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The Committee Secretary  
House of Representatives Standing Committee  
On Education and Employment  
P.O Box 6021  
Parliament House  
Canberra ACT 2600

16 March 2012

By email: [committee.reps@aph.gov.au](mailto:committee.reps@aph.gov.au)

Dear Committee Secretary

**Subject: The Fair Work Amendment (Better Work/ Life Balance) Bill 2012**

The Australian Public Transport Industrial Association (APTIA) is the industrial association 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.

APTIA seeks to make comments for consideration by your Standing Committee as it reflects on the impacts of the two private member's Bills introduced into Parliament by the Greens Representative, Adam Bandt, MP.

The Terms of Reference for the House Standing Committee for Education and Employment is to consider the text of the proposed Bill and its explanatory memorandum.

APTIA has assessed the main functions of the **Fair Work Amendment (Better Work/ Life Balance) Bill 2012** as follows:

- To repeal the existing right to request provisions in the NES, and replace it with a new "Part 2-7A Flexible working arrangements" which would provide a new right allowing an employee, or an employee organisation that is entitled to represent the employee, to request the employer to change the employee's working arrangements. Requests can be refused by the employer on "reasonable business grounds" (proposed s.306D);
- Provide a second new right, which would allow an employee who has responsibility for the care of another person, or an employee organisation that is entitled to represent the employee, to request the employer to change the employee's working arrangements to assist the employee to care for the other person. The employer may refuse the request only on "serious countervailing business grounds" (proposed s.306E);
- A new Division 3 is proposed which would allow the Tribunal to make a "flexible working arrangements order" that it considers appropriate to ensure that an employer complies with proposed ss. 306D or 306E. A contravention of an order attracts a civil penalty and the order

would override a less beneficial term of a modern award or is inconsistent with a term of an enterprise agreement;

- APTIA seeks to raise the following matters for your consideration.

### **Bills Premature!**

APTIA's position is that the private member's Bills is premature, given that the Federal Government has commissioned the Fair Work Review Panel to undertake a comprehensive review of the Fair Work Act 2009, as part of its commitment to restore fairness to the Australian workplace relations system. The Review Panel will, after much deliberation and consultation with industry will report to the Minister by the end of May 2012.

To allow two Bills (i.e. the Fair Work (Job Security and Fairer Bargaining) Amendment Bill 2012) to be introduced which effect significant amendments to the Fair Work Act 2009 would be contrary to the Government's stated intentions and almost render the review process worthless.

### **Workplace Flexibility already exists!**

APTIA considers that the proposed changes to the NES in the Bill are uncalled for as there exists a workable flexibility arrangement already under the Fair Work Act for employers and employees to discuss workplace flexibility. This is guaranteed by the NES (Section 144 Fair Work Act 2009) and which further supported by Section 315 which requires 'family or carer responsibilities' to be considered as a component of discrimination.

There is no evidence to suggest that the flexible workplace arrangements enshrined in the Fair Work Act 2009 are not working. The Bus Industry is one such industry in which roster flexibility is crucial. Passenger transport is all about on time running and scheduled shifts, especially when involving transportation of school children to and from school. There has been no anecdotal evidence to suggest that the current laws are insufficient for such operations.

### **Power of Employee Associations**

The current review panel is currently considering many employer associations submission which are of the view that the balance between employers and employees has been eroded by the Fair Work Act 2009.

The Bill proposes to give to employee associations, who are entitled to represent members, not actually requiring them to be a member, to bring proceedings against an employer thereby extending the power of employee associations.

### **Public Transport**

The bulk of the work undertaken by public transport is the scheduled transport of the public to school, shopping centres and other points of convenience. The cost of these services, whilst partly funded through fares, are heavily subsidised by Government. Efficiency in running services requires that the services are scheduled and are on time.

When a person commences such a job with a bus company they are fully apprised of the fact that they will have to undertake scheduled shifts to meet the contractual obligations of their employer's bus service contract.

Whilst a degree of flexibility is guaranteed under the Fair Work Act 2009 nevertheless the private members Bill would present an enormous challenge to the scheduled services and require significantly more drivers to undertake the task and make the service less efficient.

**Not in keeping with the stated objects of the Fair Work Act!**

Whilst the Fair Work Act 2009 does call for laws which assist employees to balance their work and family responsibilities by providing flexible working arrangements it also seeks a balance to provide laws which provide workplace relations laws that are fair to working Australians, that are flexible for business, promote productivity and economic growth for Australia's future economic prosperity and which achieve productivity and fairness by simple good faith bargaining and acknowledging special circumstances of small and medium sized businesses. (Section 3, Fair Work Act, 2009). These objectives have been ignored in the two private member's Bills.

APTIA requests that the House of Representatives Standing Committee considers the matters raised by it in these submissions when deliberating on the proposed legislation.

Yours faithfully

Ian MacDonald, National Industrial Relations Manager