

# PUBLIC SUBMISSION COVER SHEET

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<b>Length of submission (pages, including cover sheet):</b> 3		
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## 1. Introduction: Unions Tasmania

Unions Tasmania is the peak organisation for unions in Tasmania and the State branch of the Australian Council of Trade Unions. Members of Unions Tasmania represent some 50,000 union members, from all industry sectors and across both the private and public sectors.

Our long-standing aims are as follows:

- (a) to contribute to the establishment of an economic and social order in which persons can live with freedom and dignity and pursue both their spiritual development and their material well being in conditions of economic security and equal opportunity;
- (b) *to improve the conditions and protect the interests of all classes of labour within the sphere of the Council's influence;*
- (c) *to give effect to the Australian Council of Trade Unions' policy as determined from time to time;*
- (d) *when requested to assist by conciliation or decision in the settlement of disputes between affiliated organisations;*
- (e) *to provide machinery for the just resolution of industrial disputes between employees and employers;*
- (f) *to promote, develop, and encourage the study of literature, science, art and other cultural activities amongst affiliated organisations by such means as Council may determine from time to time;*
- (g) *to establish Provincial Councils and to assist them in their operations;*
- (h) *to do all things expedient or incidental to the carrying out of these objects.*

Occupational Health and Safety is seen as absolute core business and a priority for Unions Tasmania.

## Submissions

Unions Tasmania has been deeply involved in the production of the ACTU submission to the review panel. This submission represents our views.

Unions Tasmania was consulted by the Tasmania government (along with the TCCI) in the production of its submission. It is agreed that there was considerable common ground between the three parties.

## 2. Points of Difference

On any points of difference between the Tasmanian government position and the ACTU position the latter is to be preferred. In particular we would highlight the following issues of difference:

Union Right of Entry - The Tasmanian government while supportive position places greater restrictions on the right than the ACTU position.

Incorporation of Legislation - The Tasmanian government position is all inclusive. Unions Tasmania would prefer a case by case analysis of the legislative issues.

Union Initiated Prosecution – The Tasmanian government position does not support this initiative. Unions Tasmania sees the case based on experience in New South Wales as compelling.

Duty of Care – The duty of care should remain as an absolute duty of the employer to an employee. There is a range of other duty holders each of which should be spelt out. Worker duties should be limited to taking reasonable care and not knowingly endangering others.

## 3. Other Comments

### 3.1 The Right to refuse Unsafe Work

Tasmania's Section 17 provides for an individual worker to refuse unsafe work.

The Tasmanian Workplace Health and Safety Act 1995 contains a unique provision, Section 17 of the Act that allows an employee the right to refuse unsafe work.

### 17. Refusal to work

*(1) Where an employee has reasonable grounds to believe that, as a result of work being carried on at a workplace, there is a risk of imminent and serious injury to, or imminent and serious harm to the health of, any person, an employee may refuse to work if it is not within the employee's ability to rectify the cause of the risk.*

*(2) An employee who refuses to work as mentioned in subsection (1) must immediately notify his or her employer or the person in charge of his or her workplace and, if there is an employees' safety representative for the workplace concerned,*

*the employees' safety representative of the risk of imminent and serious injury or imminent and serious harm to health.*

*Penalty:*

*Fine not exceeding 20 penalty units.*

*(3) An employee who refuses to work as mentioned in subsection (1) may be given reasonable alternative work to perform until the cause of the risk has been rectified and the employee resumes his or her usual work.*

*(4) If an employee is given reasonable alternative work to perform, the employee is required to perform that work under the terms and conditions of the employee's employment.*

While this has existed as a common law right it is our view that employers and employees are not necessarily conversant with common law rights. What they look to for guidance is the Workplace health and Safety Act where section 17 clearly spells out the right to refuse unsafe work.

Any worker can say to their employer: "Here it is, section 17. The work you have asked me to do is unsafe. I'm not doing it."

In the case of the thousands of smaller workplaces where there are no Employee Safety Representatives (ESRs) and no committee this section of the Act provides a clear provision to protect workers. In small workplaces many employees don't feel safe in raising issues with the boss. A simple statement of this right has the power to prevent a situation escalating and crossing over into an industrial or legal issue.

*"It may be the only thing they've got and it's the only thing a lot of young trainees remember after training."* A. Ayling OHS trainer

The advice from Workplace Standards Tasmania helpline is that they do get calls from employees in small workplaces seeking advice on dangerous situations and these employees are advised of this provision in the Act. The discussion is usually around defining what is "imminent and serious". The wording of section 17 may be insufficient in this area and requires further analysis.

The wording must not act to reduce the common law right in any way.

### **Case Studies**

Below are some real life examples from Tasmanian unions and the Unions Tasmania OHS trainer of how the right to refuse unsafe work has been evoked by employees in Tasmania.

While some of these stories come from highly unionised sites and others from sites with no ESRs and low union membership. The element that is common to all the examples is that, in each case, there was a clear written section of the act which could be shown to the employer and used to ensure employee safety.

In each case there is a convincing argument that having this right enshrined in the Act is useful in a practical way to provide a safer work environment.

## **Advice from OHS trainer at Unions Tasmania**

Angela Ayling runs ESR training courses at Unions Tasmania. She is also invited by employers to brief new employees at inductions. She advised that this right under section 17 is often the one thing new employees remember from their training particularly younger workers, apprentices and trainees. These young workers are often the most vulnerable in the workplace and statistics tell us, the most likely to be injured.

She also related the story of workers at a Tasmanian fish farm who were directed to take a boat out and feed the fish in the pens in dangerous, stormy weather. There was no ESR, few union members and very little attention paid to safety in this workplace. However the employees knew from earlier induction training that they had the right under section 17 to refuse unsafe work. Despite significant pressure from management they repeatedly refused to take the boat out that day until the weather calmed.

## **Electrical Trades Union**

An employee refused to connect a service line to the point of attachment on a private house because the clearance height for the energised service line was not within Australian standards AS3000 (The clearance must be 3 metres). This particular property was being renovated and a veranda was directly under the point of attachment only providing a 1metre clearance from the veranda roofline. Had this property been connected it would have left a very dangerous environment for the roofer who would then have been required to install roofing iron on the veranda within 1 metre of an energised power line. A roofer in Victoria had been killed in a similar situation.

## **Health and Community Services Union**

HACSU has on a number of occasions used section 17 to assist with resolution of issues in both private and public sector situations.

The issues have been as follows;

- ceasing to transport clients due to safety issues such as the driver being bashed while driving or other clients being injured
- refusing to accept into a service a client who was known to be violent and had bashed staff in the past

In both cases managers were prepared to place staff at risk in the interests of cost savings.

## **Transporting Clients**

Staff were required to pick up and deliver clients with disabilities from group homes or day support services to other services or on outings such as shopping or visits to other places. Staff had complained to their employer that they were not safe because clients would attack them while driving. While there had not been any accidents there had been some near misses. There

had also been minor physical injuries which did in some cases result in workers compensation claims.

Members contacted HACSU for assistance.

HACSU met with members and a delegation met with the employer and advised the employer that the driving of clients was dangerous and the matter needed to be addressed.

The employer stated that if the clients who did these things were placed in the back of the van and used their seat belts correctly that this would resolve the issue. This was trialled but it led to changes in other clients' behaviour and did not resolve the issue. Members discussed the possibility of using industrial action such as banning the driving of clients to resolve the issue but they felt that this would only lead to the employer seeking to have the bans lifted without solving the issue.

Members were also concerned that if the issue was not dealt with then there may be a serious accident which could lead to a client or worker being killed in a road accident. Members and HACSU looked for a different approach which would highlight the issue as a safety concern and not as an industrial issue. Members took the position that they would use clause 17 of the Workplace Health and Safety Act to refuse to transport clients but they would continue to perform all their other duties. The situation was finally resolved by having a security screen placed behind the driver. There were no more incidents.

### **Refusing to Accept a Client**

Members at a mental health facility contacted HACSU because they were aware that there was documented evidence that a client, who had been at the facility before, may injure staff. Members were informed that they could use Section 17 of the Occupational Health and Safety Act to refuse to work with this client if they felt at risk of injury. Members would continue to perform all other functions of their role.

The HACSU Nursing Officer went to the site and met with members. The Nursing Officer was given a copy of the risk assessment that had been completed however there was no plan as to how to handle this client. The staff with HACSU assistance drafted a letter to their manager outlining their concerns around the issue and that there was no risk management plan. The letter was sent to their immediate supervisor who passed it up the chain of command. A decision was made to not admit the client.

### **National Union of Workers**

At XXXXX Steel a truck arrived dangerously loaded (to do with methods for loading steel squares and rounds.) The ESR (who was also a union delegate) said they would not unload the truck. Management acted promptly. The truck was directed away from the site to be reloaded.

### **Unite Firefighters Union**

**Compartment Fire Behaviour Training (CFBT).** This is a fire training experience where they put a firefighter in a container with burning particle

board providing the best simulation of flashover (where the initial residue from a fire superheats & reignites). Hobart Fire Brigade commenced CFBT in 2007. Particle board contains high levels of formaldehyde and all of the clothing that the firefighters were wearing became foul smelling, contaminated and people could still smell it on their skin days later. The firefighters directly invoked section 17 and refused to do the training. Management ceased the training and then there was an extensive review in NSW into the same problem wherein comprehensive decontamination procedures were identified and on that basis they recommenced the training.

### **Australian Meat Industry Employees Union**

A slaughter-man fell off high a stand on a beef slaughter chain after an articulated link in the chain collapsed and hit him on back of the head. He fell 3 metres into a concrete pit, and landed on his shoulder. Employees left and notified that the workplace was immediately unsafe. The place was shut for two days as repairs were undertaken.

There was also a case with an electrical fault in the sticking & stunning pen at a pig processing plant. The electro-lethalor electrified the entire stunning pen. Workers notified under section 17 left the workplace which they deemed to be entirely unsafe.

## **3.2 Governance**

The issues paper refers to the establishment of a Commission in each State. This presents an opportunity to review the roles of existing structures. Unions Tasmania welcomes this and looks forward to further opportunity to comment.

Where Boards or Commission currently exist it is common practice to quarantine all or some of the role of the Inspectorate from other activity thus creating an artificial and inefficient demarcation in roles.

It is our view that the broad role of the Commission should be the administration of all aspects of the Act. The Commission should be accountable to the relevant Minister and operate subject to any direction from that Minister.