

National
Aquaculture
Council



19 January 2009

Committee Secretary
Senate Education, Employment and Workplace Relations Committee
Department of the Senate
PO Box 6100
Parliament House
Canberra. ACT 2600

Dear Secretary

RE: Submission to the Committee's Inquiry on the Fair Work Bill 2008 (FWB)

Thank you for the opportunity to provide a submission to the Committee's Inquiry on the Fair Work Bill 2008 (FWB). Please find attached the National Aquaculture Council's (NAC) submission.

The NAC represents, by value, over 90% of the Australian aquaculture industry – including all the major sectors; Atlantic Salmon, Pearls, Southern Bluefin Tuna, Prawns, Oysters, Abalone and Yellowtail Kingfish.

The NAC would like to give evidence at a Hearing of the Committee. We would be grateful if you could notify us any time slots at any location available. Further some of the NAC's members will also be seeking to give evidence separately to address their specific needs..

Yours Sincerely

Dr Craig Foster
Chair
National Aquaculture Council

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**National Aquaculture Council Submission to the Senate Education,
Employment and Workplace Relations Committee's Inquiry on the Fair Work
Bill 2008 (FWB)**

The NAC's interpretation of the FWB is that specifically allows for non-Award industries, and there is nothing in any of the other documents which precludes an industry being award-free, provided they meet all the National Employment Standards (NES), and the other statutory fair work requirements (e.g. national minimum wages). The NAC welcome the NES approach in the FWB. The NAC's interpretation of the FWB can be found in Attachment 1.

The NAC has provided these points in writing to the Minister for Employment and Workplace Relations, and separately to the Australian Industrial Relations Commission (AIRC) in the Award Modernisation Process. In these letters the NAC has sought confirmation that the aquaculture industry as a whole can operate award-free under the FWB.

The NAC emphasise again that we welcome the NES and associated statutory requirements. In themselves they provide a clear structure and direction for employers. The NAC believes it is inefficient for government to require this clear NES framework to be duplicated by another structure.

The Australian aquaculture industry is predominantly award-free. Even in States where there are Awards, the industry largely operates under registered Enterprise Agreements. The NAC, through its members, know of no instance in the aquaculture industry where the statutory requirements now included in the FWB have not been met. In some cases (e.g. wages), the normal situation is that the actual workplace conditions significantly exceed the FWB requirements. The aquaculture industry has developed predominately award-free for the following reasons:

- (1) The operations are largely at sea, and heavily dependent on suitable weather conditions. This makes it almost impossible to work effectively, and be viable, under a normal award structure;
- (2) Aquaculture farms/ranches are very often in remote regions, with a work structure and practices reflecting the geographical remoteness;
- (3) Many aquaculture operations have pronounced weekly, monthly or seasonal peaks;
- (4) Australian aquaculture operators are either largely export focused (e.g. Pearls and Southern Bluefin Tuna) or they face strong import competition (e.g.

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Atlantic Salmon, Prawns). Therefore the aquaculture industry has had to be flexible to meet the challenges of being in such competitive markets. This flexibility would not be possible within an award structure. The need for this flexibility is highlighted in Attachment 2.

Under the current NES framework and with highly variable operating conditions the Australian aquaculture industry has grown to make a significant contribution to regional Australia; offering opportunities not previously available (see Attachment 2). The flexible approach to work practices has been a substantial part of this growth, all the while meeting the fair work conditions, enterprise flexibility, and high productivity – the main objectives of the FWB.

The aquaculture industry has shown it can successfully operate award-free, with a culture of above-average remuneration, flexible but safe work practices, high productivity, continuous training, and above-average retention. It is achieving all the goals set out by the Minister in the Explanatory Memorandum to the FWB (see Attachment 1). We are not aware of any worker discontent at this structure – and this is shown by the relatively low worker turnover in the aquaculture industry.

Seafood is the most globally traded of all commodities. Since 1970, global aquaculture production has increased by 8.8% pa and now accounts for around 45% of all seafood production, and Australian aquaculture. Australia has shared in this growth. However, a crucial factor to whether Australia continues to share in the global growth of aquaculture will be the ability to maintain a flexible workforce within statutory limits.

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Attachment 1

Non-Award Aquaculture Industries and the FWB

We have researched and taken advice on the FWB, and all Policy Statements on the Government's Industrial Relations approach. This includes Forward with Fairness (April 2007); Forward with Fairness – Policy Implementation Plan (August 2007); and the Workplace Relations Amendment (Transition to Forward with Fairness) Act 2008.

Our interpretation is that the FWB specifically allows for non-Award industries, and there is nothing in any of the other documents which precludes an industry being award-free. This interpretation is based on:

- (1) The FWB and Policy Statements note that certain categories of workers or industries may be award-free. This is based on the points in (2) to (5) below.
- (2) The statement in the FWB (Explanatory Memorandum (page i) that the Bill covers "national minimum wage orders that apply to award/agreement free employees". This is in addition to the managerial and/or over \$100,000 pa employees covered elsewhere. Logic indicates that this can apply to industries such as aquaculture. **Note:** This is supported by Clauses 19 and 20 of the Bill.
- (3) The Explanatory Memorandum further refers to the situation of employees not covered by an award or any agreement (eg Section r.26). Further, Part 2-6 of the Bill has specific responsibilities which apply to non-award/agreement situations. Again, we welcome the NES, and the annual national setting of minimum wages.
- (3) The statement in the Minister's Request to the AIRC that one Objective of the Award Modernisation Process is that it "...must reduce the regulatory burden on business"(page 1 of Consolidated Version). Introducing another level of regulation such as an award would be inconsistent with this Objective. In addition, where an industry (e.g. Atlantic Salmon) operates under a registered Agreement which meets all the NES and other requirements, then opting out of the current State Award would be consistent with the Government's intent to reduce government regulation.
- (4) Again, considering the Minister's Request to the AIRC – the Commission is to have regard to the desirability of reducing the number of awards operating in the workplace relations system (3(d)). Any attempt to bring award-free (but NES, etc. compliant) and/or operating under registered enterprise agreements), would seem inconsistent with the Request.

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- (5) Again, considering that the Commission must have regard to national and international competitiveness and promotion of high levels of productivity – the reality is that the current award-free situations and/or enterprise agreements have already achieved these core targets, without compromising any of the NES and associated requirements.
- (6) The emphasis in the Request is on coverage of those who have "...historically been regulated by awards" (4A). Clearly, the dominant part of aquaculture has not been covered by awards – the industry is largely award-free, and the balance regulated by enterprise agreements.

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Attachment 2

The Australian Aquaculture Industry

Aquaculture is a regional industry which is bringing sustainable economic growth to areas of Australia which are facing the decline of traditional industries (see Attachment). Aquaculture is strongly regulated by State Governments to manage the impact of the environment on aquaculture, and of aquaculture on the environment.

The growth of aquaculture in Australia has been built on rewarding employees have high work ethic, for their willingness to work in remote and/or hostile locations (e.g. at sea) with variable hours, while at the same time providing continuous training. All these have been achieved without an Award. This is because either the sector has always been award-free (e.g. Pearls, Southern Bluefin Tuna, Yellow Tail Kingfish), or where there is a State Award (e.g. Atlantic Salmon in Tasmania) the employment conditions are based on an enterprise agreement registered with the AIRC.

The result is that Australian aquaculture sectors are not only creating jobs in remote and regional areas, they are generating wider economic growth for these areas. For example, in South Australia, the growth of aquaculture has led to the (Port) Lincoln Marine Science Centre, now a substantial research and tertiary institution employing 30 people in a regional area.

The Australian aquaculture industry operates in an extremely competitive international market. Aspects of the international seafood market include:

- (1) Worth more than \$60 billion a year, the global seafood market exceeds the world trade in all grains combined and represents more than twice the combined world trade in all tea, coffee and cocoa. Almost 200 countries supply fish and seafood products to the global marketplace, consisting of more than 800 commercially important species of fish, crustaceans and molluscs, including 30 species of shrimp alone. Fish farming has been the world's fastest growing food production sector, sustaining an annual growth rate of 8.8% since 1970. By way of comparison, livestock production, also considered a growth sector, increased at a rate of just 2.8% a year during the same period. Today, some 45% of all fish consumed by humans - 48 million tonnes in all - is raised on farms (United Nations, Food and Agriculture Organisation). Since wild capture production has plateaued, the percentage of aquaculture production will continue to grow in the future. Aquaculture seafood production will likely play a crucial role in global food security.

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- (2) Australia has no import tariffs on fish, or the other trade protection measures prevalent in Europe, North America, and Asia.
- (3) Australia has none of the substantial production subsidies which are part of aquaculture in competing countries.

Australian aquaculture differs from agricultural industries because:

- (1) The two dominant export industries (i.e. Pearls and Southern Bluefin Tuna) are built on fishing wild fish stocks well out to sea, and then farming/ranching the wild stock offshore. In both cases, the modern global technology was developed in Australia, and the industries are Australian-owned.

For example, the Southern Bluefin Tuna (some 300,000 fish) are caught by boats fishing over 150km from Port Lincoln (the regional centre where the industry is based) between December and March. The boats are often at sea for six weeks at a time and on average, only one day in four has weather suitable for fishing – in one month in 2008, no fish were caught because of the weather. The Southern Bluefin Tuna are then towed at one knot back to Port Lincoln over periods between 18-30 days.

- (2) The major import-competing aquaculture sector (i.e. Atlantic Salmon) is Australian owned, despite world production being dominated by a few global companies.

Aquaculture Production in Australia

Year	\$million (farm gate)
1993/94	256
1996/97	504
2000/01	707
2004/05	634 (1)
2006/07	793 (1)

- (1) The deceleration is due to the effect of a much stronger \$A against the selling currencies in the export industries (e.g. Yen for pearling and tuna).

Source: ABARE Fisheries Statistics (annual).

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Employment Impact of Aquaculture

Some States regularly publish the economic impact of growth industries. The example below is for South Australia.

FTE's Created by Aquaculture

	2001/02	2005/06
Direct	1,465	1,808
Flow-on	1,152	1,540
Total	2,617	3,348

Source: The Impact of Aquaculture on the SA State and Regional Economies (various years – last 2007), Econsearch for PIRSA.

Note: The Econsearch flow-on methodology does not include the jobs generated by the investment/contribution of aquaculture companies in the wider economy (e.g. cannery, tourism)

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