

Australian Council of Trade Unions

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EMPLOYEE SHARE OWNERSHIP INQUIRY

**INTRODUCTION**

The ACTU has had an involvement in the issue of Employee Share Ownership for a number of years. We would appreciate attention by the House of Representatives Committee to the submission outlined below.

During the period 1992/93 the ACTU gave significant attention to the issue of Employee Share Ownership. We prepared and issued to union officers and members a publication on the issue with the title of Employee Share Ownership Plans - Handle With Care. A copy of the publication is attached to this submission.

The ACTU is generally supportive of Employee Share Ownership when it is introduced in a manner consistent with the principles incorporated in ACTU *policy*. (*Attachment 1*.) The approach we favour is the New Generation -Employer Funded Plans, a copy of the outline of which is attached. (*Attachment 2*)

Many claims are made by proponents of Employee Share Ownership in regard to its positive effects on productivity and employee morale. In the ACTUs view many of these claims are based on anecdotal evidence and should be the subject of critical review by the Committee. There is also a range of evidence which suggests that factors other than share ownership are more important in promoting productivity and competitiveness.

The ACTU has a serious concern with the proposition that Employee Share Ownership should be promoted by way of tax concessions to the participants. If the schemes are positive to enterprise performance as their proponents claim it should be in the interests of those enterprises to encourage their use and their application should therefore not require scarce taxpayers funds. In addition it is inevitable that the share schemes will only apply to a minority of employees as those employed in the public sector, non profit sector and small to medium size private firms are generally unable to participate in a practical way - this is a further reason for questioning tax incentives for an approach which cannot be accessed by all employees.

The ACTU believes that if public funds are available to encourage employees to save more and provide for their retirement they should be used to improve superannuation benefits, particularly for the low paid.

## **ACTU POLICY**

The ACTU developed a policy position on employee share ownership in 1989 which is attached for information. In developing that policy it was determined that the following principles should be followed by unions in their consideration of proposals to introduce Employee Share Ownership.

- i) Wage levels and conditions of employment are independent of share ownership. Award standards, including wages should not be discounted in return for rewards from financial participation
- ii) All employees in an enterprise must be eligible to participate
- iii) Plans must be structured to take account of the financial ability of lower paid employees and to enable their participation
- iv) Schemes should be self-financing, minimising financial risk to employees
- v) The preferred option for participation is a democratically controlled employee trust or company, with employees having access to, and control over his or her account (subject to trust deed considerations)
- vi) Shares must be equitably distributed between employees. The preferred option is that rewards are distributed equally to all levels of employees
- vii) Plans must be subject to full consultation and decision-making by employees
- viii) Trade unions must be involved to provide advice on protecting and advancing employee interests
- ix) Plans must be part of a comprehensive approach to greater employee participation
- X) Employee share ownership is not too appropriate for public enterprises since they are owned and controlled by the whole community

In developing the above principles the ACTU is aware of both good and bad examples of employee share ownership plans. In regard to the good examples the essential features are that they:

- (i) Do not require a direct financial contribution from the employee;
- (ii) Do not expose the employee to a down-side loss such as can occur with partly-paid share plans.
- (iii) Form part of an overall management approach which involves:

- significant communications between management and employees and their unions.
  - modern work organisation practices.
  - opportunity for employee involvement in decision making.
  - consultation with unions on the structure of the share plans.
  - provision of progressive standards in wages and conditions.
- (iv) The plans are equitable in their application to all employees.
- (v) Plans are independent of the level of wages and conditions of employment.
- (vi) Plans provide for participation in an employee trust or company with employees having access to and control over their own accounts.

There is a significant number of share plans which generally meet the criteria set out above. An outstanding example would be the Lend Lease share plan which is referred to on pages 21-23 of the attached report.

In regard to bad examples of share plans some of our concerns are:

- (i) That employees have to contribute their own funds to purchase shares and thus expose themselves to the risk of a fall in the share price. There have been many recent examples of a fall in the share price in major companies leaving employees out-of-pocket in terms of the current value of the shares.
- (ii) Plans which expose the employee to a substantial liability should be company become unviable. Partly paid shares can lead to this outcome if the company cannot meet its obligations and partly paid shareholders are required to pay the full value of the share.
- (iii) Plans which have been introduced with minimal or no consultation with employees and their unions.
- (iv) Plans which are grossly inequitable in that they offer lower paid employees minimal involvement whilst offering executive level employees significant benefits.
- (v) Plans which are structured essentially to avoid taxation liabilities or are subject to manipulation to provide financial gains for their proponents.

Areas of potential and actual abuse have included the following:

- i) The potential for abuse through non-arm's length investments, such as loan-back from an Employee Share Plan (ESP) (or a trust) back to principals of the employer company.
- ii) The possibility of using ESP vehicles for income splitting.

- iii) Where substantial proportions of profits accruing to principals of a company are converted into equity through an ESP with the dominant purpose of tax avoidance.
- iv) "Cherry picking" practices, including unfair vesting, unfair allocations of units in an ESP or other vehicle, or unfair distributions.

The first three of these potential types of abuse - loan-backs, income splitting and "profit washing" - are potential abuses against the taxpayer, whereas the fourth represents potential abuse against employees as well as against the taxpayer. All forms of abuse are clearly more likely to occur in small closely held firms than in larger ones.

### **EVIDENCE OF EFFECT ON PERFORMANCE**

The evidence of the effect of share ownership on employee and company performance is mixed.

In a recent ILO publication (ILO 1995) it was stated that:

*"There is an impressive, wide-ranging body of evidence for a positive association between profit-sharing and productivity gains in the industrialised countries. In their survey of empirical results, Weitzman and Kruse, in the most comprehensive book on this issue, edited by Blinder (1990), find a degree of consensus which is most unusual in empirical research. The authors, from their survey of a wide variety of case-studies, attitudinal surveys and econometric studies, conclude that profit-sharing schemes have a positive and significant effect on productivity. "*

However, the report went on to say:

*"However, it has also been pointed out that some of these positive effects might be due to reverse causality, since the most efficient and productive enterprises are those most likely to introduce financial participation schemes. This point of view would appear to be confirmed by the chapters on Belgium, France, the United Kingdom and the United States, in which it is found that financial participation schemes tend to have been introduced and grown particularly strongly in large profitable export-oriented enterprises. The chapter on Japan also finds that the probability of a firm introducing financial participation schemes is higher in companies in which human resources are a more important factor in their success. "*

Overall the ILO report claimed that the effect of Employee Share Ownership "enhances productivity".

Some time ago, the US General Accounting Office issued a report entitled "Employee Stock Ownership Plans: Benefits and Costs of ESOP Tax Incentives". The report was based on a survey of 4,147 ESOPs covering more than seven million employees. In a sample of 3,657 of the 4,174 plans the following advantages were reported for ESOPs.

Advantage

Percentage of Plans  
Reporting It

Improved staff morale	66
Higher productivity	36
Reduced labour turnover	33
Improved profitability	23

The percentage reporting an increase in productivity includes many small firms which found productivity difficult to measure, and could not respond. A more recent US General Accounting Office study concluded however that "its analysis generally fails to substantiate assertions that ESOPs improve profitability and productivity."

A survey in 1988 in Britain by the Wider Share Ownership Council asked companies to state their "personal experience" as to the effect of employee share participation and the following results emerged :

Type of Effect %	Significant Effect %	Small Effect %	Total Positive Effect %	No Effect %
Increased understanding of the company's financial position	37	37	74	26
Improved loyalty or enthusiasm	28	54	82	18
Increased labour productivity	9	37	46	54
Facilitated recruitment	13	48	61	39
Helped in negotiations with employee representatives	11	31	42	58

The high proportion of responses which reported "no effect" on productivity with only 9% reporting a "significant" effect should be noted by the Committee.

There is a number of studies which show a positive relationship between employee share ownership and enterprise performance but there is also a number which show no positive link between employee share ownership *in itself* and economic performance.

In an assessment of the outcome of employee share ownership by David Peetz during 1989 (Peetz, 1989) he concluded in part:

“It is unclear whether employee share ownership in itself increases productivity. It sometimes does and certainly can have that effect, but whether it does depends upon a number of factors.;

What works in one setting will not necessarily work in another setting. Hence we should be wary of uncritically attempting to just follow the experience of a successful case study;

A consistent theme is the key role of participation and consultation. Financial participation projects which have a high degree of employee and union consultation in their design and which imply a high degree of employee participation in decision making, enabling employees to exercise some control over the factors that influence productivity, are likely to succeed. Those which are implemented without consultation, and which do not involve any employee participation in decision making, are likely to fail;

Of the employee share schemes, the tax-driven US ESOPs are possibly the least effective in delivering actual improvements in economic performance."

The ACTU acknowledges that there is a range of evidence, much of it anecdotal, which suggests that there is a significant positive link between employee share plans and productivity levels. However as the earlier material suggests there is a need to be cautious in taking statements of an unqualified positive link at face value. The evidence deserves to be tested in the Australian context.

One proposition which should be accepted by the committee is that the introduction of employee share ownership without other significant changes in how an enterprise works in terms of management/employee/union communication, employment conditions, management style and opportunities for employees to participate in decision making is highly unlikely to produce a positive outcome.

The ACTU also draws the attention of the committee to the submission from the AMWU which provided some views of employees in share ownership schemes. The views union members' expressed were to the effect that the individuals felt powerless to affect the share price either up or down. The responses from the AMWU members indicated that the employees placed more emphasis on factors such as:

- Job security
- Superannuation
- General employment conditions
- Work organisation/degree of discretion
- Flexible working time arrangements
- Child care availability

In the ACTUs view if the government is concerned to lift the levels of productivity in Australian workplaces it should pay more attention to issues such as :

- Improving the competence of management in enterprises
- Providing more opportunities for skill development to employees
- Paying greater attention to the problems caused by increased casualisation, part-time work and job insecurity which is severely affecting employee morale
- Encouraging greater opportunities for constructive dialogue at national, industry and enterprise levels between employer and union representatives
- Stop the attacks on collective representation of employees through their trade unions

### **EMPLOYEE RISKS**

The ACTU believes that the Committee needs to take account of the risks faced by employees if they are induced to invest savings in the share scheme related to the enterprise for which they work.

Where the schemes are fully funded by employer contributions the risk for the employee is minimised however if the employee is required to make a financial contribution the concentration of ownership and risk in one enterprise can have negative consequences for employees.

### **TAX EQUITY**

The Committee needs to consider the effect on government revenue of any taxation concession granted to encourage employee share ownership and whether the advantage of the concession can be accessed by all employees.

In practice employee share ownership has been made available to only a small minority of Australian workers. An Australian Stock Exchange survey in 1991 found that around 6% of the workforce (400,000 employees) were participating in share plans. A survey by the Remuneration Planning Corporation in the same year concluded that participation was around 500,000 in share plans.

No doubt the number of employees involved in share ownership has increased since 1991 however the proportion would remain as a minority of the workforce and be concentrated in the larger publicly listed companies.

The Committee should consider the equity of providing taxation concessions which, in practice, are only accessed by a minority group in the workforce. In practice they would not be available to employees in :

- Small to medium size enterprises which make up the fastest growing sector of the workforce
- Many private companies
- Non profit sector
- Public sector

## **SAVINGS LEVELS**

One argument for promoting employee share ownership is to increase the level of savings in Australia.

Whilst the ACTU would not argue against the benefits of a higher level of national savings there are other, more equitable, vehicles to achieve that outcome without having to provide publicly funded incentives to employee share ownership. The most equitable means of increasing savings is to provide for higher levels of contribution to employee superannuation.

Virtually every employee in Australia is eligible to receive an employment related superannuation benefit as opposed to a minority who are likely to receive a benefit from employee share ownership concessions.

If there are public funds available to encourage behaviour which will lead to higher savings levels it would be better directed to increasing superannuation benefits for the general workforce, in particular the low paid.

## **NEW GENERATION - EMPLOYER FUNDED PLANS**

The ACTU has a preference for share plans known as New Generation Employer Funded Plans.

These plans involve a company buying real shares for the benefit of employees, and holding them under various conditions. This plan type most closely fits the ACTU policy position.

This plan structure represents a new approach to designing employee share plans in Australia. The plan structure is very flexible, has simple financial and structural arrangements and can be specifically designed to deliver advantages which other plan types have difficulty offering, or cannot offer.

The employer funded plan is preferred by the ACTU for the following reasons:

- i) Participation can be maximised as employees will not be precluded from participating because they can't afford it, and the financial risk of participation can be minimised or eliminated
- ii) Larger share holdings for each employee can be accumulated for the same cost to the company as would have been incurred under the riskier employee purchase plan structure, and
- iii) Employee involvement and participation can be greater, as the plan lends itself more easily to regular additions to employee holdings, the need to regularly report on the plan progress, and employees' individual holdings are held as a group under the plan structure. This makes it easier to represent employees' interests and maximise the effectiveness of their voting rights.

The attached ACTU report outlines the new Generation plans at pages 27-28.



## **CONCLUSION**

Employee share ownership, if combined with a range of good management practice, can improve the level of performance of an enterprise. In considering publicly funded incentives in this area however the Committee should take account of:

- I. The evidence of improvement in firm performance which relates to the specific initiative of share ownership
  - II. The potential for applying share ownership to employees generally – are there more equitable means of delivering benefits to employees
  - III. The alternative means of increasing savings levels through mechanisms such as superannuation benefits to the workforce as a whole, particularly the low paid
  - IV. The need for any share ownership plan to be introduced through a process of consultation with employees and their unions
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### References :

1. ILO 1995 - Workers' Financial Participation - East West Experiences, ILO Office, Geneva
2. D. Peetz, 1989 - Conference Proceedings - Employee Financial Participation and Industrial Restructuring in Australia, p. 125-135, ACCIRT

**1. PREAMBLE**

- 1.1 Congress declares that the direct involvement of working people in decisions which affect their daily lives in the workplace represents an essential element of participation which is required in a free and democratic society.
- 1.2 Congress notes that despite a great deal being written and spoken about the need for change in the decision making processes in Australia the application of approaches which are relatively common in Western Europe, Scandinavia and elsewhere remains the exception. Whilst the involvement of members in areas such as Occupational Health and Safety, industry development and job security provisions represents a significant step forward more comprehensive change is required to obtain an adequate involvement of union members in the decision making process.
- 1.3 The changes taking place within the Australian economy and society in areas such as skill development, working practices, work organisation, equal opportunity and employment and new technology cannot be accommodated by reliance on traditional patterns of ownership, organisation and control. This will require change away from Taylorist forms of work organisation and authoritarian management structures and implementation of forms of work organisation which are inherently democratic, which encourage innovation, involvement and the optimum application of skill and experience.
- 1.4 Industrial democracy which assures workers of effective participation and representation cannot be achieved without the support and involvement of the trade union movement.
- 1.5 Industrial democracy is not an artificial objective in itself, it is a process and means for dealing with workplace problems such as job security, work organisation, skill development, occupational health and safety. improving the work environment and technological change.
- 1.6 The application of Industrial Democracy needs to take account of the experiences and culture of particular industries and enterprises and not be restricted by a single rigid set of rules or structures.

**2. WORK ENVIRONMENT**

- 2.1 The ACTU is concerned to ensure that jobs are created or reorganised in a manner which benefits Australia's workers by increasing their economic and industrial role in the workplace.
- 2.2 Congress calls on affiliates to take every opportunity to extend the role of workers at the enterprise and industry levels. This should be undertaken on a comprehensive basis utilising agreements between unions and management and, where appropriate, the establishment of rights through Awards and legislation. Various approaches such as consultative committees, consideration of new technology job redesign and job enrichment whilst not sufficient in isolation can lead to the development of industrial democracy through an expansion of such involvement over time.

2.3 New Technology, rapidly changing requirements in skill formulation and work organisation, new management techniques, equal employment opportunity and the need for cleaner and safer work have all combined to create a higher level of interaction between unions, their members and employers. Congress acknowledges that the maximum adaptation to achieve an overall upgrading in skills requires a work organisation structure which focuses upon the group rather than the individual and also life long training opportunities associated with a worthwhile career structure.

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### **3. THE ISSUES**

3.1 The process of industrial democracy will only be maximised when it is seen by workers as constituting demands consistent with their objectives and are relevant to their areas of concern. Consequently, the union movement should undertake activity around issues such as:

- I. job security
- II. adjusting to technological change
- III. health and safety
- IV. job design, supervision and general improvement in work processes
- V. education, training and retraining
- VI. contracting and sub-contracting
- VII. industry development policies
- VIII. equal Employment Opportunity
- IX. union rights and the implementation of the shop stewards and shop committee charters.

### **4. EDUCATION AND RESOURCES**

4.1 The introduction of industrial democracy should be through established union organisation arrangements. Adequate facilities, rights, access to information and training opportunities must be available to unionists participating in industrial democracy processes.

4.2 The ACTU calls upon governments to provide resources which encourages the expansion of industrial democracy in Australia. These include:

- (i) provide general education through schools and tertiary institutions so that persons entering the workforce will have a better understanding of democratic forms of work.
- (ii) facilitate activities which provide general education about democratic forms of work for those already in the workforce with special emphasis upon the needs of ethnic workers, and which build upon Equal Employment Opportunity programs;
- (iii) assist unions and industry to develop educational programs around practical activities to increase democracy at work and to improve the effectiveness and competitiveness of Australian Industry".

### **5. INDUSTRY DEVELOPMENT**

5.1 Congress believes that its industry development policy must be closely integrated with the policies on Industrial Democracy. Re-development of the manufacturing industry will rest heavily on the workforce being motivated to contribute to such development and this can only

be achieved by them having access to meaningful information and decision making as outlined in this policy.

## **6. EMPLOYEE FINANCIAL PARTICIPATION**

- 6.1 Congress notes that employee financial participation is increasingly being proposed as a form of participation by employees in their enterprises.
- 6.2 Proposals for the introduction of employee financial participation must be independent of wage levels and accompanied by an extension of employee involvement in decision making in enterprises. In isolation employee financial participation is an insufficient and unacceptable form of employee involvement.

- 6.3 Employee financial participation can take a number of forms. Two examples are employee share ownership and profit sharing.
- 6.4 Proposals for the introduction of employee financial participation require the active involvement of unions on behalf of employees. This involvement will lead to better scheme design and more security for the individual employee's interests. Unless this occurs there is a significant risk of inequitable and financially unsound schemes being imposed on workers.
- 6.5 Congress notes since public ownership means that the whole community owns and controls public enterprises through government ownership which is accountable to Parliament individual share ownership including individual employee share ownership is not appropriate in those enterprises.

## 7. **WORKPLACE RIGHTS**

- 7.1 Congress notes that industrial democracy will not have a significant impact in Australia until a base is established for its application. Areas which require attention include:
- (i) The establishment of a right of involvement in a range of decisions which affect the daily working lives of members. Such involvement to include matters such as those listed above. The right of involvement could be established through legislative or award prescription and would be exercised following union decisions to seek membership participation in enterprises or industries in appropriate circumstances
  - (ii) protection of the rights and facilities of shop stewards and union organisation, especially at the workplace level;
  - (ii) A requirement for employers to provide information on request from unions and their representatives and a requirement to negotiate on issues as requested on matters such as technological change, industry development, work organisation and sub contracting.
- 7.2 Congress calls upon the incoming Executive to consider an application to the Industrial Relations Commission to achieve a right in Awards for the establishment of Works Councils at the industry and enterprise level. Such councils to be elected by and from union members, to involve senior management at the enterprise level, to have a wide term of reference to consider matters such as those listed above, but in particular to act as a facilitator to ensure that many employees as practicable have the ability to participate in decisions which affect them.

## **NEGOTIATION PRINCIPLES**

### **- EMPLOYEE SHARE OWNERSHIP IN PRIVATE INDUSTRY -**

Where unions are dealing with proposals for issuing shares to employees, or employees demanding shares, the following principles should be followed:

- (1) Wage levels and conditions of employment are independent of share ownership. Wages should not be discounted in return for rewards from financial participation.
- (2) All employees in an enterprise must be eligible to participate.
- (3) Schemes must be structured to take account of financial ability of lower paid employees, to enable their participation. Preferably schemes should be self-financing, minimising financial risk to employees.
- (4) The preferred option is a democratically controlled employee trust, focussing on group ownership and control.
- (5) Shares must be equitably distributed between employees. The preferred option is that rewards are the same for all levels of employees.
- (6) Schemes must be subject to full consultation and decisions by employees.
- (7) Trade unions should be involved at all stages and on an ongoing basis, providing expert advice, education, and protecting and advancing employee interests.
- (8) Schemes must be part of a comprehensive approach to greater employee participation as outlined in the ACTU Industrial Democracy Policy.
- (9) Employee share ownership is not appropriate for public enterprises since they are owned and controlled by the whole community.

## **NEGOTIATION PRINCIPLES**

### **- PROFIT SHARING -**

Where unions are dealing with proposals for profit sharing, the following principles should apply;

1. Wage levels and conditions of employment are independent of profit sharing, and should not be discounted or traded off in return for profit sharing.
2. All employees in an enterprise must be eligible to participate.
3. Schemes must be negotiated collectively for the enterprise, including agreed criteria for definition of profit, and access to all financial information.
4. Schemes must be equitable between employees, with rewards preferably the same for all employees.
5. Schemes must be subject to full consultation and collective decision-making by union members.
6. Trade unions should be involved at all stages and on an ongoing basis providing expert advice, education and advancing employee interests.
7. Schemes must be part of a comprehensive approach to greater employee participation as outlined in the ACTU Industrial Democracy policy.



"New Generation" Employer Funded Plans:  
a Description

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These plans involve a company buying real shares for the benefit of employees, and holding them under various conditions. This plan structure represents a new approach to designing employee share plans in Australia. It has been successfully implemented by companies such as Du Pont (Australia), Advance Bank Australia, Coca Cola Amatil, and Miden Corporation (formerly Control Data).

The plan structure is very flexible, has simple financial and structural arrangements and can be specifically designed to deliver advantages which other plan types have difficulty offering, or cannot offer.

### ***How Employer Funded Plans Work***

#### **Share purchase**

The share purchases are fully funded by company subscriptions as an additional financial benefit to employees. Employees are not required to put their own money in the plan, although some plans may allow it.

#### **Divesting restrictions**

Employees often cannot sell their entitlements until a minimum period has elapsed. In the case of the Advance Bank, this is two years. Tax advantages encourage employees not to sell.

#### **Share purchase criteria**

The number of shares purchased for each employee can be determined in a number of different ways, such as the same number of shares for each employee, percentage of salary, years of service.

Shares purchased with company subscriptions are held for the benefit of employees until they are withdrawn by the employee or the employee leaves the company.

#### **Rights**

Shares carry full shareholder rights to dividends, bonus and rights issues, and voting.

1

## ***Employer Funded Plans and Taxation***

### **Employer subscriptions**

The subscriptions are tax deductible to the employer and not subject to the fringe benefits tax. The employee receives no assessable income at this stage.

### **Purchase of shares**

There are no tax implications as a result of the share purchases to the employer, the plan structure holding the shares for the employee, or the employees themselves.

### **Dividends**

The trust or vehicle holding the shares for employees will receive the dividends and any franking credits and pass them on to the employees, according to their individual shareholdings. The employees will receive dividends as assessable income, together with any applicable franking credits which can offset the tax payable on the dividend.

### **Sale of shares**

Employees will receive assessable income when their shares are sold by the plan and they receive the cash from the sale. Tax must be paid on this income at the normal marginal rates.