
# Parliament of Tasmania

**LEGISLATIVE COUNCIL SELECT COMMITTEE**

# Industrial Relations

**Members of the Committee**

**Mr Harriss**
**Mr Squibb**
**Ms Thorp**
**Mr Wilkinson (Chair)**

***Secretary: Mrs Sue McLeod***

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## Executive Summary

- Concern was expressed by the business community to some Members of the Legislative Council regarding the formulation of the Industrial Relations Amendment Bill 1999 (the Bill).

- It was suggested to those Members that there had been a lack of consultation, particularly with employer organisations.

- There was also a concern that the Bill introduced into the House of Assembly on 1 December 1999 was intended to be debated by both Houses prior to Parliament rising on 7 December 1999 and that there was insufficient time to adequately scrutinise and investigate the Bill.

- The Legislative Council Select Committee was established to address these concerns.

- After considering the submissions and taking oral evidence, the Committee has found that :

    1. As awards can be amended without Parliamentary approval, the definition of 'outworker' should be defined in Section 3 of the Industrial Relations Act 1984 (the Act).

    2. For the purposes of Clause 4 (Section 3) the terms 're-employment' and 're-instatement' should be defined to clarify their respective meanings.

    3. The deduction of union fees from an employee's wages by an employer should not become an 'industrial matter' because an 'industrial matter' should pertain to the relationship between an employer and an employee.

    4. The period during which a former employee is able to lodge a claim for unfair dismissal should be extended from the current 14 days to 21 days, with a capacity to seek an extension of that period only in exceptional circumstances.

    5. The Industrial Commission should take into account the viability of a business when considering any order for compensation when an employee is unfairly dismissed.

    6. Where termination of employment occurs the employee should make reasonable efforts to seek alternative employment pending a hearing in order to mitigate any loss suffered through dismissal.

    7. There should <u>not</u> be a 'no net detriment test' applied to Enterprise Agreements. The Committee believes that no person should be

precluded from accepting employment under conditions which may not meet a 'no net detriment test' if that employee is aware of all the relevant provisions of the Act relating to enterprise agreements and the Enterprise Commissioner deems the enterprise agreement to be fair in all the circumstances.

8. The Office of the Enterprise Commissioner should be retained and therefore Part IVA, Division 3 of the Act retained.

9. There should be a right of entry to the workplace for union officials in respect of both members and persons eligible to be members of a relevant organisation. The right of entry however should not be unfettered.

10. Restrictions upon a union's right to enter a workplace should be encompassed in the Act and not by way of regulation. An appropriate penalty should be imposed for a breach of this provision.

11. Legitimate conscientious objectors should be able to gain an exemption from the right of a union official to enter a workplace. An amendment consistent with a provision in the *New South Wales Industrial Relations Act 1996* should be included.

12. Enterprise agreements should not be available for public inspection but limited to the parties involved.

13. The Enterprise Commissioner's Office should be adequately resourced to ensure that all functions of the office can be carried out effectively.

**Parliament House, Hobart**
**4 April 2000**

**J.S. Wilkinson MLC**
**CHAIRMAN**

# Summary of Recommendations

The Committee recommends that :

Chapter 2

2.1 A State employee who is appointed under section 12 of the *Police Regulations Act 1998* should be specifically included in the definition of "controlling authority" in Section 3(1) of the *Industrial Relations Act 1984* (the Act), together with those State employees who are appointed under section 9, 9A or 10.

2.2 An 'outworker' as referred to in the Bill should be included in the definition of 'employee'.

2.3 Trainees and apprentices be included in the definition of 'employee' and therefore be able to access the Industrial Commission for appropriate dispute resolution.

2.4 Persons appointed under Sections 9, 9A, 10 or 12 of the *Police Regulations Act 1998* be included in the definition of 'employee'.

2.5 For the purposes of this section the terms 're-employment' and 're-instatement' should be defined.

2.6 A dispute relating to Long Service Leave and consequent entitlements be considered as an 'industrial matter'.

2.7 The deduction of union fees from an employee's wages by an employer should not become an 'industrial matter'.

Chapter 4

4.1 The amendment proposed by Clause 15 (b) be agreed to. The amendment extends the scope upon which a former employee may apply to the President for a hearing before a Commissioner in respect of an industrial dispute in relation to :

- the entitlement to long service leave; or
- payment instead of long service leave; or
- the rate of ordinary pay at which any such leave or payment is to be paid in respect of the former employee.

4.2 The period during which a former employee is able to lodge a claim for unfair dismissal be extended from the current 14 days to 21 days with a

capacity to seek an extension of that period in exceptional circumstances.

4.4 Clause 15 (d) be agreed to as it is appropriate that the Minister be the person to apply to the President for a hearing before a Commissioner in respect of an industrial dispute relating to a breach of an award or a registered agreement.

4.5 The amendments being proposed by Clause 15 (e) are appropriate.

4.6 Clause 15 (f) be agreed to.

Chapter 5

5.1 Clause 16 be agreed to with the provisos listed in 5.2-5.5.

5.2 The Industrial Commission should take into account the viability of a business when considering any order for compensation and that the Bill should include provisions to accommodate this principle.

5.3 Where termination of employment occurs the employee should make reasonable efforts to seek alternative employment pending a hearing in order to mitigate any loss suffered through dismissal.

5.4 Tasmanian employees who are under Federal awards and are presently excluded from application to the Federal jurisdiction for the hearing of disputes, should be entitled to apply for the hearing of a dispute specified in Section 29(1A) (a) or (b) of the Act.

Chapter 6

6.1 Clause 17 (b) be agreed to but reiterates the comments made in paragraphs 5.2-5.5 in relation to the principle of an employee being required to mitigate any loss when compensation is being considered.

Chapter 7

7.1 The amendments being proposed by Clause 18 are consequential to the proposed abolition of the Enterprise Commissioner and therefore are not supported.

Chapter 8

8.1 Clause 19 be agreed to.

Chapter 9

9.1 There should not be a ‘no net detriment test’.

Chapter 10

10.1 The Office of the Enterprise Commissioner be retained and therefore Part IVA, Division 3 of the Act be retained.

Chapter 11

11.1 There should be a right of entry to the workplace for union officials in respect of both members and persons eligible to be members of a relevant organisation. The right of entry however should not be unfettered.

11.2 To ensure union access to a workplace does not disrupt the normal workings of that workplace and to ensure that access is reasonable for all parties, there should be restrictions placed upon a right of entry.

11.3 Such restrictions be encompassed in the Act and not by way of regulation.

11.4 Right of entry should occur :

(a) during meal breaks;
(b) in non-working hours, or in working hours with the employer's agreement; and
(c) upon reasonable notice given to the employer of the intention to enter the workplace.

11.5 An appropriate penalty by way of fine should be imposed for a breach of the right of entry provision.

11.7 An amendment consistent with a provision in the *New South Wales Industrial Relations Act 1996* should be included to facilitate a conscientious objection to the right of entry of union officials.

Chapter 12

12.1 Clause 24 which repeals Section 61(Z)(E) not be agreed to.

12.9 Enterprise agreements, like industrial agreements, should not be available for public inspection but limited to the parties involved.

12.12 The Enterprise Commissioner's office be adequately resourced to enable all the duties and responsibilities of the Commissioner to be carried out effectively.

## Acknowledgements

The Committee extends its appreciation and thanks to all who participated in this inquiry.

In particular the Committee would like to recognise and thank Mrs Sue McLeod for her valued assistance, as well as those who provided secretarial support.

The Committee is especially grateful to Mr Clive Willingham, Director of Industrial Relations for his assistance throughout the inquiry.

# Chapter 1 – Introduction

## 1.1 APPOINTMENT AND TERMS OF REFERENCE

On Wednesday, 1 December 1999 the Legislative Council resolved, "That a Select Committee of Inquiry be appointed to inquire into and report upon the Government's proposed changes to the Industrial Relations law with particular reference to the draft Bill that is available for public comment".

The Committee comprised four Members of the Legislative Council - Mr Harriss, Mr Squibb, Ms Thorp and Mr Wilkinson (Chairman).

The Committee presented an Interim to the President on 1 March 2000 as required by the resolution of the Legislative Council.

On Thursday, 30 March 2000 the Legislative Council resolved to reappoint the Committee;

> "and that the Membership of the Committee, and its terms of reference be those agreed to in the First Session of the Forty-Fourth Parliament and that the Minutes of Proceedings of, and evidence taken by, the Committee be referred to the Committee".

The Committee met on seventeen occasions. The Minutes of such meetings are set out in Attachment 4.

## 1.2 THE REASON FOR ESTABLISHING THE COMMITTEE

The Committee was established as a result of concerns expressed by the business community to some Members of the Legislative Council. It was suggested to those Members that there had been a lack of consultation, particularly with employer organisations in formulating the Industrial Relations Amendment Bill (the Bill).

There was also a concern that the Bill introduced into the House of Assembly and read a first time on Wednesday, 1 December 1999 was intended to be debated by both Houses prior to Parliament rising on Tuesday, 7 December 1999. There was therefore insufficient time to adequately scrutinise the large number of amendments contained in the Bill.

## 1.3 PROCEEDINGS

The Committee called for evidence in advertisements placed in the three regional daily newspapers. In addition invitations were sent to the peak employer and employee representative organisations and the Minister for

Justice and Industrial Relations. The Committee received thirty written submissions and heard verbal evidence from twenty-eight witnesses. A large number of statutory declarations were also received.

The witnesses heard are listed in Attachment 1. Documents received into evidence are listed in Attachment 3.

# Chapter 2 – Interpretation

## Clause 4 (Section 3)

Definition of 'employee'

2.1 The Committee agrees that a State employee who is appointed under section 12 of the *Police Regulations Act 1998* should be specifically included in the definition of "controlling authority" in Section 3(1) of the *Industrial Relations Act 1984* (the Act), together with those State employees who are appointed under section 9, 9A or 10.

2.2 The Committee agrees that an 'outworker' as referred to in the Bill should be included in the definition of 'employee'. There is no specific definition in the Bill of 'outworker', the only reference being to an Award definition. The Committee recommends therefore that because Awards can be amended without Parliamentary approval, it is appropriate for a specific definition to be included in the Act.

2.3 The Bill provides that trainees and apprentices come under the umbrella of the Industrial Relations Act. Mr Clive Willingham, Director of Industrial Relations noted :

> "One of the reasons that these provisions are being included in the proposed amendments is as a result of discussions with the department responsible for the Vocational Education and Training Act and it is a matter of agreement between us that this mechanism that we have here now is the best way in which disputes involving trainees can be resolved".[1]

The contrary argument was that there was already a means of redress available under the *Vocational Education and Training Act* (VET Act). The Joint Employers contend in their submission that this Act is the :

> "primary foundation for the relationship between employers and trainees and contains facility for the hearing and determination of disputes arising from the terms, conditions or operation of the training agreement".[2]

Mr Willingham went on to state however that :

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[1] Transcript of Evidence – Mr Clive Willingham, Director of Industrial Relations - Friday, 25 February 2000, p. 3.

[2] Joint Employer Submission to the Legislative Council Select Committee into Industrial Relations Amendment Bill 1999 – January 2000, p. 66.

> "there have been some major disputes where trying to identify an appropriate tribunal to which trainees have access has proved impossible because of the very nature of the employment relationship. What this particular proposed amendment does is to ensure that trainees have access to an industrial umpire in the event that they are unfairly treated in their employment, it's no more complex and no more simple than that".[3]

He further noted :

> "… it was thought best to give proper referral to the Commission via Section 29 for trainees and those still in apprenticeships as being the only sensible and appropriate mechanism by which employees - because that's what they are - have access to the industrial tribunal just like every other category of employee".[4]

The Committee agrees that trainees and apprentices be included in the definition of 'employee' and therefore be able to access the Industrial Commission for appropriate dispute resolution.

2.4 The Committee agrees that persons appointed under Sections 9, 9A, 10 or 12 of the *Police Regulations Act 1998* be included in the definition of 'employee'. This was strongly supported by all stakeholders and it was always presumed that the Police were previous included under the Act. Mr Willingham stated :

> "A case about two years ago … identified for us that in fact the way the wording of the act was constructed that police employed pursuant to sections 9, 10 and 11 of the Police Regulations Act 1998 were in fact excluded from the provisions of the Industrial Relations Act. So what this particular amendment is attempting to do is bring it back where we thought we always had them and indeed that has the unequivocal support, as I understand it, of the Police Association of Tasmania and indeed the relevant minister".[5]

**Definition of 'industrial matter'**

2.5 The Committee agrees that the word 're-employment' is reasonable in the circumstances. The Committee expressed some difficulty in understanding the difference between the words 're-employment' and 're-instatement'. As a result clarification was sought and evidence was received from Mr Willingham to indicate that :

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[3] Transcript of Evidence - Mr Clive Willingham, p. 3.
[4] Transcript of Evidence - Mr Clive Willingham, p. 3.
[5] Transcript of Evidence – Mr Clive Willingham, p. 2.

> "re-employment may be ordered 'to that job', i.e. the job from which the employee has been found to have been unfairly dismissed**...**".[6]

It is the Committee's view that for the purposes of this section the terms 're-employment' and 're-instatement' should be defined.

2.6 The Committee agrees that a dispute relating to Long Service Leave and consequent entitlements be considered as an 'industrial matter'. The majority of evidence supported this amendment.

2.7 It is the Committee's view that the deduction of union fees from an employee's wages by an employer should not become an 'industrial matter'. In the absence of specific legislative provision, the High Court has determined that :

> "a requirement that employers deduct trade union subscriptions from their employees wages could not form the basis of an award provision as it did not constitute an industrial matter".[7]

The TTLC argued that :

> "The proposal is simply to include the deduction of Union subscriptions in the definition of 'industrial matter'", and that "the change in the Act will allow the Commission to make decisions about such matters or registered agreements where workers and the employer have agreed to deductions".[8]

The TCCI however argues that the amendment :

> "is designed to allow unions to put clauses into awards that make the deduction of union subscriptions from an employee's wages obligatory for an employer".[9]

The Committee believes that an industrial matter should pertain to a relationship between an employer and an employee.

The Act reflects this principle. The deduction of union fees however is a matter pertaining to the relationship between the employee and his/her union and to make it an industrial matter would "… make the

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[6] Letter to the Chairman dated 29 February 2000 from Clive Willingham, Director of Industrial Relations, Department of Justice and Industrial Relations, p. 3.

[7] Joint Employer Submission to the Legislative Council Select Committee into Industrial Relations Amendment Bill 1999 – January 2000, p. 23.

[8] Tasmanian Trades and Labor Council Submission to the Legislative Council Select Committee on Industrial Relations – 25 February 2000, p. 39.

[9] Tasmanian Chamber of Commerce and Industry Ltd Submission to the Legislative Council Select Committee into Industrial Relations Amendment Bill 1999 – 25 February 2000, p. 23.

employer the financial agent of the employee for the benefit of the union".[10]

It is the Committee's view however that if an employee requests an employer to deduct union fees, or any other payments from their wages, a reasonable employer should agree to this request.

[10] Joint Employer Submission, p. 22.

# Chapter 3 – Intervention

## Clause 13 (Section 27)

3.1 The amendments proposed by Clause 13 (a) and (c) are consequential on the abolition of the Enterprise Commissioner and therefore not supported by the Committee.

3.2 Clause 13 (b) proposes a rewording of Section 27 (2) of the Act. The Committee is of the opinion that this changes the wording rather than the intent of the legislation as to who can “intervene in any proceedings before the Commission”.

The Committee agrees with the proposed amendment which should limit frivolous applications by organisations seeking to intervene.

# Chapter 4 – Hearings for settling disputes

**Clause 15 (Section 29)**

4.1 The Committee agrees with the amendment proposed by Clause 15 (b). The amendment extends the scope upon which a former employee may apply to the President for a hearing before a Commissioner in respect of an industrial dispute in relation to :

- the entitlement to long service leave; or
- payment instead of long service leave; or
- the rate of ordinary pay at which any such leave or payment is to be paid in respect of the former employee.

The Committee has already agreed that these are 'industrial matters' by accepting the extension of the definition of 'industrial matter' in Section 3(a)(vi) of the Act.

4.2 The Bill proposes an extension of the time during which an application for a hearing before a Commissioner may be made in respect of an industrial dispute relating to termination of employment –

- from 14 days to 28 days after the date of termination; or
- if there are exceptional circumstances such further period as the Commission considers appropriate.

In its submission the Tasmanian Trades and Labor Council argued that:

> "It is also proposed that the period during which a former employee is able to lodge a claim for unfair dismissal be extended from the current 14 days to 28 days. Being terminated can be a shattering experience. It can take some time before people are able to exercise their rights. Indeed, many workers are simply not aware of their rights. Giving dismissed workers only 14 days to negotiate their way through an unfamiliar process and to file the necessary application is unfair. The Committee should not assume that every sacked employee is aware of how to get help, where to get help or that their mental state will enable all employees to begin finding out how to get help if they are not aware of it.

> The TTLC believes that the extension to 28 days will ensure that employees have a reasonable period of time to seek protection of their rights".[11]
>
> "We are aware that a time limit varies around Australia. Clearly the Tasmanian limit is too restrictive".[12]

In the written submission by the Joint Employers it was argued :

> "8.1.3 The existing Section 31(1B) requires that an application be made to the Commission within 14 days or within any further period the Commission considers appropriate in the circumstances.
>
> 8.1.4 The amendment as proposed will provide unambiguously the most generous provision in this country within which an employee may make an application alleging unfair dismissal.
>
> In the Federal *Workplace Relations Act 1996* an application must be made within 21 days of the date of termination and the Commission has a discretion to extend the 21 days
>
> The situation in the Federal Act is largely replicated in the Queensland, New South Wales and South Australian Acts and when coupled with the Victorian situation where the industrial regulation is provided under the Federal Act it is evident that this is the dominant provision within the Country.
>
> 8.1.5 The Western Australian Legislation does contain a provision for an application to be lodged within 28 days of termination however there is no capacity for an employee to seek extension of that period.
>
> 8.1.6 Clearly, the proposal within the Bill for a 28 day lodgement period coupled with a capacity to seek an extension of that period would be the most generous in the Country and, in our view, excessive."[13]

4.3 The Committee is of the view that the period of 14 days is too restrictive and that the period of 28 days is excessive whilst the proposed amendment continues to allow the Commission to grant such further period if it considers there are exceptional circumstances. A

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[11] TTLC Submission,p. 37.
[12] TTLC Submission, p. 38.
[13] Joint Employer Submission, p. 27.

period of 21 days would provide a similar period of time generally applying throughout other Australian jurisdictions.

4.4 The Committee agrees with Clause 15 (d). It is appropriate that the Minister be the person to apply to the President for a hearing before a Commissioner in respect of an industrial dispute relating to a breach of an award or a registered agreement. Parliament should not delegate such a discretionary function to a public servant. It should only be exercised by the Minister who should accept the responsibility for such action.

4.5 The Committee agrees with the amendments being proposed by Clause 15(e).

4.6 The Committee agrees with Clause 15 (f). The Joint Employer Submission however argues that :

> "8.5.4 The provision included in the Bill has two failings from our point of view :-
>
> - the conciliation conferences should be mandatory (subject to our second dot point);
> - provision should be included for a conciliation conference to be waived where industrial action is being taken.
>
> 8.5.6 Under the Federal *Workplace Relations Act 1996* the Australian Industrial Relations Commission is required to conduct a conciliation conference to endeavour to settle the claim (Section 170CF (1)).
>
> If a matter fails to settle at a conciliation conference the AIRC:-
>
> "(a) must issue a certificate in writing stating that it is so satisfied in respect of that ground or each such ground; and
> (b) must indicate to the parties the Commission's assessment of the merits of the application in so far as it relates to that ground or to each such ground; and
> (c) if the Commission thinks fit, may recommend that the applicant elect not to pursue a ground or grounds of the application (whether or not also recommending other means of resolving the matter) (Section 170CF (2))".
>
> 8.5.9 A provision should be included that the requirement for a conciliation conference can be waived if an industrial dispute involves any form of industrial action.
>
> Failure to include such a provision could lead to unscrupulous unions using a conciliation process to drag out a dispute to

> maximise the adverse impact on a business of a strike or other industrial action."[14]

It is the Committee's opinion that any process which allows parties to conciliate and sort out differences is a preferred method of settlement. The Commission however should be mindful that the conciliation process is not used as a method of unnecessarily extending a dispute.

[14] Joint Employer Submission, pp. 35-36.

# Chapter 5 – Criteria applying to disputes relating to termination of employment

## Clause 16 (Sections 30 and 30A)

5.1 The Committee agrees with the principle of Clause 16 of the Bill.

5.2 The Committee is of the view however that the Commission should take into account the viability of a business when considering any order for compensation. The Joint Employers' Submission drew attention to Section 170CH(7) of the Federal *Workplace Relations Act 1996 (WRA)* which includes a requirement that the Australian Industrial Relations Commission *(AIRC)* must have regard to, inter alia, "the effect of the order on the viability of the employer's undertaking, establishment or service".[15] The Committee considers that this is an appropriate principle to be observed and the Bill should include provisions to accommodate this principle.

5.3 It is the Committee's view that where termination of employment occurs the employee should make reasonable efforts to seek alternative employment pending a hearing in order to mitigate any loss suffered through the dismissal. It was argued in the Joint Employers' Submission that :

> "It is inherent in the notion of compensation that there is a duty on an employee whose services have been terminated to mitigate the loss for which he or she seeks compensation. A statutory right to compensation does not imply a lack of obligation to mitigate losses that are to be compensated."[16]

The Committee finds no reason to disagree with this statement.

### Employees under Federal award

5.4 The Committee agrees that Tasmanian employees who are under Federal awards and are presently excluded from application to the Federal jurisdiction for the hearing of disputes, should be entitled to apply for the hearing of a dispute specified in Section 29(1A) (a) or (b) of the Act. A person who is employed or formerly employed in Tasmania under a Federal Award therefore should be afforded the same rights and privileges as an employee under a Tasmanian Award.

5.5 The contrary argument was that employees whose positions had been terminated may wish to make mischievous applications. It was stated that "there is some serious jurisdictional paper warfare issues to

[15] Joint Employer Submission, p. 38.
[16] Joint Employer Submission, p. 39.

contend with there".[17] The proponents of this argument however suggested that those employers should enter into contracts which would negate any influx of mischievous applications.

[17] Transcript of Evidence – Denita Harris, Australian Hotels' Association, 18 February 2000, p. 5.

# Chapter 6 – Orders arising from hearings

## Clause 17 (Section 31)

6.1 The Committee agrees with Clause 17(b) but reiterates the comments made in sub-paragraphs 5.2-5.5 in relation to the principle of an employee being required to mitigate any loss when compensation is being considered. Evidence suggests that this principle is consistent with Queensland and New South Wales industrial relations legislation.

# Chapter 7– Commission to be satisfied of public interest

**Clause 18 (Section 36)**

7.1 The amendments being proposed by Clause 18 are consequential to the proposed abolition of the Enterprise Commissioner and therefore are not supported by the Committee due to its recommendation that the office be retained.

# Chapter 8 – Minimum conditions of employment

## Clause 19 (Section 61F)

8.1 The Committee agrees with Clause 19.

Mr Willingham, Director of Industrial Relations stated in his evidence to the Committee :

> "Section 61F is about establishing minimum conditions of employment that can be contained in an enterprise agreement and where you look to find those minimum conditions is the three mediums that are currently available: an enterprise agreement, an industrial agreement or an award. As I say, it might be any of those, it might be none of them or it might be a combination of some of them".[18]

[18] Transcript of Evidence, Mr Clive Willingham, p. 39.

# Chapter 9 – Approval of Enterprise Agreement

**Clause 21 (Section 61J)**

9.1 Clause 21 of the Bill provides for a 'no net detriment test'. It is the Committee's view that there should not be a 'no net detriment test'.

9.2 It is the Committee's opinion that the fairness in all the circumstances test provided for in Section 61J(1)(f), if properly applied, is a test which is intended to ensure that both the employer and the employee have entered into a fair agreement.

9.3 The Committee believes that no person should be precluded from accepting employment under conditions which may not meet a no net detriment test if that employee is aware of all the relevant provisions of Part IVA of the Act and the Enterprise Commissioner deems the enterprise agreement fair in all the circumstances.

9.4 Before an enterprise agreement is approved **under the current Act** the Enterprise Commissioner must be satisfied that :

- "The agreement conforms to the minimum standards prescribed in Section 61F, ie :
  - Hourly rate of pay
  - Annual leave
  - Sick leave
  - Parental leave
- The agreement contains provisions that identify the parties to the agreement and the classes of employees covered by its terms.
- The agreement fixes the conditions of employment to which employment under the agreement is to be established.
- The agreement contains a provision specifying the duration of the agreement.
- The bargaining process adopted by the parties was appropriate and fair.
- The agreement was not made under duress.
- The Minister has not intervened and advanced grounds that justify the refusal of the agreement.
- The agreement is fair in all the circumstances.
- The parties to the agreement are able to demonstrate an awareness of their entitlements and obligations under Part IVA of the Act.
- The parties are able to demonstrate an awareness of any changes to the existing conditions of employment which will result from the agreement.

- Any secret ballot was conducted in accordance with guidelines published in accordance with s61ZD by the Enterprise Commissioner.
- The parties to the agreement were provided with a written statement at least 2 weeks before the conduct of the secret ballot that specifies :
  - Changes to entitlements and obligations resulting from the agreement; and
  - The nature of any changes to existing conditions of employment.
- Must be approved by not less than 60% of affected employees through the conduct of a secret ballot".[19]

9.5 The Enterprise Commissioner must ensure that the above provisions are complied with prior to giving approval to an enterprise agreement.

9.6 The evidence suggests that many awards of the Tasmanian Industrial Commission are not reflective of the modern day needs of the industry that they purport to regulate.

> "The farms can't operate within the award structure, cows have to be milked Saturdays and Sundays. That's quite a logical one, I suppose, but I don't think our legislators now understand the intricacy of our crops. You have a window of opportunity of less than 24 hours to spray some of your crops now and its usually early in the morning or late in the evening when there isn't any wind; you have a window of opportunity of when you work the ground up, or when you drill that ground, or when you spray it, and when you harvest…
>
> When the time comes, if we need to work up a paddock at night, it has to be done because the rain clouds are coming or you need to get the potatoes out of a particular area – particularly in the Circular Head area, they can tell within almost half an hour when the rain will come. If we work all night we can get this paddock out. The rain is coming, we've had so many millimetres of rain, if we get anything more on it now we won't get on it for another two months and they need to work. That's why it's so important for us. If the legislation goes with a no net detriment or the no net detriment test is introduced, it'll go back to gross disobedience …"[20]

[19] Document provided by TCCI – "Part IVA – Enterprise Agreements".
[20] Transcript of Evidence - Mr Keith Rice, TFGA, 21 February 2000, p. 7.

9.7 A further example of problems which may arise if a no net detriment test is introduced is the example of The Orana Respite Centre agreement :

> "Clearly the agreement would fail a no disadvantage test as was conceded by Norma Jameson, if it was applied in isolation. But that agreement was reached to keep people employed and to allow services to be maintained to a very disadvantaged group in that community and the Enterprise Commissioner was able to find a balance that the agreement was fair in all the circumstances".[21]

9.8 The employee organisations argued that the no net detriment test still allowed wages to be reduced :

> "In fact rates can be reduced in dollar terms as long as improvement in other conditions such as extra holidays, compensates for this reduction".[22]

They believed that **in many cases** there is not a high level of understanding amongst workers of the entitlements and conditions that apply to them and that a no net detriment test would ensure that all workers are properly protected. The employee organisations presented to the Committee a number of examples of workers who were unaware of their actual entitlements and gave up conditions under the enterprise agreement system.

The examples provided however showed that there was not a deficiency within the legislation, but rather a failure to implement the legislation.

It is the Committee's view that there should be adequate resources provided to the Enterprise Commissioner and that office to ensure that the Enterprise Commissioner is able to properly investigate all the relevant criteria as set out in Part IVA of the Act.

9.9 Evidence suggested that data collected by the office of the Enterprise Commissioner showed that in the twelve months leading up to May 1996 :

> "employers utilising Part IVA of the Act have experienced net employment growth of 14% which is light years ahead of general performance within Tasmania and cannot be described as mere coincidence.
>
> At that same time net employment for Tasmania however had increased by 0.75% of 1%, so I don't care whether it is

[21] Transcript of Evidence - TCCI, 25 February 2000, p. 16.
[22] TTLC Submission, p. 23.

> part time, full time or whatever, whatever it does show is that there is significant employment growth amongst employers using enterprise agreements which is light years in front of a less than 1% growth for the workforce generally and I think any growth in employment in this State would have to be something positive".[23]

This level of employment growth was consistent with other evidence which supported the benefits of the present system.

9.10 Evidence from Mr Andrew Kemp noted that :

> "After more than a decade of running last in the Australian economic stakes there are encouraging signs that Tasmania is improving its relative position. The passage of the proposed Bill will put a significant amount of lead in the saddle bags just as our economic horse is moving nicely forward".[24]

Where an employee has been properly advised in relation to entitlements, the relevant award and conditions of employment, it is the Committee's opinion that the employee has a democratic right to choose whether to work or not. This, in the Committee's view, is fair and reasonable, taking into account the stringent tests to be applied by the Enterprise Commissioner prior to the agreement being approved.

[23] Transcript of Evidence - TCCI, p. 40.
[24] Transcript of Evidence - TCCI, p.2.

# Chapter 10 – Enterprise Commissioner

## Clause 22 (Division 3 of Part IVA)

10.1 It is the Committee's view that the office of the Enterprise Commissioner be retained and therefore Part IVA, Division 3 of the Act be retained.

10.2 It is the Committee's opinion that there is a need for consistency in decisions relating to enterprise agreements. The Tasmanian Trades and Labor Council believed that :

> "The Industrial Commission is the place where employment arrangements such as awards and agreements are tested. It is well equipped to handle these agreements and to test whether they are fair".[25]

If all Commissioners however sat in judgement of the fairness or otherwise of enterprise agreements there would be a potential for inconsistency in reasoning to occur. The proposed amendments do not contain a provision for appeal and therefore there is no process to test one Commissioner's opinion against another. This could create confusion with the enterprise agreement process and could well bring them into disrepute.

10.3 It is the Committee's opinion that consistency is best provided by retaining the office of Enterprise Commissioner.

10.4 Employee organisations argued that there is no need for a separate position of Enterprise Commissioner. One of the reasons offered for the abolition of the office of Enterprise Commissioner was that employees had lost faith in the position.

10.5 The Committee cannot accept this reason for the abolition of the office, as those who have allegedly lost faith in the office of Enterprise Commissioner could have the same person approving enterprise agreements as an Industrial Commissioner.

10.6 The Committee accepts the evidence provided by the Joint Employers that the role and function of the Enterprise Commissioner is not the same as "that undertaken by other members of the Tasmanian Industrial Commission and the roles should not therefore become enmeshed".[26]

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[25] TTLC Submission, p. 6.
[26] Joint Employer Submission, p. 49.

10.7 In a discussion paper released by the Government in 1992 the role of the Enterprise Commissioner was set out as follows :

> "An important feature of the Commissioner's responsibilities will be to undertake an advisory and facilitative role with employers and employees wishing to enter into enterprise agreements. It is envisaged that the Commissioner will be involved in assisting parties with the development of enterprise agreements well before reaching the stage of formal application.
>
> The Enterprise Commissioner's role will also focus on ensuring the parties understand their rights and obligations under the Act and proposed agreement, as well as the conditions of employment under any award currently applying to them. Therefore the role of the Enterprise Commissioner is also one of facilitation and education".[27]

10.8 Evidence was received that –

> "the Office of Enterprise Commissioner is similar to the Office of the Employment Advocate established under the *Workplace Relations Act 1996* for the processing of Australian workplace agreements.
>
> Western Australia currently utilise a separate Commissioner of Workplace Agreements that is distinct from the West Australian Industrial Relations Commission and in South Australia a separate Division of the South Australian Industrial Commission has been formed to undertake this function."[28]

10.9 It would seem therefore that the separation on a Federal level and also in other states of the Enterprise Commissioner from the Industrial Commission recognises the different function required between the two.

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[27] Joint Employer Submission, p. 49.
[28] Joint Employer Submission, p. 50.

# Chapter 11 – Right of Entry of Union Officials

**Clause 30 (Section 77)**

11.1 The Committee agrees that there should be a right of entry to the workplace for union officials in respect of both members and persons eligible to be members of a relevant organisation. The right of entry however should not be unfettered.

11.2 It is the Committee's view that to ensure union access to a workplace does not disrupt the normal workings of that workplace, and to ensure that access is reasonable for all parties, there should be restrictions placed upon a right of entry.

11.3 It is the Committee's view that such restrictions be encompassed in the Act and not by way of regulation.

11.4 It is the Committee's view that a right of entry should occur :

(a) during meal breaks;
(b) in non-working hours, or in working hours with the employer's agreement; and
(c) upon reasonable notice given to the employer of the intention to enter the workplace.

11.5 The Committee notes that the Act provides penalties for breaches and it is the Committee's view that an appropriate penalty by way of fine should be imposed for a breach of this provision.

11.6 Under the Act union officials are currently able to enter a workplace where they have a member at any time. It is the Committee's opinion that all legislation should protect all classes of people especially the vulnerable. Some of the most susceptible people in the workplace are those who are most disadvantaged. Thus the ability to obtain information from a union representative would assist these people in making an informed decision.

11.7 The Committee received evidence from a religious organisation known as 'The Brethren' that "over the years the Brethren had consistently made representations to both State and Federal government and the courts in order to gain exemption from compulsory unionism".[29] Their concern was that Clause 30 of the Bill provided a right of entry for union officials. Such a provision is contrary to their genuinely held beliefs. It is the Committee's view that this concern can be alleviated by an inclusion of an amendment consistent with a provision in the *New South Wales Industrial Relations Act 1996.* This provision reads :

[29] Transcript of Evidence - The Brethren, 17 February 2000, p. 10.

"296(2) This Part does not confer authority on an authorised industrial officer to enter any premises for the purposes of holding discussions with employees or of an investigation if :

(a) the persons employed at that place are employed by a person who holds a certificate of conscientious objection under Section 212(3) because of membership of a religious society or order (such as the Brethren) and
(b) none of the persons employed at those premises are members of an industrial organisation, and
(c) there are no more than 20 persons employed at those premises.

Due to the reference in sub-section (a) to a holder of a certificate the NSW Act included a further clause which reads :

212(3) A certificate of conscientious objection may, without limiting this section, be issued to a person (whether or not an employee) who satisfies the Industrial Registrar that he or she is a practising member of a religious society or order whose tenents or beliefs preclude membership of any organisation or body other than that society or order. In the case of a certificate issued to a person who is not an employee, a reference in this section to a relevant organisation of employees is taken to be a reference to a relevant organisation of employers".[30]

[30] The Brethren Submission, p. 13.

# Chapter 12 – Register

**Clause 24 (Section 61)**

12.1 The Committee does not agree with Clause 24 which repeals Section 61(Z)(E).

12.2 The Committee believes that an Enterprise Agreement is a confidential agreement between the employer and an employee or group of employees in a particular enterprise.

12.3 The Enterprise Commissioner has to be satisfied that :

- the conditions of employment specified in the agreement comply with the minimum conditions of employment specified in Section 61(F);
- matters referred to in Section 61(E) are contained in the agreement;
- that the bargaining process adopted by the parties to the agreement was appropriate and fair;
- that the agreement was not made under duress; and
- that the agreement is fair in all the circumstances.

12.4 The Committee received conflicting evidence regarding the transparency of Section 55 Industrial Agreements. Mr Chris Brown, Senior Industrial Officer with the Health and Community Services Union claimed that Section 55 agreements are open to public scrutiny and that he had "been able to obtain copies of enterprise agreements from the Commission of which we are not a party to".[31]

12.5 The Committee heard evidence from Mr Paul Griffin, Shop Distributive and Allied Employees' Association that Section 55 Industrial Agreements do not have to be made public, as "They're only between the employer, the Union and the parties".[32]

12.6 Several other witnesses supported this evidence. Mr Terry Edward's written submission on behalf of the Tasmanian Chamber of Commerce and Industry Ltd (No 22(b)) stated that –

[31] Transcript of Evidence – Mr Chris Brown, Senior Industrial Officer, HACSU – 21 February 2000, p. 5.
[32] Transcript of Evidence – Mr Paul Griffin, Shop, Distributive and Allied Employees' Association, 9 February 2000, p. 10.

"The TCCI emphatically oppose the proposal at Clause 24 of the Bill to open access to enterprise agreements to all and sundry.

The evidence from all users of the Part IVA system of enterprise bargaining is clear and unequivocal – none support this aspect of the Bill.

The only persons to give evidence in support of this proposition are those that have consistently refused to be involved with the system.

The question to be posed is why do these unions need access to agreements that do not affect them. The real answer is so that they can apply pressure and coerce employers and employees and to embark on campaigns of public vilification eg Banjo's, Chickenfeed, Margate Bakery.

Many witnesses gave evidence to the Committee that they obtained a competitive advantage through their enterprise agreement which would be imperilled by opening up access. Some witnesses gave evidence that the content of agreements in some instances could be considered commercially-in-confidence including formulae, business processes etc. Unlimited access to this material would be inimical to the best interests of the business, including employees.

The compilation of an enterprise agreement is a costly process both in terms of financial and human resources and we consider it unfair that a company could see its competitor simply copy an agreement developed following such expense.

It is interesting to observe that s55 agreements are not proposed to be equally opened up to scrutiny through this Bill.

Subsequent to HACSU's evidence TCCI again contacted the Commissions Acting Registrar Alan Mahoney who confirmed that s55 agreements are not available for public scrutiny.

It might be noted that in fact s55 agreements are 'more secret' than Part IVA agreements as they are only available for inspection by a party to the agreement ie by definition an employer and a union.

Employees employed under the agreement cannot gain access to view and/or copy the agreement because they are not a party to it.

> We do not believe that Part IVA agreements nor s55 agreements should be open for public inspection by anyone so minded. The content should remain the province of the parties. We would however believe an employee bound by a s55 agreement should be entitled to inspect and/or copy that agreement.
>
> Our position is not generated by shame or fear as many union witnesses have put to this Committee it is a simple proposition that the agreements should remain the property of the parties and not be open to copy-catting or loss of competitive advantage nor to the likely harassment of parties by uninvolved groups." [33]

12.7 The Joint Employer Submission argues that the conditions applying to Part IVA and Section 55 agreements in the current Act should be retained.

> "We say, that there are cogent reasons for access to agreements to be limited to those persons that are directly affected by an agreement and strongly contest this proposed change to the Act.
>
> 9.2.3 The current provisions of the Act provide a clear right of access to the register to the following categories :
>
> - the direct employer and employees that are party to the agreement;
> - where a union(s) is a party to the agreement – the union(s) and a member of the union(s) that is affected by the agreement;
> - if an employee committee is party to the agreement – the employee committee and each employee represented by that committee; and
> - officers of the Workplace Standards Authority.
>
> This range of access is relevant and appropriate and extension beyond these limits is unwarranted and undesirable.
>
> 9.2.4 The opening of agreements to scrutiny by other than the direct parties will lead to 'copy cat' agreements which have little if any regard to the actual requirements of the enterprise.

[33] TCCI Submission, pp. 12-13.

The principal purpose behind the shift towards enterprise agreements is to move away from the erroneous assumption inherent in the award system that all businesses in the same industry have the same requirements.

It is patently obvious that every business is different to every other business and therefore the 'one size fits all concept' is invalid.

Utilisation of 'copy cat' agreements will reduce the effectiveness of enterprise bargaining and lead to a return to the 'me-too-ism' which plagued industrial relations in Australia in the 1970's and 1980's.

It is imperative that any potential to reduce the idiosyncratic nature of enterprise agreements is not permitted to succeed.

9.2.5 It is also relevant to consider that some agreements may contain 'commercially-in-confidence' material such as formulae, business processes etc. Unlimited access to such material could be inimical to the best interests of the parties to agreements, including employees.

Examples of how such matters might find their way into enterprise agreements could include where the parties have determined and defined key performance indicators or have included detailed incentive payment schemes into their agreement.

9.2.6 Many businesses invest considerable intellectual and financial resources into their enterprise agreements and it is unfair that their business competitors should be entitled to gain access to this material through inspecting the register retained by the Commission.

It is entirely conceivable that a businesses competitive advantage could be dissipated or even eliminated through access being provided to non-parties to agreements.

9.2.7 Section 56 of the *Industrial Relations Act 1984* sets out the registration requirements that apply to agreements that are ratified by the Tasmanian Industrial Commission.

These agreements whilst similar in concept to enterprise agreements provide for a union monopoly on the employee side as employees are not able to process an agreement without a union being the party to the agreement.

9.2.8 It is interesting to observe that the Bill does not seek to apply the same level of scrutiny to Section 55 industrial agreements as it does to agreements reached under Part IVA of the Act.

An inquiry to the Registry of the Tasmanian Industrial Commission in the course of the preparation of this submission has revealed that the Registry categorically regard Section 55 agreements to be the private domain of the parties to the agreement.

The Registry advise that Section 55 Agreements are not available for inspection by other than the direct parties to the agreement. The Registry further advised that employees covered by the terms of a Section 55 Agreement would not be permitted to inspect and/or copy the agreement, that right, would apply only to the union which is the party to the Agreement and the employer.

In many respects this ‘secrecy’ is more onerous than that currently complained of by the unions in respect to Part IVA agreements.

We note again that the Bill does not include a proposal to make Section 55 Agreements publicly available to scrutiny, almost certainly because of the union monopoly on involvement in such agreements.

We do not advocate such a change as the parties to a Section 55 agreement are entitled to have this agreement remain their confidential property as are those parties to Part IVA Agreements. What we are unable to comprehend is the differential approach inherent in the Bill.

9.2.9 The fact that a union is party to an agreement does not automatically mean that the agreement is above reproach. There are many examples of ‘bad’ agreements reached by unions.

9.2.10 There are no compelling reasons why the current provisions should not continue to apply. This amendment will enable unions to identify the parties (employer & employee) and target those parties for retribution."[34]

12.8 A letter dated 20th March 2000 from the Acting Registrar of the Tasmanian Industrial Commission however confirms that copies of Section 55 Industrial Agreements are only made available to the parties to those agreements.

12.9 It is the Committee's view that enterprise agreements, like industrial agreements, should not be available for public inspection but limited to the parties involved.

12.10 The Committee received evidence that not all workplaces displayed copies of enterprise agreements or forwarded copies to each party to an agreement at least two weeks prior to the ballot to approve the agreement.

12.11 The Committee received further evidence to indicate prospective employees joining a workplace with an enterprise agreement in place did not always receive a copy of the Agreement prior to accepting the position.

12.12 It is the Committee's view that the Enterprise Commissioner's office should be adequately resourced to enable all the duties and responsibilities of the Commissioner to be carried out effectively.

12.13 The Committee received examples of some workplaces where many of the employees who originally voted to accept an enterprise agreement had left the particular workplace and it was possible that more than 60% of the current employees had no say in the acceptance of the original agreement.

The Committee notes that under both the Act and the Bill, the Enterprise Commissioner or the Registrar is to keep a register which includes notices of termination of agreements. Section 61R of the Act provides for the termination of an enterprise agreement before the end of the period specified in the agreement.

The Committee is of the opinion that new employees have the choice of accepting those conditions or not becoming an employee in that enterprise.

12.14 The Committee is of the opinion that strict enforcement of the provision to display a copy of the agreement at the workplace and to provide access to a copy of the agreement to all new employees prior to

[34] Joint Employer Submission, pp. 51-54.

employment, would ensure any person accepting a position did so with full knowledge of the agreement.

# LIST OF REFERENCES

Brown, Chris, Senior Industrial Officer, Health and Community Services Union, *Transcript of Evidence*, 21 February 2000.

Griffin, Paul, Shop Distributive and Allied Employees' Association, *Transcript of Evidence*, 9 February 2000.

Harris, Denita, Australian Hotels' Association, *Transcript of Evidence*, 18 February 2000.

*Joint Employer Submission,* January 2000.

Rice, Keith, Tasmanian Farmers and Graziers Association, *Transcript of Evidence*, 21 February 2000.

Tasmanian Chamber of Commerce and Industry Ltd, *Part IVA – Enterprise Agreements.*

Tasmanian Chamber of Commerce and Industry Ltd*, Submission*, 25 February 2000.

Tasmanian Chamber of Commerce and Industry Ltd, *Transcript of Evidence,* 25 February 2000.

Tasmanian Trades and Labor Council*, Submission*, 25 February 2000.

The Brethren, *Transcript of Evidence,* 17 February 2000.

The Brethren, *Submission*.

Willingham, Clive, Director of Industrial Relations, Department of Justice and Industrial Relations, *Letter to the Chairman,* 29 February 2000.

Willingham, Clive, Director of Industrial Relations, Department of Justice and Industrial Relations, *Transcript of Evidence,* 25 February 2000.

# LIST OF WITNESSES ATTACHMENT 1

Ainslie House Association

Australian Council of Trade Unions

Australian Education Union

Australian Hotels Association

Australian Liquor Hospitality and Miscellaneous Workers' Union

Australian Manufacturing Workers' Union

Australian Mines and Metals Association

Australian Services Union

Australian Workers' Union

Catholics Against Oppression

Community and Public Sector Union

Delta Hydraulics

Department of Justice and Industrial Relations

Ferris, Ms T

Garnham, Dr J

Groom, MHA, Mr R

Health and Community Services Union

Hobart Community Legal Service Inc

Kitto, Mr C

Mundy & Sons

Orana Respite Centre

Shearwater Supermarkets

Shop, Distributive and Allied Employees' Association

Tasmanian Chamber of Commerce and Industry

Tasmanian Farmers' and Graziers' Association

Tasmanian Newsagents Association

Tasmanian Trades and Labor Council

Tasmanian Women's Consultative Council

WEL Tasmania

**PLUS 3 PRIVATE WITNESSES**

# ATTACHMENT 2
# WRITTEN SUBMISSIONS TAKEN INTO EVIDENCE

Ainslie House Association Inc

Australian Council of Trade Unions

Australian Education Union

Australian Hotels Association

Australian Liquor, Hospitality & Miscellaneous Workers Union

Australian Manufacturing Workers' Union

Australian Services Union

Badger Makes Badgers

Catholics Against Oppression

Community & Public Sector Union

Ferris, Tricia

Garnham, Dr Jim

Groom, MHA, Ray

Health and Community Services Union

Hobart Community Legal Service Inc

Holderness-Roddam, Bob

Kitto, Carl

Media Entertainment & Arts Alliance

Reith MP, Hon Peter

Shop, Distributive & Allied Employees' Association

Tasmanian Chamber of Commerce and Industry Ltd

Tasmanian Trades & Labor Council

Tasmanian Women's Consultative Council

Temple-Smith Barclay Barristers & Solicitors

The Australian Workers' Union

The Brethren

Wallace, Jill and Flanagan, Deane

WEL Tasmania

Working Women's Centre

# ATTACHMENT 3
# DOCUMENTS TAKEN INTO EVIDENCE

Denis Anderson – Alleged Constructive Dismissal by Village Cinemas

Clerical and Administrative Employees (Private Sector) Award

W Chung Sing & Co Pty Ltd Agreement

Island State Group Employment

Say Cheese Casual Employees Enterprise Agreement 1999

Overview of the Working Women's Centre Services

Women and Paid Work in Tasmania

Media Entertainment & Arts Alliance Contract of Employment – Advocate Newspaper

Letter from Sue Strugnell regarding additional information requested by Select Committee on Industrial Relations

Australian Industrial Relations Commission – Decision of Case dated 22 October 1993, Melbourne

Agreement between the Parliamentary Labor Party, the Australian Labor Party and the Tasmanian Trades and Labor Council 1998

Orana Respite Centre Enterprise Agreement and Draft Enterprise Agreement 1999

Tasmanian Newsagents Association Proposed Enterprise Agreement.
Draft Shearwater Supermarket Enterprise Agreement.

"Beyond enterprise Bargaining – The Case for Ongoing Reform of Workplace Relations in Australia" – Australian Mines and Metals Association.

Traditional Model of Industrial Relations System

Existing Model for Section 61 Enterprise Agreement

Memorandum dated 27 September 1999 from Jim Evans, Manager Enterprise Agreement Unit to All Employees regarding The Tasmanian Sandstone Enterprise Agreement 1999

The Tasmanian Sandstone Enterprise Agreement 1999

Approval of the Tasmanian Industrial Commission of the Tasmanian Sandstone Enterprise Agreement 1999

Enterprise Agreement 1994

Salamanca's Food Fair and Café Enterprise Agreement 1998

All Bar One – Enterprise Agreement 1998

Comparison of key provisions between Park Group of Companies Enterprise Agreement 1998 and Hotels, Resorts, Hospitality and Motels Award

Letter from Andrew Pickett, Bakers Dozen to Australian Liquor, Hospitality and Miscellaneous Workers Union not consenting to terminate Enterprise Agreement

Federal Court Decision re Hunter Valley Developments Pty Ltd

Tasmanian Industrial Commission Decision T6563 of 1996

Tasmanian Industrial Commission Decision T7098 of 1997

Tasmanian Industrial Commission Decision T7212 of 1997

Supreme Court Decision – Pioneer Building Products Pty Ltd vs Tasmanian Industrial Commission

The Family Based Care (North) Support Staff Enterprise Agreement 1999

Tasmanian Industrial Commission – Review of Wage Fixing Principles 1999 – The Principles

Submission by the Tasmanian Farmers and Graziers Employers' Association and the Tasmanian Farmers and Graziers Association to the House of Assembly Select Committee July 1996

Pastoral Industry Award 1998

Sworn statements of evidence provided through the TCCI.

Letter dated 4 January 2000 from the TCCI to A/Enterprise Commissioner regarding Part IVA Enterprise Agreements.

Copy of letter dated 8 September 1999 to the Minister for Justice and Industrial Relations from TCCI providing comment on the draft Industrial Relations Amendment Bill 1999.

Letter dated 15 December 1999 to Enterprise Commissioner from TCCI regarding Part IVA Enterprise Agreements (tabled by Lin Thorp)

Letter dated 24 December 1999 to TCCI from Enterprise Commissioner in response to (d) (tabled by Lin Thorp)

Labor Media Statement dated 20 August 1998 by Paul Lennon – Security for Workers

The Tasmanian ALP 1998 Platform

Tasmanian ALP Platform – previous document

Part IVA – Enterprise Agreements – Tests that must be applied

Sworn statement in respect to issues relating to the Park Group of Companies Enterprise Agreement as put to the Committee by David O'Byrne of the Australian Liquor, Hospitality and Miscellaneous Workers Union (Tasmanian Branch)

Comments by the Minister for Justice and Industrial Relations in relation to the Industrial Relations Amendment Bill 1999

# MINUTES OF PROCEEDINGS ATTACHMENT 4

## LEGISLATIVE COUNCIL SELECT COMMITTEE

## INDUSTRIAL RELATIONS

## MINUTES

## THURSDAY, 2 DECEMBER 1999

The Committee met at 6.15 pm in the Ante Chamber, Parliament House, Hobart.

**Members Present :** Mr Harriss, Mr Squibb, Ms Thorp and Mr Wilkinson.

**Election of the Chairperson**

Mr Wilkinson was elected Chairperson and took the chair.

**Business**

***Resolved :***

That advertisements calling for submissions be inserted in the three daily Tasmanian newspapers on Wednesday, 8 December 1999 and that receipt of written submissions be conditioned for closure on Friday, 14 January 2000.

**Other Business**

Members' attention was drawn to the need to maintain confidentiality of any deliberations of the Committee which take place behind closed doors, as prescribed in the Standing Orders.

Legislative Council S.O. No. 182 states :

"Reference shall not be made to any proceedings of a Committee of the Whole Council, or of any Select Committee, until the same have been reported to the Council".

Legislative Council S.O. No. 265 states :

"The Evidence taken by any Select Committee of the Council, and Documents presented to such Committee, which have not been reported to the Council shall not be referred to in the Council by any Member or published or disclosed by any Member or by any other person".

At 6.25 pm the Committee adjourned until 10.00 am on Tuesday, 7 December 1999.

## LEGISLATIVE COUNCIL SELECT COMMITTEE

## INDUSTRIAL RELATIONS

## MINUTES

## TUESDAY, 7 DECEMBER 1999

The Committee met at 2.20 pm in Committee Room No. 3, Parliament House, Hobart.

**Members Present :** Mr Harriss, Ms Thorp and Mr Wilkinson.

**Order :** The Order of the Parliament appointing the Committee dated 1 December 1999, having been circulated, was taken as read.

**The Minutes** of the meeting held on Thursday, 2 December 1999 were accepted as a true and accurate record and confirmed.

**Business**

***Resolved :***

(a) That witnesses be heard under Statutory Declaration.

(b) That evidence be recorded verbatim unless otherwise ordered by the Committee.

(c) That so much of Standing Order No. 257 be suspended as would prevent strangers being admitted when the Select Committee is examining witnesses, unless the Committee otherwise resolves.

(d) That the Secretary send invitations to make submissions to the TTLC and the TCCI, with a request for the information to be forwarded to their membership.

Mr Squibb took his place.

At 2.28 pm the Committee adjourned until a date to be advised.

# LEGISLATIVE COUNCIL SELECT COMMITTEE

## INDUSTRIAL RELATIONS

## MINUTES

## THURSDAY, 27 JANUARY 2000

The Committee met at 11.45 am in Committee Room No. 2, Parliament House, Hobart.

**Apologies :** Lin Thorp

**Members Present :** Mr Harriss, Mr Squibb and Mr Wilkinson.

The President was in attendance.

**The Minutes** of the meeting held on Tuesday, 7 December 1999 were accepted as a true and accurate record and confirmed.

**Submissions :**

***Resolved,*** that the following submissions be received :

| | |
|---|---|
| 1 | Badger Makes Badges |
| 2 | Australian Liquor, Hospitality & Miscellaneous Workers Union |
| 3 | Australian Hotels Association |
| 4 | Tasmanian Women's Consultative Council – Dr Jenna Mead |
| 5 | Catholics Against Oppression – Mr Julian Punch |
| 6 | Australian Manufacturing Workers' Union – Mr Philip Baker |
| 7 | Australian Services Union – Mr Trevor Cordwell |
| 8 | Community & Public Sector Union – SPSF Group Tasmania – Ms Sue Strugnell |
| 9 | Tasmanian Trades & Labor Council – Ms Lynne Fitzgerald |
| 10 | WEL Tasmania – Ms Viki Rutter |
| 11 | Working Women's Centre – Ms Biljana Skoklevska |
| 12 | Shop, Distributive & Allied Employees' Association – Mr Paul Griffin |
| 13 | Australian Council of Trade Unions – Ms Linda Rubinstein |
| 14 | Australian Education Union – Mr Chris Lane |
| 15 | Temple-Smith Barclay Barristers & Solicitors – Mr Stephen Wright |
| 16 | Media Entertainment & Arts Alliance – Mr Andrew Muthy |
| 17 | Mr Carl Kitto |
| 18 | Hon Peter Reith MP – Minister for Employment, Workplace Relations and Small Business Leader of the House of Representatives |
| 19 | Dr Jim Garnham – University of Tasmania |
| 20 | Health and Community Services Union |
| 21 | Brethren – Andrew J Shedden |
| 22 | Tasmanian Chamber of Commerce and Industry Ltd – Mr Terry Edwards |
| 23 | Mr Bob Holderness-Roddam |
| 24 | Ms Jill Wallace & Ms Deane Flanagan |
| 25 | Hobart Community Legal Service Inc |

| | |
|---|---|
| 26 | The Australian Workers' Union |
| 27 | Ainslie House Association Inc |

**Correspondence Received :**

(a) Letter from Lin Thorp MLC suggesting that all people making submissions be given the opportunity to present verbal evidence.

(b) Copies of correspondence forwarded to the President from the Health and Community Services Union.

**Business :**

***Resolved,***

(a) That a letter be sent to the Minister advising of the Committee's surprise at not receiving a submission from the Department and giving an opportunity to forward one.
(b) That the Secretary provide Members with a copy of an updated Act.
(c) That the Secretary provide Members with a copy of the Commonwealth Industrial Relations legislation.
(d) That the Chairman be authorised to meet informally with the Hon Peter Reith MP, Federal Minister for Employment, Workplace Relations and Small Business in relation to his submission.

At 12.30 pm the Committee adjourned until 8.15 am on Wednesday, 9 February 2000.

## LEGISLATIVE COUNCIL SELECT COMMITTEE

## INDUSTRIAL RELATIONS

## MINUTES

## WEDNESDAY, 9 FEBRUARY 2000

The Committee met at 8.51 o'clock am in Committee Room No. 2, Parliament House, Hobart.

**Members Present :** Mr Harriss, Mr Squibb, Ms Thorp and Mr Wilkinson.

The President of the Legislative Council also attended the meeting.

**The Minutes** of the meeting held on Thursday, 27 January 2000 were accepted as a true and accurate record and confirmed.

**Submissions :**

***Resolved,*** that the following submission be received :

(28) Ms Tricia Ferris

**Witnesses :**

DR JENNA MEAD, Tasmanian Women's Consultative Council was called, made the Statutory Declaration and was examined.

The witness withdrew.

MR ROBERT JOHNSON, Hobart Community Legal Service Inc was called, made the Statutory Declaration and was examined.

The witness withdrew.

MR CARL KITTO, Hobart was called, made the Statutory Declaration and was examined.

The witness withdrew.

MS SUE STRUGNELL, Community and Public Sector Union was called, made the Statutory Declaration and was examined.

The witness withdrew.

MR PAUL GRIFFIN, Shop, Distributive and Allied Employees' Association was called, made the Statutory Declaration and was examined.

The witness withdrew.

MR ANDREW MUTHY, Media Entertainment and Arts Alliance and MS LUNED JAMES a member of the Alliance were called, made the Statutory Declaration and was examined in Camera.

The witness withdrew.

The meeting was suspended at 1.17 o'clock pm.

The Committee resumed at 2.37 o'clock pm in Committee Room No. 2, Parliament House, Hobart.

**Members Present :** Mr Harriss, Mr Squibb, Ms Thorp and Mr Wilkinson.

The President of the Legislative Council also attended the meeting.

**Witnesses :**

DR JIM GARNHAM, Senior Lecturer, University of Tasmania was called, made the Statutory Declaration and was examined.

The witness withdrew.

MR IAN PATERSON, Australian Services Union was called, made the Statutory Declaration and was examined.

The witness withdrew.

MS BILJANA SKOKLEVSKA, MS SUE DILLEY, Working Women's Centre and MS KATHERINE BASSANO a client of the Centre were called, made the Statutory Declaration and were examined in Camera.

The witness withdrew.

**Documents :**

***Resolved,*** that the following documents be Tabled :

(a) Denis Anderson – Alleged Constructive Dismissal by Village Cinemas (16)

(b) Clerical and Administrative Employees (Private Sector) Award (7)

(c) W Chung Sing & Co Pty Ltd Agreement (7)

(d) Island State Group Employment (7)

(e) Say Cheese Casual Employees Enterprise Agreement 1999 (11)

(f) Overview of the Working Women's Centre Services (11)

(g) Women and Paid Work in Tasmania (4)

At 5.40 o'clock pm the Committee adjourned until 10.15 o'clock am on Thursday, 17 February 2000.

# LEGISLATIVE COUNCIL SELECT COMMITTEE

## INDUSTRIAL RELATIONS

## MINUTES

## THURSDAY, 17 FEBRUARY 2000

The Committee met at 10.25 o'clock am in Committee Room No. 2, Parliament House, Hobart.

**Members Present :** Mr Harriss, Mr Squibb, Ms Thorp and Mr Wilkinson.

The President of the Legislative Council also attended the meeting.

**The Minutes** of the meeting held on Wednesday, 9 February 2000 were accepted as a true and accurate record and confirmed.

**Submissions :**

***Resolved,*** that the following submissions be received -

(29) Mr Ray Groom, MHA – Shadow Minister for Industrial Relations

**Documents Received :**

***Resolved,*** that the following documents be received -

(h) Media Entertainment & Arts Alliance Contract of Employment – Advocate Newspaper (16).

(i) Letter from Sue Strugnell regarding additional information requested by Select Committee on Industrial Relations (8).

**Witnesses :**

MR ANDREW J SHEDDEN, MR J. QUENTIN HARRIS, MR DERYCK J. LEWIS AND MR GEOFFREY G. WOOLSTON, on behalf of the Brethren were called, made the Statutory Declaration and were examined *in Camera*.

The witnesses withdrew.

MR RAY GROOM MHA, Shadow Minister for Industrial Relations was called, made the Statutory Declaration and was examined.

The witness withdrew.

MR JOHN WHITE, Delta Hydraulics was called, made the Statutory Declaration and was examined.

The witness withdrew.

MRS NORMA MARY JAMESON, Orana Respite Centre was called, made the Statutory Declaration and was examined.

The witness withdrew.

MR GRAEME LE FEVRE, Tasmanian Newsagents Association was called, made the Statutory Declaration and was examined.

The witness withdrew.

MR GARRY POULTON AND MISS HAYLEY MCLAREN, Shearwater Supermarkets were called, made the Statutory Declaration and were examined.

The witnesses withdrew.

The meeting was suspended at 1.20 o'clock pm.

The Committee resumed at 2.35 pm in Committee Room No. 2, Parliament House, Hobart.

**Members Present :** Mr Harriss, Mr Squibb, Ms Thorp and Mr Wilkinson.

The President of the Legislative Council also attended the meeting.

MR BILL FITZGERALD, Australian Mines and Metals Association was called, made the Statutory Declaration and was examined.

The witness withdrew.

MRS KATRINA DRAKE-MUNDY AND MRS CAROL DE JERSEY, Mundy & Sons were called, made the Statutory Declaration and were examined.

The witnesses withdrew.

**Documents :**

**Resolved,** that the following documents be Tabled :

(a) Australian Industrial Relations Commission – Decision of Case dated 22 October 1993, Melbourne (21).
(b) Agreement between the Parliamentary Labor Party, the Australian Labor Party and the Tasmanian Trades and Labor Council 1998 (29).

(c) Orana Respite Centre Enterprise Agreement and Draft Enterprise Agreement 1999
(d) Tasmanian Newsagents Association Proposed Enterprise Agreement.
(e) Draft Shearwater Supermarket Enterprise Agreement.
(f) "Beyond enterprise Bargaining – The Case for Ongoing Reform of Workplace Relations in Australia" – Australian Mines and Metals Association.

**Correspondence :**

***Resolved,*** that the following correspondence be received :

(a) Letter from the Hon Peter Patmore, MHA declining the Committee's offer to provide a written submission and acknowledging that Departmental Officers would be called to give verbal evidence.

***Resolved,*** that the Secretary invite Mr Bevan Johnson and Mr John King to give evidence to the Committee.

At 5.15 o'clock pm the Committee adjourned until 8.45 am on Friday, 18 February 2000.

## LEGISLATIVE COUNCIL SELECT COMMITTEE

## INDUSTRIAL RELATIONS

## MINUTES

## FRIDAY, 18 FEBRUARY 2000

The Committee met at 10.25 o'clock am in Committee Room No. 2, Parliament House, Hobart.

**Members Present :** Mr Harriss, Mr Squibb, Ms Thorp and Mr Wilkinson.

The President of the Legislative Council also attended the meeting.

**Witnesses :**

MR JULIAN S PUNCH on behalf of Catholics Against Oppression was called, made the Statutory Declaration and was examined.

The witness withdrew.

MS DENITA HARRIS, on behalf of the Australian Hotels Association was called, made the Statutory Declaration and was examined.

The witness withdrew.

The meeting was suspended at 11.50 pm.

The Committee resumed at 2.02 pm in Committee Room No. 2, Parliament House, Hobart.

**Members Present :** Mr Harriss, Mr Squibb, Ms Thorp and Mr Wilkinson.

The President of the Legislative Council also attended the meeting.

MRS GWEN NICHOLSON AND MR ROBERT WILKINSON, on behalf of Ainslie House Association were called, made the Statutory Declaration and were examined.

The witnesses withdrew.

MR CHRIS LANE, on behalf of the Australian Education Union was called, made the Statutory Declaration and was examined.

The President withdrew.

The witness withdrew.

MR ROBERT FLANAGAN, on behalf of the Australian Workers' Union was called, made the Statutory Declaration and was examined.

The witness withdrew.

**Submissions :**

***Resolved,*** that the following submission be received :

(14) Australian Education Union

**Documents :**

***Resolved,*** that the following documents be Tabled :

(a) Traditional Model of Industrial Relations System (26)
(b) Existing Model for Section 61 Enterprise Agreement (26)
(c) Memorandum dated 27 September 1999 from Jim Evans, Manager Enterprise Agreement Unit to All Employees regarding The Tasmanian Sandstone Enterprise Agreement 1999 (26)
(d) The Tasmanian Sandstone Enterprise Agreement 1999 (26)
(e) Approval of the Tasmanian Industrial Commission of the Tasmanian Sandstone Enterprise Agreement 1999 (26)

At 5.45 o'clock pm the Committee adjourned until 10.00 o'clock am on Monday, 21 February 2000.

# LEGISLATIVE COUNCIL SELECT COMMITTEE

## INDUSTRIAL RELATIONS

## MINUTES

## MONDAY, 21 FEBRUARY 2000

The Committee met at 10.10 o'clock am in Committee Room No. 2, Parliament House, Hobart.

**Members Present :** Mr Harriss, Mr Squibb, Ms Thorp and Mr Wilkinson.

The President of the Legislative Council also attended the meeting.

**Witnesses :**

MR DAVID O'BYRNE, on behalf of the Australian Liquor Hospitality and Miscellaneous Workers' Union was called, made the Statutory Declaration and was examined.

The witness withdrew.

MS TRICIA FERRIS was called, made the Statutory Declaration and was examined via phone link.

The meeting was suspended at 12.20 pm.

The Committee resumed at 2.00 o'clock pm in Committee Room No. 2, Parliament House, Hobart.

**Members Present :** Mr Harris, Mr Squibb, Ms Thorp and Mr Wilkinson.

The President of the Legislative Council also attended the meeting.

MR MIKE HALL AND MR CHRIS BROWN, on behalf of the Health and Community Services Union was called, made the Statutory Declaration and was examined.

The witnesses withdrew.

MS LINDA RUBENSTEIN, on behalf of the Australian Council of Trade Unions was called, made the Statutory Declaration and was examined.

The witness withdrew.

MR PHILIP BAKER, on behalf of the Australian Manufacturing Workers' Union was called, made the Statutory Declaration and was examined.

The witness withdrew.

MS VIKI RUTTER AND MS AUSTRA MADDOX, on behalf of WEL Tasmania was called, made the Statutory Declaration and was examined.

The witnesses withdrew.

MR KEITH RICE, on behalf of the Tasmanian Farmers' and Graziers' Association was called, made the Statutory Declaration and was examined.

The witness withdrew.

**Documents :**

***Resolved,*** That the following documents be received :

(a) Enterprise Agreement 1994 (2)
(b) Salamanca's Food Fair and Café Enterprise Agreement 1998 (2)
(c) All Bar One – Enterprise Agreement 1998 (2)
(d) Comparison of key provisions between Park Group of Companies Enterprise Agreement 1998 and Hotels, Resorts, Hospitality and Motels Award (2)
(e) Letter from Andrew Pickett, Bakers Dozen to Australian Liquor, Hospitality and Miscellaneous Workers Union not consenting to terminate Enterprise Agreement (2)
(f) Federal Court Decision re Hunter Valley Developments Pty Ltd (20)
(g) Tasmanian Industrial Commission Decision T6563 of 1996 (20)
(h) Tasmanian Industrial Commission Decision T7098 of 1997 (20)
(i) Tasmanian Industrial Commission Decision T7212 of 1997 (20)
(j) Supreme Court Decision – Pioneer Building Products Pty Ltd vs Tasmanian Industrial Commission (20)
(k) The Family Based Care (North) Support Staff Enterprise Agreement 1999 (20)
(l) Tasmanian Industrial Commission – Review of Wage Fixing Principles 1999 – The Principles (6)
(m) Submission by the Tasmanian Farmers and Graziers Employers' Association and the Tasmanian Farmers and Graziers Association to the House of Assembly Select Committee July 1996 (22)
(n) Pastoral Industry Award 1998 (22)

**Submissions :**

***Resolved,*** That the following submissions be received :

(6) AMWU
(10) WEL Tasmania

**The Minutes** of the meetings held on Thursday, 17 February 2000 and Friday, 18 February 2000 were accepted as a true and accurate record and confirmed.

At 6.30 o'clock pm the Committee adjourned until 8.45 o'clock am on Friday, 25 February 2000.

## LEGISLATIVE COUNCIL SELECT COMMITTEE

## INDUSTRIAL RELATIONS

## MINUTES

## FRIDAY, 25 FEBRUARY 2000

The Committee met at 9.00 o'clock am in Committee Room No. 2, Parliament House, Hobart.

**Members Present :** Mr Harriss, Mr Squibb, Ms Thorp and Mr Wilkinson.

The President of the Legislative Council also attended the meeting.

**Witnesses :**

MS LYNNE FITZGERALD, on behalf of the Tasmanian Trades and Labor Council was called, made the Statutory Declaration and was examined.

The witness withdrew.

MR TERRY EDWARDS, MR TIM ABEY AND MR ANDREW KEMP, on behalf of the Tasmanian Chamber of Commerce and Industry were called, made the Statutory Declaration and were examined.

The witnesses withdrew.

The meeting was suspended at 1.20 pm.

The Committee resumed at 2.35 o'clock pm in Committee Room No. 2, Parliament House, Hobart.

**Members Present :** Mr Harriss, Mr Squibb, Ms Thorp and Mr Wilkinson.

The President of the Legislative Council also attended the meeting.

MR CLIVE WILLINGHAM, on behalf of the Department of Justice and Industrial Relations was called, made the Statutory Declaration and was examined.

The witness withdrew.

**Submissions :**

***Resolved,*** That the following submissions be received :

(9) Tasmanian Trades and Labor Council
(22) Tasmanian Chamber of Commerce and Industry

**Correspondence :**

***Resolved,*** That the following correspondence be received :

(a) Letter from Dallas Hooker
(b) Statement by Bill Colvin
(c) Letter from Philipa Varris

**Documents :**

***Resolved,*** That the following documents be received :

(a) Sworn statements of evidence provided through the TCCI.
(b) Letter dated 4 January 2000 from the TCCI to A/Enterprise Commissioner regarding Part IVA Enterprise Agreements.
(c) Copy of letter dated 8 September 1999 to the Minister for Justice and Industrial Relations from TCCI providing comment on the draft Industrial Relations Amendment Bill 1999.
(d) Letter dated 15 December 1999 to Enterprise Commissioner from TCCI regarding Part IVA Enterprise Agreements (tabled by Lin Thorp)
(e) Letter dated 24 December 1999 to TCCI from Enterprise Commissioner in response to (d) (tabled by Lin Thorp)
(f) Labor Media Statement dated 20 August 1998 by Paul Lennon – Security for Workers
(g) The Tasmanian ALP 1998 Platform.
(h) Tasmanian ALP Platform – previous document.
(i) Part IVA – Enterprise Agreements – Tests that must be applied.
(j) Sworn statement in respect to issues relating to the Park Group of Companies Enterprise Agreement as put to the Committee by David O'Byrne of the Australian Liquor, Hospitality and Miscellaneous Workers Union (Tasmanian Branch).
(k) Comments by the Minister for Justice and Industrial Relations in relation to the Industrial Relations Amendment Bill 1999.

**Business :**

The Secretary advised the Committee that Tricia Ferris had phoned indicating a change of response to a question. She now believes that it was the system that let her down and that a secret ballot would protect workers.

At 5.40 o'clock pm the Committee adjourned until 8.00 o'clock am on Monday, 28 February 2000.

## LEGISLATIVE COUNCIL SELECT COMMITTEE

## INDUSTRIAL RELATIONS

## MINUTES

## MONDAY, 28 FEBRUARY 2000

The Committee met at 8.12 o'clock am in Committee Room No. 1, Parliament House, Hobart.

**Members Present :** Mr Harriss, Mr Squibb, Ms Thorp and Mr Wilkinson.

The President of the Legislative Council also attended the meeting.

**Report Deliberations :**

The Committee considered the Industrial Relations Amendment Bill 1999 clause by clause.

The Committee suspended at 10.10 o'clock am.

The Committee resumed at 1.40 o'clock pm in Committee Room No. 1, Parliament House, Hobart.

**Members Present :** Mr Harriss, Mr Squibb, Ms Thorp and Mr Wilkinson.

The President of the Legislative Council also attended the meeting.

**Correspondence :**

Letter dated February 2000 from Hon Peter Patmore MHA, Minister for Justice and Industrial Relations regarding enterprise agreements and the position of Enterprise Commissioner.

**Report Deliberations :**

The Committee further considered the Industrial Relations Amendment Bill 1999.

The Committee suspended at 4.20 o'clock pm.

The Committee resumed at 4.40 o'clock pm in Committee Room No. 1, Parliament House, Hobart.

**Members Present :** Mr Harriss, Mr Squibb, Ms Thorp and Mr Wilkinson.

The President of the Legislative Council also attended the meeting.

**Report Deliberations :**

The Committee further considered the Industrial Relations Amendment Bill 1999.

***Resolved,*** That the Secretary should contact the Director of Industrial Relations to clarify some of the issues raised.

At 6.20 o'clock pm the Committee adjourned until 9.30 o'clock am on Tuesday, 29 February 2000.

## LEGISLATIVE COUNCIL SELECT COMMITTEE

## INDUSTRIAL RELATIONS

## MINUTES

## TUESDAY, 29 FEBRUARY 2000

The Committee met at 9.40 o'clock am in Committee Room No. 1, Parliament House, Hobart.

**Members Present :** Mr Harriss, Mr Squibb, Ms Thorp and Mr Wilkinson.

The President of the Legislative Council also attended the meeting.

**Report Deliberations :**

The Committee further considered the Industrial Relations Amendment Bill 1999 and the evidence presented.

The Committee suspended at 11.05 o'clock am.

The Committee resumed at 11.20 o'clock am in Committee Room No. 1, Parliament House, Hobart.

**Report Deliberations :**

The Committee further considered the Industrial Relations Amendment Bill 1999 and the evidence presented.

Ms Thorp withdrew at 12.22 o'clock pm.

The Committee suspended at 1.05 o'clock pm.

The Committee resumed at 2.25 o'clock pm in Committee Room No. 1, Parliament House, Hobart.

**Report Deliberations :**

The Committee further considered the Industrial Relations Amendment Bill 1999 and the evidence presented.

The Committee suspended at 4.40 o'clock pm.

The Committee resumed at 5.00 o'clock pm in Committee Room No. 1, Parliament House, Hobart.

**Report Deliberations :**

The Committee further considered the Industrial Relations Amendment Bill 1999 and the evidence presented.

**Correspondence :**

Letter dated 29 February 2000 from Clive Willingham, Director of Industrial Relations answering the questions asked by the Committee in relation to the Bill.

The Committee suspended at 6.18 o'clock pm.

The Committee resumed at 8.10 o'clock pm in Committee Room No. 1, Parliament House, Hobart.

**Report Deliberations :**

The Committee further considered the Industrial Relations Amendment Bill 1999 and the evidence presented.

Ms Thorp withdrew at 9.15 o'clock pm

At 10.20 o'clock pm the Committee adjourned until 10.00 o'clock pm on Wednesday, 1 March 2000.

## LEGISLATIVE COUNCIL SELECT COMMITTEE

## INDUSTRIAL RELATIONS

## MINUTES

## WEDNESDAY, 1 MARCH 2000

The Committee met at 10.06 o'clock am in Committee Room No. 1, Parliament House, Hobart.

**Members Present :** Mr Harriss, Mr Squibb, Ms Thorp and Mr Wilkinson.
The President of the Legislative Council also attended the meeting.

**The Minutes** of the meetings held on 28 and 29 February 2000 were accepted as a true and accurate record and confirmed.

**Interim Report Deliberations :**

The Committee considered a draft Interim Report.

At 10.40 o'clock am the Committee suspended.
At 11.15 o'clock am the Committee resumed.

**Interim Report Deliberations :**

The Committee agreed to the report paragraph by paragraph.

***Resolved,*** That Trevor Sutton be requested to advise the media of the release of the Interim Report.

***Resolved,*** That the Interim Report be presented to the President at 12.00 o'clock noon in the President's Suite.

The Committee decided to arrange tentative meeting times for Wednesday, 8 March, Friday, 17 March and Monday, 20 March 2000.

At 11.45 o'clock am the Committee adjourned until 2.15 o'clock pm on Wednesday, 8 March 2000.

## LEGISLATIVE COUNCIL SELECT COMMITTEE

## INDUSTRIAL RELATIONS

## MINUTES

## WEDNESDAY, 8 MARCH 2000

The Committee met at 2.25 o'clock pm in Committee Room No. 1, Parliament House, Hobart.

**Members Present :** Mr Harriss, Mr Squibb, Ms Thorp and Mr Wilkinson.

The President of the Legislative Council also attended the meeting.

The Minutes of the meeting held on Wednesday, 1 March 2000 were accepted as a true and accurate record and confirmed.

**Report Deliberations :**

The Committee considered the Draft Report.

At 4.25 o'clock pm Mr Harriss withdrew.

***Resolved,*** That the President be authorised to discuss the technical details of Clause 19 of the Industrial Relations Amendment Bill 1999 with Mr Clive Willingham.

The Chairman stressed to the Committee the importance of confidentiality of the details of the report.

At 5.28 o'clock pm the Committee adjourned until 9.30 o'clock am on Friday, 17March 2000.

## LEGISLATIVE COUNCIL SELECT COMMITTEE

## INDUSTRIAL RELATIONS

## MINUTES

## FRIDAY, 17 MARCH 2000

The Committee met at 9.40 o'clock am in Committee Room No. 1, Parliament House, Hobart.

**Members Present :** Mr Harriss, Mr Squibb, Ms Thorp and Mr Wilkinson.

**The Minutes** of the meeting held on Wednesday, 8 March 2000 were accepted as a true and accurate record and confirmed.

**Correspondence :**

***Resolved,*** That the following correspondence be received –

- Letter to the Hon Geoffrey Squibb dated 17th February 2000 from Mr Tim Short, Secretariat, Tasmanian West Coast Business Development Inc. regarding the Industrial Relations Legislation.

The Committee suspended at 9.55 o'clock am.

The Committee resumed at 11.05 o'clock am.

**Report Deliberations :**

The Committee considered the Draft Report.

***Resolved,*** That the Secretary contact the Industrial Commission for confirmation in writing of access to Section 55 agreements.

At 11.35 o'clock am the Committee adjourned until 11.00 o'clock am on Monday, 20 March 2000.

## LEGISLATIVE COUNCIL SELECT COMMITTEE

## INDUSTRIAL RELATIONS

## MINUTES

## MONDAY, 20 MARCH 2000

The Committee met at 11.17 o'clock am in Committee Room No. 1, Parliament House, Hobart.

**Members Present :** Mr Harriss, Mr Squibb, Ms Thorp and Mr Wilkinson.

The President of the Legislative Council also attended the meeting.

**The Minutes** of the meeting held on Friday, 17 March 2000 were accepted as a true and accurate record and confirmed.

**Correspondence :**

***Resolved,*** That the following correspondence be received –

Letter dated 20 March 2000 from the Acting Registrar of the Tasmanian Industrial Commission in relation to access to Section 55 Industrial Agreements.

**Report Deliberations :**

The Committee considered Draft Report No. 4.

The Committee suspended at 1.10 o'clock pm.
The Committee resumed at 1.40 o'clock pm.

The Committee further considered Draft Report No. 4.

The Committee suspended at 4.20 o'clock pm.
The Committee resumed at 4.35 o'clock pm.

The Committee further considered Draft Report No. 4.

At 5.07 o'clock pm the Committee adjourned until 10.00 o'clock am on Tuesday, 21 March 2000.

## LEGISLATIVE COUNCIL SELECT COMMITTEE

## INDUSTRIAL RELATIONS

## MINUTES

## TUESDAY, 21 MARCH 2000

The Committee met at 10.10 o'clock am in Committee Room No. 1, Parliament House, Hobart.

**Members Present :** Mr Harriss, Mr Squibb, Ms Thorp and Mr Wilkinson.

The President of the Legislative Council also attended the meeting.

**Report Deliberations :**

The Committee considered Draft Report No. 4.

The Committee suspended at 11.45 o'clock am.

The Committee resumed at 11.55 o'clock am.

**Report Deliberations :**

The Committee considered Draft Report No. 5 paragraph by paragraph.

Chapter 1

1.1 Agreed to
1.2 Agreed to – Ms Thorp voted against the paragraph as she believed the concerns were unfounded.
1.3 Agreed to

Chapter 2

2.1 Agreed to
2.2 Agreed to
2.3 Agreed to
2.4 Agreed to

The Committee suspended at 1.28 o'clock pm.
The Committee resumed at 2.00 o'clock pm.

2.5 Agreed to
2.6 Agreed to
2.7 Agreed to – Ms Thorp voted against the paragraph as she supports the amendment in its current form – that the deduction of union dues be deemed an 'industrial matter'.

Chapter 3

3.1 Agreed to – Ms Thorp voted against the paragraph as she supports the abolition of the office of Enterprise Commissioner.
3.2 Agreed to

Chapter 4

4.1 Agreed to
4.2 Agreed to
4.3 Agreed to – Ms Thorp voted against the paragraph as she supports the extensions to 28 days and further extension in exceptional circumstances.
4.4 Agreed to

4.5 Agreed to
4.6 Agreed to

Chapter 5

5.1 Agreed to
5.2 Agreed to – Ms Thorp voted against the paragraph.
5.3 Agreed to – Ms Thorp voted against the paragraph.
5.4 Agreed to
5.5 Agreed to

Chapter 6

6.1 Agreed to – Ms Thorp voted against the paragraph as she supports the amendment but not the proviso.

Ms Thorp withdrew.

The Committee further considered draft Report No. 5.

At 4.55 o'clock pm the Committee adjourned until Thursday, 30 March 2000.

## LEGISLATIVE COUNCIL SELECT COMMITTEE

## INDUSTRIAL RELATIONS

## MINUTES

## THURSDAY, 30 MARCH 2000

The Committee met at 3.05 o'clock pm in Committee Room No. 1, Parliament House, Hobart.

**Members Present :** Mr Harriss, Mr Squibb, Ms Thorp and Mr Wilkinson.

**Order :** The Order of the Parliament appointing the Committee dated 30 March 2000 was taken as read.

**Election of Chairperson :**

Mr Wilkinson was elected Chairperson and took the chair.

**The Minutes** of the meetings held on 20 and 21 March 2000 were accepted as a true and accurate record and confirmed.

**Report Deliberations :**

The Committee considered the Final Draft Report.

Cover Page - Agreed to

Table of Contents - Agreed to

Acknowledgements - Agreed to

Chapter 1

1.2 Agreed to amendments

Chapter 2

2.2 Agreed to amendments
2.3 Agreed to amendments

Chapter 7

7.1 Agreed to – Ms Thorp voted against the paragraph as she supports the abolition of the Enterprise Commissioner and the inclusion of a public interest test in the approval process of enterprise agreements.

Chapter 8

8.1 Agreed to

Chapter 9

9.1 Agreed to – Ms Thorp voted against the paragraph as she supports the introduction of a 'no net detriment' test.
9.2 Agreed to – Ms Thorp voted against the paragraph.
9.3 Agreed to - Ms Thorp voted against the paragraph.
9.4 Agreed to - Ms Thorp voted against the paragraph.
9.5 Agreed to - Ms Thorp voted against the paragraph.
9.6 Agreed to - Ms Thorp voted against the paragraph.
9.7 Agreed to - Ms Thorp voted against the paragraph.
9.8 Agreed to - Ms Thorp voted against the paragraph.
9.9 Agreed to - Ms Thorp voted against the paragraph.
9.10 Agreed to - Ms Thorp voted against the paragraph.

Chapter 10

10.1 Agreed to – Ms Thorp voted against the paragraph as she supports the abolition of the Enterprise Commissioner.
10.2 Agreed to - Ms Thorp voted against the paragraph.
10.3 Agreed to - Ms Thorp voted against the paragraph.
10.4 Agreed to - Ms Thorp voted against the paragraph.

10.5 Agreed to - Ms Thorp voted against the paragraph.
10.6 Agreed to - Ms Thorp voted against the paragraph.
10.7 Agreed to - Ms Thorp voted against the paragraph.
10.8 Deferred
10.9 Agreed to - Ms Thorp voted against the paragraph.

Chapter 11

11.1 The vote on the following paragraph was divided and it therefore passed in the negative :

"The Committee agrees that there should be a right of entry to the workplace for union officials in respect of both members and persons eligible to be members of a relevant organisation. The right of entry however should not be unfettered."

Chapter 12

12.1 Agreed to – Ms Thorp voted against the paragraph as she believes that enterprise agreements should be open to public scrutiny as are Section 55s, given that notice of hearings are in the Law List and hearings are open to the public.
12.2 Agreed to - Ms Thorp voted against the paragraph.
12.3 Agreed to - Ms Thorp voted against the paragraph, as she supports the abolition of the Enterprise Commissioner.
12.4 Agreed to
12.5 Agreed to
12.6 Agreed to
12.7 Agreed to
12.8 Agreed to
12.9 Agreed to - Ms Thorp voted against the paragraph.
12.10 Agreed to
12.11 Agreed to
12.12 Agreed to - Ms Thorp voted against the paragraph, as she supports the abolition of the Enterprise Commissioner.
12.13 Agreed to with amendment - Ms Thorp voted against the paragraph as she supports the 'no net detriment' test.
12.14 Agreed to - Ms Thorp voted against the paragraph as she supports the need for a 'no net detriment' test.

List of References – Agreed to with amendment.

Attachment 1 – List of Witnesses – Agreed to

Attachment 2 – Written Submissions Taken into Evidence – Agreed to

Attachment 3 – Documents Taken into Evidence – Agreed to

Attachment 4 – Minutes of Proceedings – Agreed to

At 4.05 o'clock am the Committee adjourned until 9.30 o'clock am on Tuesday, 4 April 2000.

## LEGISLATIVE COUNCIL SELECT COMMITTEE

## INDUSTRIAL RELATIONS

## MINUTES

## TUESDAY, 4 APRIL 2000

The Committee met at 9.58 o'clock pm in Committee Room No. 1, Parliament House, Hobart.

**Members Present :** Mr Harriss, Mr Squibb, Ms Thorp and Mr Wilkinson.

**The Minutes** of the meeting held on 30 March 2000 were accepted as a true and accurate record and confirmed.

**Report Deliberations :**

The Committee further considered the Final Draft Report.

Chapter 10

10.8 Agreed to

Chapter 11

***Resolved,*** That the Committee reconsider paragraph 11.1 which states :

> "The Committee agrees that there should be a right of entry to the workplace for union officials in respect of both members and persons eligible to be members of a relevant organisation. The right of entry however should not be unfettered."

11.1 Agreed to – Mr Harriss voted against the paragraph as he believes that a right of union access should only apply where the workplace has members of the union.
11.2 Agreed to – Mr Harriss voted against the paragraph because of his position on 11.1.
11.3 Agreed to – Mr Harriss voted against the paragraph because of his position on 11.1.
11.4 Agreed to – Mr Harriss voted against the paragraph because of his position on 11.1.
11.5 Agreed to – Mr Harriss voted against the paragraph because of his position on 11.1.

11.6 Agreed to – Mr Harriss voted against the paragraph because of his position on 11.1.
11.7 Agreed to

Executive Summary – The vote taken on the Executive Summary was based on it being an accurate summary of the contents of the Report.

Agreed to.

Summary of Recommendations - The vote taken on the Summary of Recommendations was based on it being an accurate summary of the recommendations contained in the Report.

Agreed to.

***Resolved,*** That the following be included in 1.1 on page 8 of the Report :

The Committee presented an Interim to the President on 1 March 2000 as required by the resolution of the Legislative Council.

On Thursday, 30 March 2000 the Legislative Council resolved to reappoint the Committee;

> "and that the Membership of the Committee, and its terms of reference be those agreed to in the First Session of the Forty-Fourth Parliament and that the Minutes of Proceedings of, and evidence taken by, the Committee be referred to the Committee".

***Resolved,*** That the Report be tabled in the Legislative Council today, 4 April 2000.

***Resolved,*** That Trevor Sutton be requested to prepare a media release and arrange a media conference.

The Committee expressed its appreciation to Mr Wilkinson for his chairmanship of the Committee.

**The Minutes** of today's meeting, 4 April 2000, were accepted as a true and accurate record and confirmed.

At 10.35 o'clock am the Committee adjourned sine die.