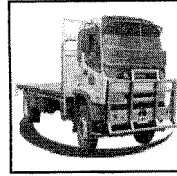


***Courier and Taxi  
Truck Association***

**ABN 25 970 673 778**



**SUMMISSION TO**

**SENATE EMPLOYMENT**

**WORKPLACE RELATIONS**

**AND**

**EDUCATION COMMITTEE**

21 July 2006

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

Email: [eet.sen@aph.gov.au](mailto:eet.sen@aph.gov.au)

Dear Mr Carter

On behalf of the members of the Courier and Taxi Truck Association (CTTA) we thank you for the opportunity to present our submission to the Senate Employment, Workplace Relations and Education Committee in relation to the Independent Contractors Bill 2006.

In making this submission the CTTA wants to focus on the exclusion from the Independent Contractors Bill of owner drivers in both New South Wales and Victoria.

CTTA is a sector specific organisation representing principal contractors in the courier and the taxi truck industry. In New South Wales and Victoria our members engage the majority of independent contractor owner drivers in this sector. The Association has been in operation since the 1970's.

In New South Wales CTTA is registered pursuant to the *Industrial Relations Act 1996* and it is a party to the major Contract Determinations established by the *New South Wales Industrial Relations Commission* (NSWIRC).

The system of contract determinations has operated in NSW since State legislation was passed in 1978. The most litigated contract determination is the *Transport Industry – Courier and Taxi Truck Contract Determination* and CTTA has exceptional knowledge on the system and how contract determinations operate.

CTTA is extremely disappointed with the decision to exclude independent contractor owner drivers from the Independent Contractors Bill. This decision leaves Australia with a national system for employers/employees under WorkChoices, 2 million independent contractors covered by the Independent Contractors Bill and independent contractor owner drivers in New South Wales and Victoria in no mans land without the protection afforded to all other workers.

In particular the current decision places independent contractor owner drivers in the worst position of any worker in Australia when it comes to interference by a Union. The issues creating this problem are listed below.

## 1. Issues which Discriminate against Independent Contractor Owner Drivers.

- 1.1 Should the current exclusion proposal in the Independent Contractors Bill continue into law owner drivers in NSW and Victoria will be engulfed by Union control. Whilst the Union movement has been restricted with right of entry for other workers in Australia such a protection will not exist for the principal contractors that engage these owner drivers.
- 1.2 The NSWIRC will continue to set rates of remuneration and conditions that have been expunged for all other workers in Australia.
- 1.3 With the continuing interference by Unions the opportunity to establish commercial contracts between the principal contractors and independent contractor owner drivers will be lost.
- 1.4 When analysing the independent contractor sector of Australian business it is difficult to find an industry more in need of flexibility through commercial terms. It is an unfortunate fact that independent contractor owner drivers are sent many mixed signals of their status in the workplace.

## 2. Chapter 6 of the New South Wales Industrial Relations Act 1996.

- 2.1 Chapter 6 of the NSWIRA creates the platform for owner driver regulation in New South Wales. These contract determinations regulate what is a commercial contract into an award type document. As such independent contractors in the road transport industry in New South Wales have the same entitlements as employees. This is highly confusing to participants in the industry who struggle to come to terms with independent contractors being transformed into employees by virtue of a State Act.
- 2.2 Chapter 6 also provides for 'applied provisions' and the 'interpretation of those applied provisions' appear in sections 343 and 344 of the said Act and state:

### 343 Application of certain provisions for the purposes of this Chapter

- (1) The following provisions of this Act apply to and for the purposes of this Chapter (*the applied provisions*):
  - (a) Section 27 (Prohibition on cashing-in of accumulated sick leave),
  - (b) Part 3 of Chapter 2 (National and State decisions),
  - (c) Part 10 of Chapter 2 (Payment of remuneration),
  - (d) Part 3 of Chapter 3 (Common law actions during conciliation of industrial disputes),

- (e) Section 143 (Strike pay prohibited),
  - (f) Section 172 (Power to order secret ballot),
  - (g) Part 8 of Chapter 4 (Industrial Committees),
  - (h) Part 1 of Chapter 5 (Principles of association),
  - (i) Part 7 of Chapter 5 (Entry and inspection by officers of industrial organisations),
  - (j) Chapter 7 (Enforcement).
- (2) The applied provisions have effect subject to such modifications as are prescribed by this Part or the regulations.

### **344 Interpretation of applied provisions**

For the purposes of the application of the applied provisions:

- (a) A reference to employment is to be read as a reference to engagement under a contract of bailment or carriage, and
- (b) A reference to an employer is to be read as a reference to a bailor of public vehicles or principal contractor, and
- (c) A reference to employees is to be read as a reference to bailees of public vehicles or carriers, and
- (d) a reference to remuneration of an employee (however expressed) is to be read as a reference to amounts payable to a bailee under the contract of bailment or amounts payable to a carrier under the contract of carriage, and
- (e) A reference to an award is to be read as a reference to a contract determination, and
- (f) A reference to an enterprise agreement is to be read as a reference to a contract agreement, and
- (g) a reference to an industrial organisation is to be read as a reference to an association of employing contractors, an association of contract drivers or an association of contract carriers, and
- (h) A reference to an industrial organisation of employers is to be read as a reference to an association of employing contractors, and

- (i) A reference to an industrial organisation of employees is to be read as a reference to an association of contract drivers or an association of contract carriers, and
- (j) a reference (in Part 7 of Chapter 5) to relevant employees in relation to an organisation is to be read as a reference to persons who are or are eligible to be members of an association.

2.3 It is the impact of sections 343 and 344 that create confusion and the fundamental area which CTTA believed would be addressed by the Independent Contractors Bill.

### 3. National Harmonisation.

- 3.1 Since the 1980's there has been a genuine attempt to achieve national harmonisation across the road transport industry. This has been successful in many areas associated with road laws and road safety.
- 3.2 Our understanding of the Government's 2004 election promise was that such harmonisation would extend to workplace relations.
- 3.3 The proposed exclusion provision in the Independent Contractors Bill deprives a very important sector of the Australian economy of the opportunity for a consistent approach.

### 4. More Contract Determinations on the Way.

- 4.1 The current situation in NSW is the Union's grab for more control by way of applying for new State wide contract determinations.
- 4.2 At the present time the NSWIRC is about to hand down its decision for a new State wide *Transport Industry – Mutual Responsibility (State) Award and Contract Determination*. This new Award/Contract Determination will place even more obligations on principal contractors with no evidence that road safety will be improved.
- 4.3 In addition the TWU has applied for a *Transport Industry – Redundancy (State) Contract Determination*. This application seeks to make principal contractors in NSW pay redundancy of up to 16 weeks gross weekly remuneration if a contractor is less than 45 years of age and up to 20 weeks where the contractor is over 45 years of age.

## 5. Goodwill in Road Transport.

- 5.1 Goodwill is not generally wide spread in the road transport industry due to the fact that most independent contractor owner drivers do not have any goodwill to sell.
- 5.2 In the 1980's this was an issue that was isolated to owner drivers of large vehicles operating in the cement; brewage; and egg cartage.
- 5.3 In 2001 The NSW IRA was amended with the insertion of section 345 in Part 7 of the Act. The definitions of that section are listed below:

## Part 7 Compensation for termination of certain contracts of carriage

### 345 Definitions

In this Part:

*Carrier* means an individual, partnership or body corporate who or which supplies services under contracts of carriage.

*Head contract of carriage* means an agreement, arrangement or practice under which a principal contractor and carrier agree that the carrier is to provide services exclusively and on an agreed regular basis for the principal contractor.

*Previous carrier* means a previous carrier as referred to in section 346 (1) (a).

*Previous principal contractor*, in relation to a previous carrier, means the principal contractor immediately preceding the principal contractor referred to in section 346 (1) (a) to whom the previous carrier provided services under the relevant head contract of carriage.

*Termination* has its ordinary common law meaning, and includes conduct by a principal contractor, being conduct resulting from factors within the control of the principal contractor, the effect of which is to alter the head contract of carriage in a manner which imposes serious financial disadvantage on the carrier.

*Tribunal* means the Contract of Carriage Tribunal established by this Part.

- 5.4 Since 2001 there have been very few applications for relief. Figures obtained from the NSWIRC shows that the following number of applications has been received.

2001 to 2004	50 Applications
2005	NO applications
Up to May 2006	3 applications

5.5 On this point we note the contents of the submission made by the New South Wales Road Transport Association Inc. and totally support the position put forward by that Association.

## **6. Positive Result of Overriding the New South Wales and Victorian Laws.**

6.1 The most immediate effect would be felt in NSW where terms and conditions between principal contractors and independent contractors could be based on a commercial contract basis. NSW has the highest number of independent contractor owner drivers and NSW roads are heavily used by road transport travelling through the State.

6.2 Franchises – which have been covered by the NSWIRA since 1996 – would be able to undertake their operations under the Franchise Act without the impact of industrial regulation.

6.3 On the issue of Franchises in the road transport industry CTTA submits that very few if any franchises are aware of the coverage via the Industrial Relations Act.

6.4 Contract Determinations are known to be honoured in their **breach**. This is the key indicator to substantiate that these Determinations are not utilised for the good of independent contractor owner drivers rather they are used by the Union to interfere with what should be a commercial undertaking.

## **7. Proposed Amendment to the Independent Contractors Bill.**

7.1 CTTA is aware of an amendment proposed by the member for O'Connor, the Hon Wilson Tuckey.

7.2 The proposed amendment to insert a sunset clause into the exclusion is strongly supported by the CTTA.

7.3 This amendment needs to be adopted and presented to the Parliament. This will at least give some assurance of the Australian Government's commitment to future change without creating short term chaos.

## **8. Taxation Implications.**

8.1 The taxation implications of the proposed exclusion of NSW and Victorian independent contractor owner drivers affect both principal contractors and the independent contractor owner drivers.

- 8.2 Currently independent contractor owner drivers correctly operate with an Australian Business Number (ABN) and provide their services pursuant to GST obligations. Any change in this status would result in the independent contractor owner drivers being taxed at source via the PAYG system.
- 8.3 Should the PAYG system apply a large number of independent contractor owner drivers would not be able to remain in business.

**Summary.**

The relationship between principal contractors and independent contractor owner drivers should be covered by the Independent Contractors Bill to provide future assurance in commercial terms.

It is the CTTA's view that national consistency in the road transport industry workplace relations is long over due and much needed.

CTTA predilection is for an 'opt-in' provision in the interim period to properly allow for real choice in the road transport industry in NSW and Victoria. This would allow those who genuinely agree to be covered by the Independent Contractors Bill from inception.

The foreshadowed review announced by Minister Andrews to commence in 2007 could then be utilised by those still covered by State based industrial relations systems to bring about nation wide consistency of these types of laws.

CTTA is pleased to give further oral evidence to the Senate Committee.

Should you have any questions, please do not hesitate to contact me on either (02) 9653 2922 or 0418 233 322.

Yours sincerely

**Kathy Robertson**  
**Chief Executive Officer**