



7 January 2009

Mr John Carter
Committee Secretary
Senate Education, Employment and Workplace Relations Committee
Department of the Senate
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Mr Carter

Submission to the Inquiry into the Fair Work Bill 2008

We attach a brief submission to the Senate Inquiry on behalf of our organisation, which outlines our specific concerns in relation to certain elements of the Bill and how we view these in terms of a fair and balanced outcome.

In general, our view is that the Bill is not a complex document and that it attempts to bring a balance of rights and obligations for the primary participants in the workplace, namely, employers and their employees. Most provisions of the Bill achieve that balance, with the exception of those major concerns raised by many of the peak employer organisations.

As an organisation representing employer interests we share those concerns, particularly as they relate to:

- Right of Entry
- Transfer of Business
- Good Faith Bargaining

Our submission addresses those concerns and if you have any queries in relation to its content, please contact me on (03) 9855 5492.

Yours sincerely

A handwritten signature in black ink, appearing to read 'M. Taylor', is written over a faint, larger version of the same signature.

Margaret Taylor
Workplace Relations Adviser

Enc:



SUBMISSION FROM THE AUSTRALASIAN CONVENIENCE AND PETROLEUM
MARKETERS ASSOCIATION
(ACAPMA)

To

SENATE EDUCATION, EMPLOYMENT AND WORKPLACE RELATIONS
COMMITTEE

Inquiry into the Fair Work Bill 2008

7 January 2009

Who is ACAPMA?

ACAPMA is the acronym for the Australasian Convenience and Petroleum Marketers Association.

ACAPMA is a registered national employer body representing the interests of distributors and retailers in the fuel industry.

Members are predominantly regionally and rurally based and account for 75% of all country sales to the end user or consumer, and handle about 35% of all petroleum sales in Australia.

Members are small to medium enterprises employing in excess of 5000 Australians.

Previously known as the Australian Petroleum Agents and Distributors Association (APADA) ACAPMA has been assisting petroleum marketers for over 30 years.

ACAPMA Member Profile

Our members operate businesses that can be described by one or more of the following statements:

- Business operates mainly in regional and rural areas.
- Own or operate inland storage facilities.
- Operates its own tanker fleet or use cartage contractors.
- Customers include transport, primary producers, industrial companies and government agencies.
- Retail supply and operation including company owned, independent and commission agent.
- Shop offer is more in line with the community needs.
- Retail has strong independent branding and shop offer.
- Are large employers and trainers in regional and rural communities.
- Are profitable and want to develop their business further.

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Our submission:

ACAPMA believes, while in a general sense the Fair Work Bill currently being debated and assessed is a less complex piece of legislation than its predecessor, there are a critical number of areas that need consideration by this Senate Inquiry. In specific terms these relate to:

▪ **Right of entry provisions**

We are concerned at the provisions of the Bill relating to this which are to be found in Chapter 3, Part 3 – 4. Our major concern relates to the apparent removal of the restrictions to entry by union officials and, in particular, their ability to gain access to non-union members' records. Surely it is ethically wrong for a person's confidential employment details to be "lawfully" revealed to an organisation of which they are not a member.

However, in relation to the latter, we are encouraged by the Minister's comments to the Australian Industry Group (8.12.08) that: "We are allowing a right of entry permit holder to inspect *only* those documents that are *directly* relevant to investigating a breach of an award or the Act that affects a member of the union." And further that: "Any claim this can be used to copy lists of names and addresses of employees is unfounded..... Privacy Act requirements apply and any misuse results in a significant fine and the cancellation of the permit." This does clarify the situation, but we feel it should be made quite clear in the legislation that a union can only inspect the records of a member, otherwise it can lead to argument and dissension with the relevant union and employer.

Overall, there is concern also at the apparent expansion of right of entry provisions generally.

▪ **Transmission of business**

This element has always created confusion among employers and has been the subject of legal arguments over time. Now to be known as "Transfer of business" it seems the legislation in its current form offers significant changes to transmission rules.

For example, the Bill proposes expanding the existing protections for employees which, in turn, will create broader obligations for employers. A transfer of business will occur in the following situation:

- Where employees of the old employer join the new employer within three months;
- The work the employee performs for the new employer is the same or substantially similar;
- An out-sourcing or in-sourcing of work from or to the new employer; and
- There is a transfer of assets used in the business between the old and new employers.

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So that the new test focuses on there being a similarity in the work performed, rather than looking at whether a business – or part of a business – has been transferred as is the case at present.

There needs to be greater clarity in terms of what happens to industrial instruments covering employees involved in business transfers. Perhaps this may be clarified by the transitional Bill.

In our view, arguably the transfer of business provisions presents the most significant changes in the legislation.

▪ **Good faith bargaining**

This element of the Bill has created a great deal of confusion and angst among employers and their representatives. It appears *prima facie* significantly skewed to the rights of unions rather than a balanced approach recognizing employers and their employees who do not wish to have representation in the bargaining process.

With all the best will in the world, an uneven bargaining surface may well be considered a step into the past. Whatever, one may say about WorkChoices, it did recognize that in some workplaces, employers and employees were prepared to negotiate and implement their preferred path of agreement-making. This is not to say that unions should not have the right to represent those who choose membership but there must be freedom of association rights for all.

In summary:

While the Bill presents some significant changes for employers, at the same time it broadens employee entitlements and protections, and restores the focus on collective bargaining that will now be under one stream, i.e. there will no legislative distinction between union and non-union agreements, and all agreements will be made directly with employees.

The critical issues, we believe, are those itemized in this submission; however, our views generally concur with those expressed by the peak employer organizations.

Ultimately, it will be a balancing act to ensure that the interests of both employers and employees are protected against the effects of the global instability and enable jobs to be sustained. In the case of ACAPMA members this is particularly important given our business focus lies predominantly within regional and rural Australia.