



Motor Trades Association of Australia

Committee Secretary
Senate Education, Employment and Workplace Relations Committee
Department of the Senate
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Sir/Madam

This submission to the Inquiry into the Fair Work Australia Bill 2008 is presented on behalf of the Motor Trades Association of Australia Industrial Council (MTAA IC). The Members of the MTAA IC are the:

- Motor Traders' Association of New South Wales (MTA NSW) founded in 1910;
- Motor Trade Association of South Australia Inc (MTA SA) formed in 1926;
- Motor Trade Association of Western Australia Inc (MTA WA) formed in 1934;
- Motor Trade Association of ACT Ltd (MTA ACT) founded in 1974;
- Motor Trade Association of Northern Territory Inc (MTA NT) formed in 1984; and
- Service Station Association Ltd (SSA) founded in 1935.

MTA NSW and MTA SA are federally registered Industrial Organisations.

The organisations listed above, together with the Australian Automobile Dealers Association (AADA) form the Motor Trades Association of Australia (MTAA).

MTAA is the peak national representative organisation for the retail, service and repair sector of the Australian automotive industry. The Association represents the interests, at the national level, of over 100,000 retail motor trade businesses with a combined turnover of over \$160 billion and which employ over 308,000 people. The Association is a federation of the various state and territory motor trades associations, as well as the Service Station Association (SSA) and the Australian Automobile Dealers Association (AADA). MTAA also has a number of Affiliated Trade Associations (ATAs), which represent particular sub-sectors of the retail motor trades ranging from motor vehicle body repair to automotive parts recycling. All of the ATAs are composed of the relevant sections of each of the MTAA Member bodies and are represented, at a national level, by MTAA.

The Association's affairs are directed by a Board on which each of MTAA's Member bodies is represented. The role of the Association is to:

- raise awareness in the community of the retail motor trades' significant contribution to the Australian economy;
- convey and promote to governments the interests of the retail motor trades;
- promote improved working relationships and practices with the motor trades' unions;

- on behalf of the Members of the Association, provide information about the trades to governments, the public and the trades' employees;
- work with governments to plan the future of the retail motor trades and their role in the economy and other areas of national planning;
- extensively improve training and to develop work opportunities within the trades in co-operation with education and training authorities, the unions and government generally; and
- promote and improve the reputation of the trades with its customers and the general public.

While MTAA IC seeks to raise only a small number of issues about the content of the Bill, endorsing it as it does in the broad, it does see those issues as significant for employers in the retail motor trades. Set out below are the matters that MTAA IC would like to bring to the attention of the Committee in relation to the Transfer of Business and Enterprise Bargaining – Determination, Low Paid Stream and, Access to Employee Non Union Member Records and Good Faith Bargaining provisions of the Bill. In addition we raise the issue of funding to educate the retail motor industry employers as to legislative changes.

1. Transfer of Business (Part 2-8 of Chapter2) - High Income Employees

Within Division 2 at Section 316 the provision appears to seek to lock in common law arrangements for (high income) employees at the time of transfer of business from one employer to the other. MTAA IC is concerned that this proposed legislation should not attempt to deal with these types of matters – often these employees are also award-free.

In MTAA IC's view this type of provision could lead to unexpected costs to an incoming employer arising from an arrangement between the previous employer and the transferring employee. This arrangement may not be formalised or even documented and the incoming employer may not even be informed of the arrangement but would as a result of the provision be obliged to adhere to that hitherto unknown arrangement. Further, the arrangement may have little to do with the revised operations of the employee, their role and the circumstances of the new business.

It is MTAA IC's opinion that this provision could most likely lead to an increased likelihood of the termination of those (high income) employees upon transfer of a business. Indeed high income employees are already most at risk of termination at the time of a transfer of business.

The transfer of business provisions should only, if the Bill must address the issue at all, deal with the "transferable instruments" it seeks to deal with within Division 2 at Section 312. Further comments about "transferable instruments" are offered below.

2. Transferable Instruments

MTAA IC is concerned that enterprise agreements, determinations and named employer awards transfer to a new employer with an indefinite duration. It is our opinion that these "transferring instruments" should have a limited term. MTAA IC would propose that period would be one which was sufficient for the parties to reorganise their arrangements – presently this period is 12 months.

It is MTAA IC's view that upon transfer of a business, the new employer should not have to be responsible for decisions made by other parties in different circumstances for an extended period; those were previous arrangements that suited the previous employer and employee/s.

The proposed provision has the potential to make the selling of a business more difficult than may currently be the case. In the present economic and trading environment values of business are being eroded and any goodwill available when selling a business is becoming more difficult to secure. Retail motor trade circumstances include insurance companies determining by whom and where repair work will be done, as distinct from the damaged vehicle owner choosing who will repair their vehicle. Similar situations may occur across franchising operations where in tight economic conditions, future potential purchasers of 'on-foot' franchise agreements will likely pay greater attention to the terms of franchise agreement and the impact of them on the operation and financial viability of the business. For many small business people their business is their retirement asset and any legislative change which may impact on their ultimate ability to sell their business at a fair value could not be supported by MTAA IC.

3. Determinations

Part 2-5 within Chapter 2 of the Bill seeks to permit Fair Work Australia to make a determination in relation to proposed enterprise agreements. MTAA IC is concerned with the idea that a determination could arise out of an enterprise agreement process, because that would not be an "agreement" that is secured but rather an "arbitrated" outcome. The possibility of an arbitrated outcome being available puts employers in a situation where they might be 'coerced' by and through such a process, which in the end would seem somewhat at odds with the good faith bargaining process.

4. Low Pay Bargaining and Low Pay Workplace Determinations

Low pay bargaining is proposed through Division 9 of Part 2-4 of the Bill whereas Low Paid workplace determinations are provided for within Division 2 of Part 2-5 of Chapter 2.

MTAA IC believes that in relation to the Low Paid Bargaining and the Low-Paid Workplace Determinations provisions an employer should be able to engage staff on clear and certain arrangements. Employers rely on certainty when conducting their business. Employers (and for that matter employees) should be able to go about their business without having activity of this type intrude.

The processes surrounding this low paid stream are most unclear. It could be that an employer (most likely a small business employer) is caught up in a complex web of arrangements and determinations with other employers and their employees, not necessarily within the same industry sector or trade. Events, negotiations, conferences, hearings and so on could continue for an inordinately long period all of which may point to major costs and uncertainty for employers.

It is also inappropriate that an employer and its employees be caught up within a broader multi business determination.

A further concern is for employers with English as a second language or those who, because of that or for other reasons, ignore the issue thinking it is of no relevance. Those employers could be caught up in such a determination without an understanding of what the new obligations to their employees may be.

When there is a common outcome for a group of businesses that is not workplace specific that may not lend itself to the most efficient and equitable outcomes.

MTAA IC can only envisage additional costs for employers caught up in this process and it is therefore seriously concerned about the impact of these provisions on, particularly, small employers.

5. Access to Employee Records

There has been much speculation about union delegates with permits accessing non member records. It appears from the content of the Bill at 481ff in Subdivision A of Division 2 of Part 3-4 of Chapter 3 that this is not the case. The inquiry process of the permit holder is limited, as MTAA IC understands the Bill, to [S482(1)(a)] the suspected contravention (as it relates to the “member of the permit holders’ organisation” [S481(1)]. This is also the case at S482(c) which limits the access to and collection of employee records to the suspected contravention in relation to a member.

This quite rightly, in MTAA IC’s view conforms to the Government’s stated intention. MTAA IC does believe however that the Committee could consider recommendations to further confirm this outcome in order to clarify and remove any possibility that union delegates with permits could have access to non-member employee records. For example, this could be achieved by the inclusion of the words “(other than non-member records)” within S482(1)(c).

6. Good Faith Bargaining

Perhaps one of the most significant changes to the workplace relations arrangements proposed in the Fair Work Australia Bill 2008 is the requirement on parties to bargain in good faith. That requirement is a welcome addition to the workplace relations legislative arrangements. MTAA IC notes that the good faith requirements include the disclosure of relevant information in a timely manner. MTAA IC is, though, concerned that there appears to be little guidance in the Bill or Explanatory Memorandum and suggests that it could be beneficial for a range of example information to be detailed in the legislation to provide guidance as to what is meant by ‘relevant information’.

MTAA IC is concerned that a requirement to provide ‘relevant information’ could be misused by parties to seek detailed financial and other information about privately held companies, partnerships and sole traders. In MTAA IC’s view a requirement to provide such information to employees and or their bargaining agents is not appropriate and nor is it necessary and could be seen by many as an attempt to employ or reduce the profitability of a

particular business. In order to avoid any disputes over what might be considered relevant information, MTAA IC seeks further clarity and descriptiveness on that matter in the provisions relating to good faith bargaining.

7. Education Funding Request

MTAA IC recommends to the Committee that there is a need for 'education' funds to be made available to Associations and other representative organisations to ensure that employers are made aware of their obligations under the Fair Work Australia Bill prior to it coming into effect. There are many thousands of small employers in the retail motor trades who will be covered by the Bill and it is important the information be made available to them well in advance of the date of effect of the Bill in order to avoid any unnecessary and inadvertent breaches of the provisions of the Bill. Employer organisations in the retail motor trades have successfully engaged in this activity with the support of Government funding on a number of previous occasions.

8. Conclusion

In conclusion, MTAA IC in general believes the Fair Work Australia Bill 2008 to be reasonable and balanced. MTAA, in other contexts, has long sought the inclusion of specific good faith dealing requirements in legislation and the Association acknowledges that such a requirement imposes a standard of behaviour on both parties engaged in a bargaining process. The inclusion of a good faith bargaining clause is, notwithstanding the request for some further clarity above, welcomed by the Association and MTAA IC.

It is the case that in the current economic climate one of the biggest challenges for Australia is the prospect of higher levels of unemployment. It is therefore important that this legislation does not impose real or even perceived barriers to the engagement of additional employees by small and or large businesses. It needs to be remembered that cost imposts on employers in the form of higher wages need to be recovered from the marketplace. If employers are able to show that increased costs are unable to be recovered from the market place then in good faith the other bargaining party needs to also consider the potential downside to cost increases for employers.

I would like to thank the Senate Committee for its consideration of this submission.

Yours faithfully



MICHAEL DELANEY
Executive Director

22 December 2008