APTIA
Australian Public Transport Industrial Association
moving people

The Committee Secretary

The Senate Education Employment and Workplace Relations Committee

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Dear Sir

Subject: The Fair Work (Amendment) Bill 2013

The Australian Public Transport Industrial Association (APTIA) has set out below submissions relating the Fair Work (Amendment) Bill and respectfully requests the Standing Committee on Education, Employment and Workplace Relations to consider its submission. The undersigned is available to appear before your Committee to expand upon APTIA's position.

1. The Australian Public Transport Industrial Association and Public Transport Industry

1.1 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.

1.2 APTIA represents State Bus and Coach Associations, large Urban Bus and Coach Operators, such as Greyhound Australia and Murrays and Passenger Transport Operators such as Ventura Motors in Victoria, the Bus Lines Group in New South Wales and the Australian Transit Group in Western Australia.

1.3 The public transport industry is a labour intensive industry and most persons are employed on fixed or floating rosters with heavy reliance on flexibility for employers to change rosters on short notice to meet their customers' needs.

1.4 Governments purchase school and route services and negotiate heavily regulated and prescriptive contract terms. Most government contracts require early and late night services along with peak services. Government contracts also require weekend services. In most cases Government competitively tenders their route and school contracts in the metropolitan areas.

1.5 The day charter work, tourist services and long distance over night services are deregulated and also highly competitive and price driven.

1.6 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.

1.7 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

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pocket money. In the majority of cases permanent drivers have taken to the industry as a second or third career change.

1.8 Bus drivers on average take home around $50K per annum although most permanent bus drivers rely on overtime or weekend work from charters (usually voluntary overtime) to supplement their wages.

2. Terms of Reference

2.1 To provide th**at** any period of unpaid maternity leave does not reduce an employee's entitlement to unpaid parental leave; to increase the maximum period of concurrent unpaid parental leave from 3 to 8 weeks; to be taken over three periods in any 12 month period.

2.2 To expand the NES for flexible working arrangements to include: aged persons over 55 years, persons with caring responsibilities, persons who are the victims of or who have family members who are the victims of domestic violence, disabled persons and persons who have children of school age.

2.3 To enable pregnant employees to transfer to safe jobs regardless of their period of service.

2.4 The FWC must now take into account the need for extra remuneration for employees who work on weekends, shifts, public holidays, weekends, shifts, overtime and irregular, unsocial or unpredictable hours.

2.5 Workers bullied at work can now go to FWC and seek an order to stop the bullying. The definition of bullying has been extended.

2.6 A frame work has been established to provide definition to permit holders as to how they exercise their rights of entry.

2.7 The function is given to FWC to promote co-operative and productive workplace relations and prevent disputes.

2.8 Increased consultation for rosters, not necessarily major change.

3. General Comments

3.1 Various Employer Groups have expressed their concerns about the Bill and APTIA supports the issues raised such as:

- The speed with which the Bills have been presented to the Parliament
- The lack of consultation with any employer groups
- The obvious political take over from sensible discussion and necessary workplace reform

3.2 APTIA is disappointed that the proposed Bill as a second tranche does not address the balance of the recommendations of the Fair Work Review panel's recommendations.

3.3 The consequence of the Bill is that vital reforms, as recommended, such as extending the period for IFAs and recognising in enterprise agreements indirect benefits in lieu of actual pay are ignored.

3.4 The family friendly measures in the amendment will add cost and complexity to the industry without a clear public benefit. In some cases the costs will be passed on to state

governments through change event mechanism in the bus service contracts. Others will be passed on to customers or absorbed by the employer depending on their sustainability in competitive touring and charter markets.

3.5 The employment pendulum from the Bill has swung dramatically in favour of employees and the consequences of this failure will impact on economic productivity and industrial harmony.

4. Specific Industry Issues

4.1 Unpaid maternity leave and parental leave

- The complexity of introducing yet another form of maternity leave is not justified and appears out of balance with the possible benefits.
- The complexity and costs of administering special maternity leave and extending concurrent parental leave will have a disproportionate impact on small businesses. The question of what constitutes a "safe job" should be clearly defined. Question whether a bus driver is a safe job?
- The proposals will clearly provide employees, especially those who work together the opportunity of taking up to three periods of leave during any one year.
- In the public transport industry where strict schedules are part of the services offered for contract by Government any change in staff has to be replaced usually by casuals who receive higher rates of pay in lieu of leave.
- In the event that a permanent employee is taken on it is difficult because services are defined and not varied often to relocate them in another part of the business once the parental leave is completed.
- Special consideration should be given in the Bill to businesses that have the special features of the public transport industry.
- Because no consultation has occurred and because no consideration has been given to the special features of passenger transport services will diminish because Bus Operators will find it harder to find drivers.

4.2 Flexible working arrangements

- The Bill substantially extends the NES without any consideration for businesses such as public transport which is labour intensive and is exemplified by strict scheduling and rostering.
- Although the Bill does place some restrictions upon employees who request flexible work arrangements it nevertheless opens up increase expectations for employees who have children at school, are over 55 years old which is a demographic within the passenger transport industry.
- It is not possible to provide to a driver who for instances accepts a job as a school bus driver time off to pick their own children when that is exactly their task.
- Even though there is a "reasonable business grounds" the expansion of flexible working arrangements should be left to the existing Individual Flexibility Agreement (IFA) process

and not further prescribed into legislation, hence the consideration of the arrangements between the employer and employee.

- The Bill should extend the definitions of what would be deemed a legitimate excuse to refuse a work arrangement.
- APTIA suggests that the Bill should be amended to recognise the type of industry or type of employment agreed to by the employee as a reasonable excuse to refuse such requests.

4.3 Pregnant employees

- APTIA does not oppose the extension of the opportunity of a pregnant employee to request a transfer to a safe job.
- The Bill does need to recognise the options for a pregnant employee in circumstances where no safe jobs are available.
- There remains confusion also as to who determines the safeness of the job.

4.4 Extra remuneration

- This part of the Bill, like the proposed changes to the NES and working arrangements appears part of a political wish list which does not recognise long standing practices of flexible work practices in industries such as the bus industry.
- There is no need to add a further "objective" to provide additional remuneration for overtime and for working unpopular hours. These arrangements are best left between the employer and employee under the existing award, Enterprise Agreement (EA) and IFA system. The Passenger Vehicle Transportation Award (PVTA) already adequately provides for this.
- Currently in the public transport industry employers and employees have negotiated flat rates of pay to provide greater productivity in the workplace for both employers and employees. In many instances the Monday to Friday base rate is substantially above the award or enterprise agreement and is imbedded in the negotiations. The problem with the Bill is that Trade Unions and employees are reluctant to reduce their base rate of pay notwithstanding that the weekends will provide loadings. Employees by their own choice volunteer for weekend work as extra work to increase their income.
- In the Bus and Coach industry most employers' roster over Monday to Friday and offer weekend work to volunteers. These employees work by choice and therefore the rationale for the Bill may not apply to public transport.
- The Fair Work Review Panel, a body appointed by the Government and sympathetic to the labour movement, recommended that the Act recognise the opportunities for employers and employees to negotiate employment terms which did not necessarily relate to extra remuneration.
- An example in the Public Transport Industry is employers who offer to their employees 'time off in lieu' for overtime, public holidays and weekend work. The reason that employees agree to these provisions is to provide them with more time off with their families which they consider more important than the extra money at the time.

4.5 Bullying

- The Bill appears to take away from the employer the opportunity to be the first to address the problem however and APTIA recommends that the right is limited to a period after the employer is first notified of a bullying problem in the work place.
- APTIA is very concerned that (particularly for small business) the risk of employees abusing the proposed system is high and therefore would seek further information to justify why for example the Work Health and Safety Bullying Codes of practice etc. do not provide for sufficient mechanism to reduce bullying in the workplace. Maybe there should be a 100 employee rule because of the proportionately extra admin the proposal would generate.

4.6 Rights of Entry

- Unfortunately the trade union movement from the experience in the public transport industry abuse the powers given to them pursuant to the Act.
- APTIA considers the existing union rights of entry already provide adequate access for unions. Further prescription is likely to create further conflict rather than improve outcomes for employers and employees. For example, the proposed changes are too open to exploitation where the union simply doesn't agree, so that they gain access to the driver's lunch room, where non-union employees would be subjected to the meeting, when they may not wish to participate.
- Unlike employees who are able to seek support from the OFWO for adverse action and employer does not have the same protection as the abuse of an entry permit has usually occurred well before the employer has the right to deal with the breach.
- APTIA seeks a balance to the extended rights of entry by an amendment which strengthens the right of an employer to lodge an application for breach of the right of entry with sanctions dealt with by FWC rather than the federal industrial courts which is a slower, much more expensive jurisdiction.

4.7 Promoting productivity and preventing disputes

- It has been APTIA's long held view that the FWC acknowledges that public transport is an essential service and that the welfare of the public is impacted by strike action. The reasons have been dealt with by decisions prior to the introduction of the Fair Work Act and although the provisions are almost identical the Commission does not recognise the impact of public transport.
- Furthermore APTIA has been involved as the advocate for public transport operators who have been the subject of strike action and who have on all occasions failed before FWC to either suspend or terminate strike action.
- This issue remains the greatest failure of the bargaining system that trade unions can, unchecked, take strike action, to force their terms and conditions upon public transport operators who risk termination of their bus contract for failure to run services.
- In the case of **South Link Pty Ltd and Transport Workers Union of Australia PR 937514 8 September 2003,** Commissioner Dangerfield acknowledged the role that public transport plays in the community and the impact that public transport plays to the welfare and safety of the community. At paragraph 12 of the Decision he stated:

  "In my view the term 'welfare' is sufficiently wide to cover the legitimate interests of the community serviced by the Company in terms of that community being able to commute at

the scheduled times to their many and various destinations, including their schools, their workplaces, their hospitalised, doctors, pharmacies, shopping venues and the like."

- In the Decision of Deputy President Blain of the Australian Industrial Relations Commission in **Transport Management Group t/a Southern Cross Transit and the Transport Workers Union of Australia [PR935665] 1 August 2**003 the Deputy President in terminating the protected action stated at paragraph 33:

  "On balance I was satisfied that many people were stranded, distressed or otherwise significantly disadvantaged b y the unavailability of bus transport as a consequence of the industrial action. Further I considered that the industrial action caused significant disruption to members of the public serviced by the applicant.'"

- In **Transit Australia Pty Ltd v Transport Workers' Union of Australia [2011} FWA 5006,** a more recent case Commissioner Ian Cambridge echoed his views about the contradiction between some of the objects of the Act and the right to strike which seems to be blindly upheld by FWC in all cases.

- Commissioner Cambridge exclaimed at paragraph 19:

  "The legislative regime has been constructed with a clear intention to facilitate the taking of protected action. Although, I personally find such an approach to be inconsistent with other objects regarding the promotion of productivity and economic growth."

- Even more recently Commissioner Cambridge looked at the entire legislative process of trade unions in the public transport industry seeking to take strike action simply to comply with provisions of the Act to take strike action inside the 30 days required by Section 459 (1) of the Act.

- In **Oliveri Transport Services Pty Ltd [2013] FWC 2187, 11 April 2013** Commissioner Cambridge at paragraph 17 commented:

  "There was criticism made by the employer that the weekend industrial action notified by the TWU, was in large part prompted by the impending expiration of the 30 day period permitted for authorisation of protected industrial action pursuant to subsection 459 (1) (d) of the Act. This criticism represents more of a complaint about the legislation rather than a factor that would operate to support an Order to suspend protected action pursuant to s.425 of the Act."

- Commissioner Cambridge in the same case stated at paragraph 24:

  " There is no specific object relating to avoiding or minimising protected action. The legislative regime has been constructed with a clear intention to facilitate the taking of protected action."

- It is APTIA's submission that, until those issues addressed by Commissioner Cambridge, as set out above, then the function given to FWC by the Bill is not capable on being achieved.

4.8 Consultation for roster change

- The Bill, in so far as it deals with the consultation process is a significant extension of the current requirements of the Act which includes a consultation clause in each award and enterprise agreement.

- The Passenger Vehicle Transportation Award 2010 provides for consultation on major changes and for notice to be given to employees of roster changes of up to seven days.

- APTIA considers it unnecessary and counterproductive to put additional provisions into awards prescribing consultation. Such consultation in the bus industry is a normal part of doing business and the decision about changes to rosters and working hours are made by employers in the public interest with full consultation with the work force. Adding a further layer of formality is considered counterproductive for the growth of public transport in NSW. Planning rosters is difficult enough without having to balance the competing interests of employees, who are all to be given this right. How is an employer supposed to weigh up those competing interests? Is getting home to dress the sick mother's wound less or more important than getting home to care for the teenage children?
- To require an employer to consult with an employee on a roster change is adding a significant, other layer, of administration upon the employer. In the public transport industry there are many reasons why rosters change at short notice. Some of the reasons may include:
    - New classes being added to the school bus service task.
    - Drivers not turning up for work and new rosters required to complete the service route tasks for the day.
    - The Government may require, as part of their service contract new services or even on short notice new services for a temporary reason.
    - Governments regularly change their rail timetables, which necessitates a change to the roster.
    - The industry has always consulted on major changes but day to day changes are part of the ordinary business of public transport operators.
- It is APTIA's submission that the Bill should recognise the unique nature of public transport operations.

Yours faithfully

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