



Community and Public Sector Union

CPSU (State Public Services Federation Tasmania) Inc. - CPSU (SPSF Group, Tasmanian Branch)

18 December 2012

Lara Giddings MP
Minister administering the State Service Act 2000
Level 11, 15 Murray Street
Hobart 7000

Dear Premier,

RE: Ministerial Direction No. 27

I write to convey to you concerns the CPSU holds regarding Ministerial Direction No. 27, Work Health and Safety dated 29 November 2012 (MD27 or the Direction).

At 4.1 the Direction requires Heads of Agency to establish Work Health and Safety (WHS) plans that "achieve compliance with the *Work Health and Safety Act* by 31 December 2016". The Act, being a law of the State of Tasmania, demands compliance from enactment on 1 January 2013 and it is of major concern to us that you countenance and endorse non-compliance with the law for a period of up to four years.

It is highly irregular and inappropriate for any employer to concede, and through direction endorse, non-compliance with any applicable law.

While we understand the State Service is a poor performing employer in the area of WHS, you, like other Tasmanian employers, have had an additional year to come into compliance with the model legislation due to delays in the legislative process. We further understand WHS is about continual improvement and vigilance over time but the lack of definition and guidance around achieving compliance by 31 December 2016 leaves Heads of Agency and other Officers exposed to possible breaches of at least two statutes.

Given MD27 authorises non-compliance with an applicable Australian law as defined by the *State Service Act 2000* the Direction facilitates possible breaches of that Act in addition to the *Work Health and Safety Act 2012*.

The *State Service Act 2000* places obligations on Heads of Agency to "uphold, promote and comply with the State Service Principles" (s.8). They are also subject to the State Service Code of Conduct (s.9) wherein it is stipulated that "An employee, when acting in the course of State Service employment, must comply with all applicable Australian law" (ss.4).



CPSU MEMBERS DON'T STAND ALONE

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The decision to set aspirations with regard to the law instead of requiring adherence is even more troublesome when one remembers both WorkCover and Workplace Standards Tasmania are subject to MD27. It is difficult to imagine how the regulator can hold other Tasmanian employers to account against the statute while their own employer is not required to comply.

Clearly it is inappropriate for any employer to seek to exempt themselves from applicable law and we are concerned about the confusion this message will cause those workers responsible for implementing the *Work Health and Safety Act 2012* on your behalf. We would appreciate a response that explains the purpose of the authorised non-compliance and how our members can protect themselves against possible action under ss. 4 of the *State Service Act 2000* should they seek to use MD27 as a defense against not fully complying with the *Work Health and Safety Act 2012* from 1 January 2013.

Should you wish to discuss this matter please don't hesitate to contact Mat Johnston on either 6233 5689 or via email at m.johnston@tas.cpsu.com.au.

Yours sincerely,

Tom Lynch
General Secretary
CPSU (SPSFT) Inc