

The Committee Secretary  
The Senate Education and Employment Legislation Committee  
P.O. Box 6100  
Parliament House  
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23 January 2015

Dear Sir

**Subject: The Fair Work Amendment (Bargaining Process) Bill 2014**

The Australian Public Transport Industrial Association (APTIA) has set out below submissions relating the Fair Work Amendment (Bargaining Process) Bill and respectfully requests the Standing Committee on Education and Employment Legislation consider its submission.

The undersigned is available to appear before your Committee to expand upon APTIA's position.

**The Industry**

- APTIA is the industrial arm of the Bus Industry Confederation (BIC), which is the peak national body, representing bus and coach operators across the country. There is an estimated thirty thousand employees (30,000) who are employed by BIC members. APTIA represents all State Bus and Coach Associations with over 2000 small and large bus and coach operators. APTIA also represents Urban Bus and Coach Operators whose businesses traverse state boundaries such as Transdev Australia, Transit Systems Australia, Transit Australia Group, Greyhound Australia and Murrays Australia. Other public transport operators who are members of APTIA include the Ventura group, operating in Melbourne and the Bus Lines group who operate throughout 10 large rural regions in New South Wales.
- As previously outlined to the Education and Employment Legislation Committee the public transport industry is a labour intensive industry and bus and coach drivers are employed under the modern award or in most cases under negotiated enterprise agreements. Most bus operators specifically operate Government contracted route and school bus services. The public is dependent upon the regular scheduled bus services. A break down in those services, which occurs from time to time creates considerable inconvenience to the public but more importantly:
  - Places the public in harm's way as they try to get to their destinations without access to their public transport
  - Impacts in the ability of the public to access medical assistance, hospital services, shopping centres and family
  - Discriminates against those who are unable to access any other form of transport, especially the young of school age and the elderly

- Impacts on the economy of a region if the break down in services is protracted.
- Long distances travel, day charters, tourist ravel are generally deregulated and dependent upon the number of passengers carried to provide services. Movement therefore in wage rates without commensurate productivity savings would cause such operators to question their viability. On the other hand with the Government contracted services are funded by the Government and unrealistic wage claims can lead to extra government costs followed by reduced services.
- The industry has a diversity of employment types such as permanent, permanent part time and casual workers. The school bus services are predominantly undertaken in the morning and afternoon. In most isolated rural areas school bus drivers are casual employees. The average age of bus drivers is 53 years old and the demographics include drivers who drive as a second job, drivers who are retired or on the pension and work for some extra pocket money. In the majority of cases permanent drivers have taken to the industry as a second or third career change. Whilst employees within the industry

The various Fair Work Amendment Bills currently languishing in the Senate are therefore of great interest to APTIA as the Government attempts to make public transport service operators more viable and efficient.

APTIA makes the following comments relating to the current Bill.

### **Section 187 (1A)**

The Bill proposes that the Fair Work Commission (FWC) is to be satisfied that, during the bargaining process improvements to productivity at the workplace are discussed.

The Explanatory Memorandum (EO) provides examples of productivity (i.e. elimination of restrictive practices, initiatives for greater responsibilities and skills and improvements to efficiencies with workplace procedures and practices) but stresses that no agreement needs to be reached as to this productivity only that discussions have taken place.

#### **APTIA comment:**

- The amendment does not appear to APTIA to provide an outcome for either an employer or employee as it does not define what is meant by the word 'discuss' nor does it provide any recourse to either an employer or employee to seek enforcement of the proposed requirement.
- APTIA's concern is that in reality 'lip service' only will be paid to this requirement unless it is supported by some enforcement measures.
- APTIA is of the view that productivity should be a mandatory requirement of all enterprise agreements.
- APTIA would support a further amendment to section 228 of the Fair work Act (The Act) which would include the requirement to discuss productivity as a good faith bargaining requirement which would allow the FWC to intervene under section 229 of the Act if either party had issues with the negotiation well before the FWC was required to consider an application to approve an enterprise agreement under section 187 of the Act which is the subject of the Bill.

## Section 443 (1)

This amendment seeks to include additional matters that must be considered by FWC before it makes a Protected Action Ballot Order. Issues such as steps taken to negotiate an enterprise agreement, the communication between the parties, considered responses and the extent of the negotiations are now to be considered before an order is made.

### **APTIA comment:**

- APTIA welcomes any amendments which encourage the parties to continue to negotiate terms of an enterprise agreement. APTIA considers that the current Act has allowed applications for Protected Action Ballots to become the first course of action rather than the last course of action.
- APTIA has always considered that public transport is an essential service and should be protected from the effects of protracted protected action. This would include the Act providing a provision for FWC to arbitrate unresolved negotiations after a period of time similar to that envisaged by the provisions of the Fair Work (Amendment) Bill 2014, relating to Greenfield Agreements.
- APTIA supports the amendment to section 443 (1) as envisaged by the Bill but cautions that its interpretation will be in the hands of the FWC and given that the MO is silent on how it is intended for sections 443 (1) (a) to (d) to apply the Committee may consider some further explanation on the application of the section.

## Section 443 (2)

This amendment also seeks to reduce the chances of an applicant in achieving a Protected Action Ballot order if their claims are 'manifestly excessive' or would have an 'adverse impact' on productivity at the workplace.

### **APTIA comment:**

- APTIA applauds this proposed amendment as it creates an important barrier to prevent unnecessary Protected Action. This is not available under the Act which sets the bar too high for suspending or terminating protected action at such criteria as circumstances which;
  - endanger the life, the personal safety or health, or the welfare, of the population or a part of it; or
  - cause significant damage to the Australian economy
- There are very few examples where this criterion has been established except in circumstances where, as in the Qantas case, the Country's reputation and economy was at stake.
- The proposed amendment will require an Applicant to justify that they have participated in meaningful productivity negotiations, which will help to reinforce the proposed amendments to section 443 (1).
- This amendment should not be seen as an attack on the right to take protected action but a positive way to improve the outcomes for industry at both employer and employee level.

- APTIA's one concern is that the amendment has not sought to address the most obvious anomaly with the Protected Action provisions (Division 8) of the Act.
  - Section 436 outlines the object of the Division which is to provide a *'fair, simple and democratic process to allow a bargaining representative to determine whether employees must engage in particular protected industrial action for a proposed enterprise agreement.'*
  - The anomaly is then created by section 437 (5) which only provides that 'those employees represented by the Bargaining Agent' are required to vote for the taking of 'Protected Action'.
  - There is no democracy at work where legislation allows for a Protected Action Order to be made on the basis of a ballot with a majority vote of only part of a work force in which the majority of the employees in fact are not represented by the Bargaining Agent.
  - If the section was in fact democratic only those employees who were represented by the Bargaining Agent should be able to take the protected action.
- APTIA would support an amendment to the Bill which sought to limit any protected action order to employees who were represented by the Applicant bargaining agent and who were entitled to vote in the Ballot.

Finally APTIA would like to express its frustration that a number of industrial relations Bills are currently before the Senate and have not yet been considered.

Yours faithfully

Ian MacDonald, National Industrial Relations Manager