



The Committee Secretary
Senate Education and Employment Standing Committee
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18 December 2015

By email:

Dear Committee Secretary

Subject: The Fair Work Amendment (Remaining Measures) Bill 2015

You have invited the Australian Public Transport Industrial Association (APTIA) to make a submission to your Committee into the **Fair Work Amendment (Remaining Measures) Bill 2015** currently before you.

The Australian Public Transport Industrial Association (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 (30,000) employees who are employed by members of BIC or members of the respective State Associations. Our industry is a labour intensive industry that is an essential public service and is directly impacted by Australia's industrial laws. **The Passenger Vehicle Transportation Award 2010** primarily deals with employment terms and conditions.

APTIA provided a comprehensive submission to the Senate Standing Committee on 15 April 2014 in support of most of the proposed **Fair Work (Amendment) Bill 2013** and was pleased to see that parts of the Amendment Bill were passed towards to end of 2015.

APTIA also welcomes the fact that the Government has re-introduced a range of amendments in this current Bill which primarily seek to adopt the recommendations of the Fair Work Review Panel, which provided a comprehensive assessment of the Fair Work Act 2009, in its review of August 2012.

With respect to the specific amendments in the Remaining Measures Bill 2015 APTIA makes the following further comments:

- (1) Fair Work Review Panel recommendation 6 providing that, on termination of employment, untaken annual leave is paid out as provided by the applicable industrial instrument.**

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- a) The Passenger Vehicle Transportation Award 2010 is one of the few modern awards, which exempts the payment of leave loading, in line with pre-modern awards and industry practice.
- b) APTIA's supports the proposed amendment as the exemption for payment of leave loading on termination is incorporated into the Passenger Vehicle Transportation Award 2010 (MA00063) because of historical reasons including the fact that annual leave loading is increased to 25% in some jurisdictions to cover the exemption.
- c) Neither was it suggested in either the Award Modernisation process or the Two Year Review by any party, employer or employee group, of an anomaly or inconsistency with the provisions of the Fair Work Act.
- d) APTIA acknowledges that S. 90 (2) of the Fair Work Act 2009 has created an anomaly and the Parliament has the opportunity to rectify the situation which has been effected by this amendment to the Fair Work Act currently before the Parliament.

(2) Fair Work Review Panel recommendation 2 by providing that an employee cannot take or accrue leave under the Fair Work Act during a period in which the employee is absent from work and in receipt of workers' compensation;

- a) APTIA's view is that the intention of workers compensation is to create a circumstance whereby employees' entitlement are covered by the compensation and would support an amendment to give effect to this existing practice.

(3) Fair Work Review Panel recommendations 9, 11, 12 and 24 by:

- **requiring flexibility terms in modern awards and enterprise agreements to provide for unilateral termination of individual flexibility arrangements with 13 weeks' notice;**
 - **requiring flexibility terms in enterprise agreements to provide, as a minimum, that individual flexibility arrangements may deal with when work is performed, overtime rates, penalty rates, allowances and leave loading;**
 - **confirming that benefits other than an entitlement to a payment of money may be taken into account in determining whether an employee is better off overall under an individual flexibility arrangement and require individual flexibility arrangements to include a statement by the employee setting out why he or she believes that the arrangement meets his or her genuine needs and leaves him or her better off overall at the time of agreeing to the arrangement; and**
 - **providing a defence to an alleged contravention of a flexibility term where the employer reasonably believed that the requirements of the term were complied with at the time of agreeing to a particular individual flexibility arrangement.**
- a) Currently the Passenger Vehicle Transportation Award, as with all modern awards has individual flexibility provisions which reflect the decision of the Full Bench of the Fair Work Commission. However the Fair Work Act 2009 does not reflect this position and the amendment gives legislative effect to the decision of the Commission.
 - b) APTIA strongly supports amendments to the IFA's which allow non financial benefits to be considered as part of the BOOT as it achieves greater flexibility in the public transport industry in which casual employment and part time employment is a significant factor. Examples of this are

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school bus drivers who operate their buses for only two to four hour a day 201 days a year during school periods only. Because public transport is an essential public service casuals are regularly used in circumstances when permanent drivers are absent on personal leave which can sometimes come at short notice.

(4) Fair Work Review Panel recommendation 38 by providing that there will not be a transfer of business under Part 2-8 of the Fair Work Act when an employee becomes employed with an associated entity of his or her former employer after seeking that employment on his or her own initiative before the termination of the employee's employment with the old employer. Similar amendments are also made in relation to Part 6-3A of the Fair Work Act;

- a) APTIA supports changes to the transmission of business provisions under the Fair Work Act 2009 to allow greater flexibility in circumstances where a business is transferred and existing employees are offered employment but on the terms provided by the incoming employer.
- b) APTIA does not consider that this amendment goes far enough. APTIA considers that the amendment should repeal the provisions set out in Part 6-3A, Chapter 6 which was a consequence of the Fair Work (Transfer of Business) Act 2012. APTIA considers that the legislation, which itself is under review does have some unforeseen consequences for achieving cost efficiency through Government privatisation of their public utilities.

(5) Amend the right of entry framework of the Fair Work Act by:

- **repealing amendments made by the *Fair Work Amendment Act 2013* that required an employer or occupier to facilitate transport and accommodation arrangements for permit holders exercising entry rights at work sites in remote locations;**
 - **providing for new eligibility criteria that determine when a permit holder may enter premises for the purposes of holding discussions or conducting interviews with one or more employees or Textile, Clothing and Footwear award workers;**
 - **repealing amendments made by the *Fair Work Amendment Act 2013* relating to the default location of interviews and discussions and reinstating pre-existing rules; and**
 - **expanding the FWC's capacity to deal with disputes about the frequency of visits to premises for discussion purposes.**
- a) APTIA takes the view that the right of entry is an entitlement of an employee trade union in circumstances where an employee is aggrieved and seeking assistance with the enforcement of their rights. However an open invitation is often abused and this necessitates the intervention of the Fair Work Commission. It is APTIA's view that the right should be maintained but reasonable notice, proper authority and reasonable co-operation from an employer will create a better environment for exercise of the right of entry. To this extent the current right of entry is too prescriptive and therefore should be limited as set out in the amendment.

(6) Fair Work Review Panel recommendation 43 by providing that, subject to certain conditions, the FWC is not required to hold a hearing or conduct a conference when determining whether to dismiss an unfair dismissal application under section 399A or section 587.

- a) APTIA supports the recommendation of the Fair Work Review Panel which sought to eliminate unfair dismissal applications, which have no basis supporting a claim and to only trouble the Fair Work Commission with genuine applications.

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- b) APTIA supports the amendment which will allow the Commission to weed out those applications for unfair dismissal which have no base and which will reduce the costs associated with defending an application which is a doomed application.

Yours faithfully

Ian MacDonald, National Industrial Relations Manager

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