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14 June 2006

The Secretary
Tasmanian Freight Subsidy Arrangements Inquiry
Productivity Commission
PO Box 80
Belconnen ACT 2616

Tasmanian Freight Equalisation Scheme

This is a submission addressing clauses 5(c) and 5(d) of the Terms of Reference of the Inquiry into the arrangements for subsidising containerised and bulk shipping between the Australian mainland and Tasmania. I have no interest in bulk or wheat shipments and this submission is directed at the management of the Tasmanian Freight Equalisation Scheme and/or any subsidy scheme which might succeed it.

Until March 2005 I was the Executive Director of the Tasmanian Transport Association but this is a personal submission and I make no claim to represent the Association or any member of the Association.

In respect of Terms of Reference clause 5(c), it is submitted that the current Tasmanian Freight Equalisation Scheme is the most appropriate mechanism for addressing the freight cost disadvantage experienced by Tasmanian producers distributing to mainland markets.

The Scheme needs updating and fine tuning but, most importantly, it needs effective management by a dedicated team, committed to the application of accounting principles and elementary rules of compliance. The balance of this submission addresses this issue (by way of example) to assist the Commission to satisfy Terms of Reference clause 5(d).

1. The Tasmanian Freight Equalisation Scheme ("TFES") was comprehensively reviewed in 1998 by the Tasmanian Freight Equalisation Scheme Review Authority ("TFESRA"). The 1998 TFESRA Advisory Opinion is listed as one of the references to the Commission's Issues Paper and is not included here.

2. In 1999, the Minister for Regional Services, Territories and Local Government issued Directions for the Operation of TFES which accorded with the Advisory Opinion.

3. On 10 April 2002, the Minister for Transport and Regional Services issued revised Directions for the Operation of TFES; these are the current "Ministerial Directions".

4. I offer the following comments on the recommendations in the 1998 TFESRA Advisory Opinion:

Recommendation 1 is supported but it is believed that no "rolling reviews" have occurred and consequently manufacturers and other beneficiaries of TFES expect that the assistance which enables them to compete with their mainland counterparts will continue into the foreseeable future.

Recommendation 2 is supported but it is believed that the only review of the TFES which has taken place since 1998 is that which led to the 2002 revision of the Ministerial Directions; there have been no annual reviews, indexation or other adjustments.

Recommendation 3 is supported and it is asserted that the concept of "sea freight cost disadvantage" is widely understood and that it is quantifiable and capable of annual update but no such updates have taken place.

Recommendation 4 is supported and it is asserted that the difference between the notional cost of travelling from wharf gate to wharf gate by land or by sea is the only appropriate and practical basis for calculating assistance.

Recommendations 5 and *6* are supported and it is asserted that assistance should only be paid to shippers, that is the party which owns (or has title to) the goods and pays the freight and that no other party should be allowed to participate in the transaction.

Recommendations 7 and *8* are supported.

Recommendation 9 is supported and it is agreed that assistance should be calculated on a dollar per TEU basis.

Recommendation 10 is supported but is acknowledged that the amount of $100 per TEU should be reviewed in accordance with *Recommendation 2*.

Recommendation 11 is supported but it is acknowledged that the amount of $230 per TEU should be reviewed in accordance with *Recommendation 2*.

Recommendation 12 is supported but it is acknowledged that the scaling factors should be reviewed in accordance with *Recommendation 2*.

Recommendation 13 is supported but it is acknowledged that the road freight equivalent cost of $.067 per TEU per kilometre and the reefer loading of 10% should be reviewed in accordance with *Recommendation 2*.

Recommendation 14 is supported but it is acknowledged that the heavy weight penalty should be reviewed in accordance with *Recommendation 2*.

Recommendations 15 and *16* are supported but it is noted that the TFES has not been reviewed on an annual basis and has not been updated (see also *Recommendation 2*).

5. It is understood that the Commonwealth does not have the legislative capacity to make laws covering the payment of assistance to persons shipping goods between Tasmania and the

mainland and that the Ministerial Directions are the rules with which those who expect to qualify for assistance must comply.

6. In the absence of legislation no shipper or other party can demand payment of assistance notwithstanding that they might qualify in every respect for such assistance; the payment of assistance is entirely at the discretion of the delegate of the Treasurer.

7. The Ministerial Directions provide sufficient safeguards for a Commonwealth subsidy scheme but they do not and cannot provide for the recovery of funds paid to an unentitled person unless that person was paid assistance in response to a declaration which breached some (other) Commonwealth or State law.

8. It follows that applications for assistance should be carefully scrutinised before assistance is paid in the knowledge that a subsidy can be refused but cannot necessarily be recovered if paid by mistake.

9. The current Ministerial Directions reasonably interpret and apply the recommendations in the 1998 TFESRA Advisory Opinion (with one exception – see paragraph 13) and, with minor amendments, are a sufficient basis for the proper administration of the TFES.

10. The amendments are:

(a) insertion of the words “per kilometre” following “TEU” on the two occasions that it occurs in the second sentence of the definition of “road freight equivalent cost (RFE)” in clause 2.

(b) inclusion of a definition of “wharf to wharf freight bill” in clause 2. A possible definition might be: “an invoice or a demand for payment or a receipt for payment for the cost of carrying the goods from the wharf in Devonport to the wharf in Melbourne or from the wharf in Melbourne to the wharf in Devonport (as the case may be) produced by the ship operator which carried the goods”.

11. In 2001, I recommended to the Department (informally) that “wharf to wharf freight bill” should be defined in the Ministerial Directions to remove any doubt in respect of clauses 15.4, 16, 17, 18, 19 and 21.1. I was advised informally that my recommendation would be incorporated into the next edition of the Ministerial Directions.

12. When this did not occur, I wrote to the then Minister and I met with the Department but my representations were ignored.

13. The 1998 TFESRA Advisory Opinion recommended against allowing parties other than shippers to claim assistance (*Recommendation 6*) but the inclusion in the Ministerial Directions of a provision for agents to make claims for <u>southbound</u> shipment of goods supplied to persons engaged in the <u>agriculture, forestry and fishing industries</u> is supported.

14. There is no provision in the Ministerial Directions for agents to claim assistance in respect of northbound shipments and no provision for such agents to produce <u>wharf to wharf freight bills</u>.

15. For reasons which have not been revealed, either the Department of Transport and Regional Services, or Centrelink (as the administrator of TFES on behalf of the Department),

or both, have elected to ignore the Ministerial Directions by allowing agents to claim TFES assistance and to produce their own wharf to wharf freight bills.

16. My latest (20 March 2006) letter to the Minister on this subject has not yet been acknowledged but the text follows.

"20 March 2006

Hon Mark Vaile
Deputy Prime Minister and Minister for Transport and Regional Services
Parliament House
Canberra ACT 2300

Dear Minister

Tasmanian Freight Equalisation Scheme

This letter is to request that you close an apparent loophole in the *Ministerial Directions* which determine the amount of TFES assistance paid for shipments across Bass Strait. The loophole allows an "agent" to increase the amount of any claim under the Scheme without benefiting the producer, manufacturer or shipper for whom the TFES was established.

An exporter of goods from Tasmania for consumption on the mainland (and a producer importing goods from the mainland) is entitled to TFES assistance to compensate them for their "sea freight cost disadvantage", the difference between the assumed cost of a road trip and the actual or notional cost of the sea voyage.

Clause 15.4 of the *Ministerial Directions* states that "In no case will the amount of assistance paid exceed the wharf to wharf freight bill paid by the shipper, or, if this is not supplied the *notional wharf to wharf* freight bill."

Clearly, if a claim is not supported by a "wharf-to-wharf freight bill" (issued by a ship operator), a notional wharf-to-wharf freight bill must be derived in accordance with the *Ministerial Directions*. This involves reducing the original bill by $230 for each door-to-wharf and/or wharf-to-door delivery included in it and then scaling back the remainder to eliminate any long distance land transport component.

Since 2002/3 at least, Centrelink has allowed "agents" (but not shippers) to convert what should be door-to-door claims into wharf-to-wharf claims by producing their own wharf-to-wharf freight bills. These artificial wharf-to-wharf freight bills are designed by the agents to support a larger claim than would otherwise be available under the scheme.

That agents are exploiting this privilege is apparent from an elementary analysis of the TFES statistics published by Centrelink. In the two years to 30 June 2005, the average assistance paid per tonne of timber shipped northbound (which involves agents) rose by 27%. During the same period, the average assistance paid for freight not involving agents either stayed constant (eg frozen vegetables) or fell by as much as 16.5% (newsprint).

This result is to be expected as the following example shows.

1. A producer who has paid $1200 to transport one 20' container from his Hobart plant to his customer's depot in suburban Melbourne (and did not obtain a wharf-to-wharf freight bill) would be obliged to make a door-to-door claim based on a notional wharf-to-wharf bill derived by deducting the door-to-wharf component ($230) and the wharf-to-door component

($230) and scaling the balance (dividing by 1.3) to eliminate the Hobart to Devonport leg. His notional wharf-to-wharf freight bill would be $569 and the assistance payable would be **$388**.

2. If the same producer submitted a wharf-to-wharf freight bill of (say) $700 with his claim, he would receive assistance of **$498**.

3. An agent making a claim for the same shipment could produce an artificial wharf-to-wharf (Devonport wharf to Melbourne wharf) bill of (say) $1020 (pretending that the cost of transport from the Hobart depot to the Devonport wharf AND from the Melbourne wharf to the depot in suburban Melbourne was $180) and receive assistance of **$721**.

The *Ministerial Directions* were originally designed to encourage shippers to obtain genuine wharf-to-wharf freight bills not to encourage agents to fabricate them for a windfall gain (of **$223** in the above example). Further, clause 12.2 of the *Ministerial Directions* was clearly intended to limit the involvement of agents to southbound shipments of goods for primary producers, not northbound shipments of local produce.

Until the situation is restored to what it was before 2002/03, genuine producers, shippers and transport operators are being seriously disadvantaged or being forced to act like criminals - while "agents" apparently rort the system. It is high time the matter was resolved by amending the *Ministerial Directions*. There are two clear options:

1. Reinforce Clause 15.4 by adding a definition of "wharf-to-wharf freight bill" (an invoice or equivalent document produced by a ship operator) to Clause 2; or
2. Allow anyone to act as an agent by deleting the second and third sentences of the definition of "agent" in clause 2 and the second sentence of clause 12.2 and renumbering clause 12.2 as clause 6.4 and clause 12.3 as clause 6.5.

A third option might be to use clause 12.3 to ensure that agents only deal with claims for southbound shipments.

Minister, I have been complaining about this so called loophole for several years. During this time the agents have claimed many millions of dollars in unjustified TFES assistance. Please put an end to the rort.

Yours sincerely

Warwick Counsell"

17. Clearly, neither the Department of Transport and Regional Services nor Centrelink are competent to manage the TFES. A $90 million per annum subsidy scheme needs to be managed by a team which is interested in effective administration and the requirement that beneficiaries comply with rules. The team needs to be located in Tasmania but it should be part of the Treasury portfolio.

Warwick Counsell.