 2 Hansmann p 589 and Mitchell et al p4

sustainable or desirable.³⁴ It is evident that the pursuit of shareholder value by corporate management and decision makers has direct relevance to labour management issues and thus labour law scholars. The relationship is however “complex and paradoxical.”³⁵ In order to understand some part of this relationship the underlying concepts of the company in Anglo-Australian law needs to be examined.

Concepts of the company³⁶

Scholars have noted that there is “no single understanding of the company [i]n the Anglo-[Australian] tradition.”³⁷ In this section of the paper, two models of the company will be examined. First the traditional, ownership model will be examined. This view of the company regards shareholders as owners and perpetuates the pursuit of shareholder value above other stakeholders in the company. This theory has been varied in modern times by the agency or nexus-of-contract theory.³⁸ The theory conceives the company in contractual terms. The theory accepts that shareholders do not own the company. However, ownership of their shares gives them the right, exclusive of other stakeholders to hold directors and managers of the company accountable. Shareholders are the

³⁴ n 2 Mitchell et al p 4

³⁵ see note 24 essay by S. Deakin *Workers Finance and Democracy* p79

³⁶ much of the discussion refers to J Parkinson *Models of the Company and the Employment Relationship* British Journal of Industrial Relations 41:3 Sept 2003 pp 481-509

³⁷ *ibid* p481

³⁸ se E. Fama and M Jensen, *Separation of Ownership and Control* (1983) 25 Journal of law and Economics 301

principals and management are their agents in the relationship. The end result is that this theory still prefers maximisation of shareholder value as the appropriate goal of corporate governance.³⁹ The second model which will be examined is the stakeholder model. This model involves a balancing of interests of stakeholders, including employees.

Some Basic Concepts defined

Prior to examining the concepts of the company noted above, reference should be made to what is meant by two important terms that are often used without specific definition, namely shareholder value and/or primacy and corporate governance.

Shareholder Value/Primacy

Scholars have noted that the meaning of the terms shareholder value or primacy “is not immediately clear” as they are not strictly legal terms.⁴⁰ They are used by economists and policy-makers of corporate governance but they are not defined at law. Further there is also considerable disagreement as to how shareholder value is to be delivered. Generally shareholder value is often interpreted as a management concept which is aimed at maximizing shareholder benefit. This benefit is often defined by a strong focus on raising company earnings and the share price. However

³⁹ see n33 p485-491

⁴⁰ see n34 p79.

in contrast to this there has been support for ‘enlightened shareholder value’ which implies an obligation upon management to maximise benefits to shareholders by taking into account a balanced view of the short and long term effects of all stakeholders of the company, such as labour.⁴¹

Corporate Governance – Narrow and Broad

Corporate governance is used to describe all exercises of power mainly in large publicly listed companies. In its narrower sense it only considers corporate decision making as a function of shareholder primacy or value. This is the traditional legal understanding of corporate governance and consistent with the ownership model of the company. Corporate governance in its broadest sense encompasses the stakeholder model of the company. This takes into account all influences that may bear upon company decision making and thus is not narrowed to considerations surrounding shareholder value.

Ownership Model

The ownership model is based upon a proprietary view of the company. Shareholders are viewed as owners of the company and are thus entitled to insist that the company is run in their own interests. This is the

⁴¹ Ibid n 34 p81

justification used to invoke shareholder primacy in corporate governance decision making. However “the idea that shareholders are owners in the legal sense...rests on a technical error.”⁴² Shareholders do not own the assets of the company. In fact they may be found guilty of theft if they take and use an asset of the company without proper authorisation.⁴³ Shareholders own their shares only. Certain proprietary and contractual rights flow from the incidence of ownership of the shares but that does not translate to ownership of the assets of the company or the company itself. This holds true in publicly listed companies. The position maybe different in private companies where shares are closely held between management and shareholding. The idea that shareholders own the company is a remnant from an earlier conception of the company which operated until the early nineteenth century. This is when joint stock companies were seen as partnerships at law and shareholders were considered to have equitable ownership of the assets with managers as their agents.⁴⁴ It is unclear why this remnant of the nineteenth century still has primacy in modern company law. Perhaps it is a convenient basis upon which to justify and pursue the shareholder model where primacy is given to shareholder value in corporate governance. This model has been used to justify policy arguments in favour of corporate governance

⁴² n33 p483

⁴³ *Blight v Brent (1837)*, 2 Y & C Ex 268

⁴⁴ see Paddy Ireland, *Capitalism without the Capitalist: The joint stock company share and the emergence of the doctrine of separate corporate personality* 1996 17 *Journal of Legal History* 41

practice that act in accordance with the shareholder model.⁴⁵

Advocates of shareholder primacy have focused on the need to keep those in control of the company that is, the managers and directors accountable to shareholders. There is a real risk of abuse of position and power.

There are legal duties imposed upon office holders but that on its own is not sufficient given how widely the duties are defined.⁴⁶ They give great discretion to office holders and the courts impose their own views only in extreme circumstances. It is fair to say that the courts are reluctant to interfere into managerial decision making with regards to what is considered to be the best interests of the company. The duties may not provide an effective check on managerial decision making. However by making managers subject to shareholder value they are more likely to govern the company in the interests of shareholders and not their own interests. Another justification has been used under the agency theory. Shareholders are considered to be best placed to monitor the company's performance as they have the most to lose if the company does not perform. Other stakeholders such as employees have different objectives that may conflict with the company's best interests such as job security and high wages.

⁴⁵ see n33 p482

⁴⁶ see *Chp 2D Corporations Act Cth (2001)*

Stakeholder Theory

This concept of the company is evident in civil law countries such as Germany and Japan. In contrast with the shareholder model it conceives that the company must balance the interests of various stakeholders within the company. This must be reflected in the company's decision-making. However it presumes that managers are not able to do this as they have their own interests and thus stakeholders must have representation at the corporate governance level. Under this system employees have board representation and there are mandatory consultation procedures with employees in place. This theory acknowledges labour as a valid stakeholder in corporate governance.

Corporate Governance Practice in Australia

In Australia, studies have shown that the corporate regime promotes the shareholder model and gives primacy to shareholder value.⁴⁷ The Australian regulatory regime does not promote the stakeholder model of the company. Workers are the outsiders in this model. It is unlikely that such a model would be put in place in Australia. There would need to be radical changes to the Australian regulatory regime to allow for this model. Effectively non-shareholder interests are being incorporated into the corporate governance structure.

⁴⁷ see R. Mitchell et al n2 at p12

Labour interests however can be incorporated in the current corporate governance structure as we understand it in Australia. This is done without resort to radical changes to the system. In spite of shareholder primacy, the shareholder model does not oust the ability of management to practice corporate governance that leads to favourable labour outcomes. Labour interests can be incorporated in decisions that reflect ‘the best interests of the company’. In practice some scholars have noted that there is little difference between the best interests of the company and the best interests of shareholders.⁴⁸ The legal duties imposed upon management and office holders are general enough to give discretion to corporate decision makers. Management can and do define the long term interests of the company, one of those interests is the investment of a skilled work force within the company and for the general protection of workers’ rights. Bad publicity associated with mass sackings and restructures do not generally lead to public or shareholder approval. Long term maximisation of shareholder wealth may not be satisfied by short-term profit gains associated with a reduction in the workforce and in employment benefits generally. In the United Kingdom scholars have noted that the positive long term “economic advantages which flow from

⁴⁸ R. Mitchell at al n2 p15

cooperation between labour and management are now generally understood.”⁴⁹

The need for increased worker protection has also caused labour law scholars to draw upon corporate social responsibility CSR principles. CSR principles are theoretically incorporated into the directors’ duty of the ‘best interests of the company’. It has been noted though that employees have received very little attention in the corporate governance debate.⁵⁰ This is the case in relation to corporate social responsibility aspects of corporate governance practice. Much of the debate has focused upon the environmental impact of corporate behaviour. Certainly with the urgency created by the global warming issue corporations are increasingly concerned with the environment. Labour standards seem to be taking a backseat in the debate. The adherence to corporate social responsibility principles is largely voluntary in Australia. There is no mention of it in the *Corporations Act 2001 (Cth)*. It will most likely stay that way if the present government follows the findings of CAMAC’s latest report released in December 2006.⁵¹ The CAMAC report in essence reinforced the current corporate governance framework as an adequate basis for ensuring that companies act in a socially responsible way,

⁴⁹ Deakin & Wilkinson n 24 p338

⁵⁰ Bottomley & Forsyth, *The New Corporate Law*, Corporate law & Accountability Research Group Working Paper June 2006, Monash University, p21

⁵¹ Corporations and Markets Advisory Committee *The social responsibility of Corporations* Dec 2006

meeting international standards in this regard. There are various guidelines and instruments which may be followed by Australian companies and accords with best practice with respect to the management of labour. For example, there are the Australian Stock Exchange ten best practice corporate governance principles which recognise the value to companies of human capital.⁵² These voluntary guidelines serve to bring some attention to employment or labour matters. However given the voluntary nature of the guidelines their effectiveness in strengthening workers' rights is hard to assess. There is certainly no mandatory obligation upon management in this area. Some companies such as BHP and Rio Tinto have adopted CSR principles relating to employment practices in their management strategies. However recent studies have shown that although there is a general commitment to these strategies there is little evidence of a deeper level of commitment in the actual workplace in these companies.⁵³ A cynical observer may comment that adherence to responsible corporate practices in the area of labour is merely lip service.

A reality commented by corporate law scholars in this debate is that managers are driven to deliver shareholder value which has inevitably meant that short-term gain overrides any long-term investment which

⁵² For a more detailed list of instruments and guidelines see n14 Jones et al p58

⁵³ Ibid

strengthens workers' rights. This has translated into delivering pure financial gain to the exclusion of the consideration of the effects on other stakeholders such as workers.⁵⁴ The recent CAMAC report on social responsibility notes that consideration of non financial interests in corporate governance will ultimately enhance the commercial outcomes for companies. At the present time corporate behaviour does not reflect this thinking.

Conclusion

This paper has surveyed some of the issues that concern labour law scholars in the context of corporate governance in Australia. The brevity of the paper provides a summary only and a means of generating some discussion. The paper does not examine other areas of concern such as the vulnerability of workers' entitlements when a corporation collapses or when companies re-structure. It arguably paints a grim picture for labour in the corporate context. The investigation however does not end here as there undoubtedly will be further examination of the issues.

⁵⁴ see n 36 Parkinson at p494 and n50 Bottomley & Forsyth