Attachment D

Submissions of
The Australian Workers' Union,
Tasmanian Branch

Authorised by
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Submissions of AWU Tasmania Branch

The Australian Workers' Union in Tasmania is a general union representing the industrial interests of Blue Collar employees across a broad range of industries. Approximately 2'500 workers are active members of the Union. Approximately 70% of the union's members and those eligible to be members are regulated by the Tasmanian State Industrial jurisdiction, with the remaining 30% being regulated by the Commonwealth Jurisdiction. The Tasmania Branch is a respondent to 27 State Awards, and 25 Commonwealth Awards, which have application to Tasmania. The industries which have higher union membership density include:

- Metalliferous Mining and Mineral Processing, including smelters;
- Forestry, including silviculture;
- Infrastructure Construction, Construction Materials and Road Maintenance;
- Food Processing, including Fish, Aquaculture and Marine Products, The making of Milk, Cheese and Butter; Poultry Meat Processing,

- Horse Racing Industry, including the formation and maintenance of tracks and grounds
- Horticulturists
- Shearers, Shed Hands, Wool Pressers and Wool Classes.

The regulation of members in terms of State verses Commonwealth regulation in those industries is as follows:

Industry	State	**Commonwealth**
Metalliferous Mining and Processing	70%	30%
Smelters	85%	15%
Forestry	60%	40%
Infrastructure Construction	20%	80%
Construction Materials	50%	50%
Road Maintenance	10%	90%
Food Processing Fish, Aquaculture and Marine Products **Milk, Cheese, Butter** **C. Poultry Meat**	 100% 100% 100%	
Horse Racing Industry	80%	20%
Horticulturalists	80%	20%

Shearers, Shedhands, Woolpressers, Woolclassers (endeavouring to move to 100% State)		100%

LABOUR INTENSIVE AND CONTRACTING INDUSTRIES

The Tasmania Branch is particularly concerned about changing the no disadvantage test against the award to the proposed Fair Pay and Conditions Standard. This concern is best illustrated by the circumstances of our members engaged by Shearing Contractors and Silviculture Contractors.

Silviculture Contractors

There are approximately 20 Silviculture Contractors in Tasmania. The size of those businesses vary from small family businesses with 1 or 2 employees up to businesses which engage 70 to 80 employees. The silviculture contractors provide services such as planting, pruning, fertilising, and spraying to forestry companies such as Gunns, Forest Enterprises Australia, and Forestry Tasmania. The employment is regulated by a State Award known as the Silviculture and Afforestation Industry Award. The predominant level in the Award that covers the majority of work performed is Grade 2. The current award rate is $593.85 per week (15.62 per hour). If just one contractor applies the proposed new FPCS to an AWA as a condition of obtaining employment the effect is that the contractor will engage labour at $484.50 per week

[the minimum rate under FPCS] compared to the award rate of $593.85, a difference of $109.35 per 38 hour week, per employee. In a labour intensive industry a 18.5% reduction in the cost of labour for the contractor, will provide that contractor with a significant advantage over the other contractors. In the face of loosing work to the contractor who has applied the FPCS, other contractors will be compelled to do the same in order to remain competitive. The outcome ultimately is that large businesses such as Gunns, Forest Enterprises Australia and Forestry Tasmania achieve a significant cost reduction in the silvicultural aspects of their business at the direct cost to the employees who perform the work. The work is hard physically arduous and supports the livelihoods of approximately 300 people who live in regional Tasmania. Those employees and their families in the marginal seats of Braddon and Bass who depend on silviculture for their livelihoods will not forgive a government that reduces their already modest earnings by 18.5%.

Shearing Contractors

Like silviculture contractors, the shearing contractors rely upon the award to set rates of pay and labour costs. The effect of award reliance is to ensure a level playing field. There are approximately 9 shearing contractors in Tasmania who employ a total of approximately 300 employees in the shearing industry.

Like silviculture contractors it will take only 1 shearing contractor to apply the FPCS to their workforce, and the other contractors will be compelled to follow suit in order to remain competitive. Shearers are paid piece rates based on a formula which assumes the average shearer will shear 500 sheep per week. The Award weekly total for casual piecework shearer with own hand piece is $1049.54. Applying the proposed minium rate of $484.50 and assuming a casual loading of 20% the FPCS results in a rate of $581.40 per week. This means a shearer can loose $468.14 per week, a reduction of earning by 44%. The effect on shedhands, woolpressers and woolclasses is equally dramatic. Again these employees and their families who depend on the current level of earnings live in regional Tasmania. The proposed new system operates to the advantage of woolgrowers at direct expense of those that perform the physically arduous work.

Effect of Illustration

Silviculture and shearing are only two examples of the many labour intensive and contracting industries which operate in Tasmania and Australia. All labour intensive and contracting industries will be faced with the same competitive pressures, as silviculture and shearing contractors if the proposed new system is

implemented. For example in these industries a real reduction in actual earning is a very likely outcome of the proposed new system.

COMPULSORY ARBITRATION

The Tasmania Branch is a strong proponent of the rule of law in industrial relations. The inability of an independent umpire to impose outcomes on parties in dispute, undermines the integrity of the rule of law in Industrial Relations. The Tasmania Branch believes that the proposed s113 is too narrow in its application and should be expanded to include a new 113(c) as follows:

> *"(c) on the ground set out in subsection 107J"*

In addition the Union believes that the proposed 107(3)(b) should read

> *"(b) that industrial action is adversely affecting or would adversely effect the employer or employees of the employer; <u>or</u>"* (underlining added)

In its current form s107G(3)(b) by ending with the word "and" rather than "or" is too restrictive. By adding the word "or" the capacity for orderly resolution of industrial action is broadened.

The Branch urges the committee of inquiry to recommend those relatively modest amendments proposed above.

In addition Division 8 – Workplace determinations is too restrictive in that it requires the involvement of a Full Bench at first instance. The Tasmania Branch believes such an approach is not practical. Accordingly we believe the following amendments should be made:

113C(2) delete current proposed and insert the following:

"The workplace determination can be made by a single member of the Commission".

113C(3) delete reference to *"full bench"* and insert in lieu thereof the words *"Commission".*

113D(1) delete reference to *"full bench"* and insert in lieu thereof the words *"Commission".*

113D(5) delete reference to *"full bench"* and insert in lieu thereof the words *"Commission".*

113D(5)(i) delete current provisions and insert (i) any other factors considered relevant by the Commission"

113D(6) at the end of the proposed provisions *insert "unless the parties have agreed to the Commission inserting into the workplace determination an alternative dispute resolution process".*

113D(5) insert a new 113D(5)(j) as follows:

"(j) any matters agreed between the parties"

113D(5) insert a new 113D(5)(k) as follows:

"(k) movements in wages and earnings in the community"

176N(2) insert at the end of the proposed provision:

"unless the workplace agreement provides otherwise"

176I(5) Delete the proposed provision and insert in lieu thereof the following:

"The Commission does have power to do any of the things mentioned in subsection (4) if existing workplace agreement authorises it to do so".

The Tasmania Branch submits that protracted industrial action results in hardship and economic loss for both employer and employees alike. In its current form the Bill does not have a practical approach to the resolution of industrial action. The amendments proposed above maintain the thrust of the Bill's intention but amend it to provide practical mechanisms to resolve disputes and industrial action in an orderly manner. The Tasmania Branch submits that such an approach is the best interest of employees, employers, and the community at large, and urges the Committee to recommend the amendments to the Bill proposed above.

DEMARCATION PROVISION

A significant feature of the proposed Bill is that previously State registered unions may obtain interim federal registration. The practical effect of this is to substantially move state registered organisations into the federal sphere. Each of the State jurisdictions contain a mechanism for ensuring that where there is a competing claim by employee organisations for representational rights of a particular class of employees, an orderly process is available to resolve those competing claims. Given that the

Commonwealth is now seeking to cover the field occupied by those State jurisdictions the Tasmania Branch believes there should be a balance struck between the objectives of the Bill as it relates to freedom of association, and the traditional demarcation provisions and mechanisms found in the State jurisdiction. The Tasmania Branch believes that if the proposed Bill is to go forward to enactment the Bill 118A of the current Act and replacing it with a provision similar to s294(2) of the *Industrial Relations Act 1996* (NSW).

Such an approach balances the right for an employee to join a union with the traditional mechanism for ensuring that the orderly conduct of industrial relations is not compromised by more than one organisation of employees attempting to represent the industrial interests of the same class of persons. In summary such an approach balances the right to join a union whilst preserving the integrity of the "Conveniently Belong" rule, which is a significant aspect of employee organisation registrations.

VALIDITY OF THE BILL

The Tasmania Branch is concerned that the proposed Bill may not in fact be valid. If in fact it is determined by the High Court that the Bill (upon enactment) is invalid then a great deal of uncertainty by

employers and employees will occur about their respective rights and obligations. Underpinning the concern about the Bill's validity is that it appears to be based on s51(xx) of the Constitution and employment law was considered by the Full Court of the High Court of Australia in *Dingjan and Ors Exparte Wagner and Another (1995)* 183 CLR 323. At paragraph 8 of his Decision McHugh J discussed that relationship in the following manner;

> *"Thus a law that sough to regulate the remuneration of employment contracts made by financial analysts would not be a law with respect to s51(xx) corporations even if the work of the analyst was entirely based upon the business activities of corporations. Laws that seek to regulate such contracts are laws with respect to employment contracts, but they are not laws with respect to corporations"*

In addition given that the effect of the proposed enactment would be to substantially override the operation of State Industrial Systems, the Tasmania Branch is concerned that such proposal is unconstitutional, as 51(xxxv) specifically restricts the Commonwealth to *"(xxxv) conciliation and arbitration for the*

prevention and settlement of industrial disputes extending beyond the limits of any one state."