

Member Alert



President's corner

Ben Romanowski, President, Bus SA

August 2019

In this edition...

President's corner

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This edition I am pleased to announce the appointment of Andrea Overall as the Executive Officer of Bus SA. Andrea arrived a few weeks ago and, with a background in communications, is already contributing to how we provide our stakeholders with useful and timely information.

Keep an eye out for some changes over the coming months.

I can also confirm that a Board Meeting will be held on 17 September at 12.00, at Level 13, 515 Pirie Street, Adelaide. As is our practice, all Members are invited to attend and contribute. We hope you will be able to attend.

2019 Bus Expo and Maintenance Conference

As mentioned last month, the largest bus expo in the southern hemisphere is in Melbourne from 1 October 2019.

I strongly recommend you consider attending – it is a great opportunity to network, learn a few new tricks, and generally be involved in all things bus.

More details are available here:

www.busvic.asn.au/public/events/future-events/2019-maintenanceconference-bus-expo

Ben Romanowski



SA Government Policy

Government Relations Update

Lauran Huefner, Director Government Relations, BusSA

This is a Government that likes to commission reports. And eventually the reports have to see the light of day. Sometimes those reports tell a story that Government wants to repeat, and sometimes the report has a tricky answer that takes some time to figure out. We've got a bit of both in our space.

Procurement

In July, the Premier released his response to the South Australian Productivity Commission Inquiry into Government Procurement (Stage 1 focussed on goods and services). You can see the full response here: <https://tinyurl.com/y3cqg2cu>

The good news is that the Government fully accepted most recommendations. Although many of the recommendations are of interest to us in broad terms, some of the key approvals include:

- a focus on value for money, its definition and application (Recommendation 2.2)
- lifting the overall attention on contract management in agencies (Recommendation 2.8)
- a commitment to training public servants to improve their understanding and practice of procurement (referenced throughout the document).

Should the Government deliver on some of these, we may see improved transparency and clarity of intent in government procurement, which will only benefit us all.

School Bus Review

The other report of ongoing interest to us must be the School Bus Review. Officially this is still being completed, and I have asked various MPs to find out the status. The answer is, interestingly, "still being completed".

My suspicion is that the problem with completion is that the answer doesn't work in the current budget and political climate. The answer is that the final answer may very well be the right answer, and therefore that will cost the budget.

Our comment to the Government is that the problem of regional transport is not a simple fix. Ultimately their aim should be to make a small commitment and build over time. There is no need to hit the budget immediately with a big solution – let's put it all into a plan for regional mobility that will take most of the next decade to deliver. Be brave Premier.

Infrastructure Australia Audit

The other report recently released is the Infrastructure Australia Audit. Michael Apps refers to this in his View From Canberra. The key SA takeaway is the commentary around Adelaide requiring improved and increased bus service investment to deal with the congestion challenge. We made comment about this on social media last week, and the summary of our position is here: <https://www.bussa.asn.au/traffic-congestion/>

Perhaps this is the blueprint that SAPTA needs to look to as guidance for developing the Adelaide network? Time will tell.

Please feel free to email me if you have any questions or would like to discuss further.

Lauran Huefner
lhuefner@bussa.asn.au

BusNSW Conference 2019

BusNSW held its annual conference at the idyllic Fairmont Resort in the Blue Mountains on 18 and 19 July 2019. It was very well attended by bus and coach operators and manufacturers along with NSW officials and politicians.

Maria Capati from Piper Alderman, solicitors, provided a summary of the Chain of Responsibility and WHS obligations for operators on the first day of the Conference whilst APTIA was represented on an industry panel on the second day.



The highlight of the Conference was the standing ovation given to Paralympian Kurt Fearnley AO after he had taken the delegates through some of his many triumphs, including his gold medal win in the marathon T54 at the 2008 Beijing Paralympics and his incredible trek up and across the Kokoda track some 96 kilometres in 2009. He was inspiring.

Ian MacDonald





View from Canberra

Bus and coach national update

Michael Apps, Executive Director, Bus Industry Confederation

Bus Industry a massive future player in cities and regions

Australia's population is forecast to increase to 31.4 million people over the next 15 years. Infrastructure Australia says that spending in Sydney, Melbourne, Brisbane and Perth is failing to keep pace with population growth — especially in the outer suburbs.

Various studies have shown that 'acceptable' walking distances to public transport are generally in the realm of 400 to 800 metres. Based on this, 96 per cent of people living in the inner city are within walking distance of public transport, and only 34 per cent of Australians in the suburbs are within a walkable distance to a transport connection.

Those in regional and remote areas are worse off, with services falling 'below what is acceptable' for a developed nation.

Remote communities struggle with overcrowded housing, limited access to drinking water, inadequate transport and poor telecommunications, leading to poorer health standards and lower quality of life.

I attended a key stakeholder briefing from Infrastructure Australia on 5 August about the 2019 Infrastructure Australia Audit Report that was publicly released on 13 August.

The report paints a dire prediction about our future if Australia does not get serious about investing in infrastructure and getting public transport right. The report identifies serious trouble ahead relating to the impacts of congestion on our living

standards and a productive economy, not just in our capital cities but in all of our major cities and regions.

The pressure of population growth on the whole transport system and transport infrastructure will outstrip our capacity to provide the living standards we are accustomed.

This will have flow on effect on housing, health and other vital services that we take for granted in a first world nation like Australia.

Am I being dramatic? No, this is not new news but it is putting out the warning to the Morrison government and whoever is next, and to all state and territory governments that we need a national plan.

We need to invest now in priority transport infrastructure and we need to start now or as Hanrahan once said "we will all be rooned". This report could not be clearer, and part of BICs role and all Industry participants is to make sure governments are listening and acting.

And let me tell you autonomous vehicles or modules for everyone is not going to solve this problem.

The next BIC policy paper (Number 12) "From Workhorse to Thoroughbred" will provide ideas and thoughts on future options on the role of bus and investing in improved branded bus services, bus priority and bus rapid transit infrastructure and services as a big part of the solution - at a fraction of the cost of light and heavy rail.

BIC National Conference

The BIC National Conference is being held in Canberra November 17-20. The theme, Moving People - a National Priority, is to make sure governments are listening and acting and emphasise the role of all governments to get moving and work with industry to meet the public transport challenges ahead. They need to recognise the role of the bus as the biggest mover of people every day in the public transport system no matter where you live.

We are part of the solution, not only for public transport improvement but to deliver a legacy for future generations. There is more to this than just business growth. The conference is your opportunity to contribute to the future, the growth of the bus industry and your business, whether you are a supplier or an operator.

Infrastructure Australia will be presenting at the conference about the 2019 IA Audit Report and the future of bus. Not to be missed.

I hope to see you in Canberra to highlight the unity and strength of Industry and our commitment to playing our part in delivering the Australia of the future.

Visit www.movingpeople.com.au for more regarding the conference.

Michael Apps





Industry news

Industrial Relations

Ian MacDonald, National IR Manager, APTIA

Four year review of the PVTA

There are three issues that remain outstanding from the 4-yearly review of the modern awards, which includes the Passenger Vehicle Transportation Award 2010, and which are:

1. Finalisation of the issue of overtime for casuals
2. Finalisation of the exposure draft of the PVTA
3. Payment of wages on termination

APTIA has recently represented the industry in the Fair Work Commission regarding the issue of overtime for casuals which has prompted the following update.

Overtime for casuals

The OFWO had previously identified that the PVTA was not clear as to whether overtime would apply for casuals. Vice President Hatcher, who headed the Casual Full Bench gave directions on 15 March 2019 that both APTIA and the TWU provide a joint advice to the FWC about the issue of overtime for casuals.

Following a negotiated outcome APTIA and the TWU advised the FWC that the PVTA Exposure draft should include a clause (cl. 8.1 (e)) which stated that "ordinary hours for a casual employee will be up to 38 hours a week."

More importantly APTIA deferred to the position in the PVTA Exposure draft (cl.6.5 (c)) which stated that the casual loading of 25% would only apply to ordinary hours and not to overtime.

This position was accepted today by the FWC. This means that no casual loading (25%) is payable to a casual who may work hours in excess of 38 hours a week as overtime.

Exposure draft

It has always been the intention of the FWC to publish a new set of modern awards. Currently the current 122 modern Awards have been the subject of a number of Exposure drafts.

As the process is concluding the FWC has indicated that they propose to publish a final draft of the PVTA Exposure draft in August 2019 and provide a month for comment with a view to publishing a new PVTA in October 2019.

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Meanwhile at the office...

EO's Report

Andrea Overall, Executive Officer, BusSA

Hello all, I started in mid-August as the Executive Officer at Bus SA, and I'm very pleased to be here.

Having not been here very long at all, I don't have anything to report, so I'll just tell you a bit about myself.

I've worked most of my career in corporate communications, with a specialisation in web and print publishing. That said I've been around the traps a bit, so my experience in the broader communications profession is wide-ranging.

Before ending up back in Adelaide (don't worry, I've made my peace with it now), I had quite a varied existence, living for 15 years in Sydney and 6 years in Paris. In Sydney I was lucky enough to work for places like the University of Sydney, ASIC and Zurich Financial Services, and in France I worked for a couple of big global telecommunications companies.

Back in Adelaide I managed online communications at the SACE Board for a few years, then worked on a big project to rewrite the main UniSA website.

I'm currently working with Lauran to get my head around the issues, needs and interests of this people moving industry. Along with keeping Bus SA ticking along on a day-to-day basis, I'm really looking forward to using my communications experience to help address those issues, to meet those needs, and to raise awareness of the industry.

There's nothing I love more than working in a role where I can be both strategic (think big picture policy and strategic communications) and hands-on (think social media and pulling together information products like brochures or websites).

I have a hunch this job will give me the chance to do a fair bit of all the above!

I look forward to meeting you all at some stage. Feel free to call or email me if you've any questions, if there's anything I can help you with, or just to say hi.

Andrea Overall

Tel: (02) 8269 1077

Email: admin@bussa.asn.au





Industry News

Industrial Relations

Ian MacDonald, National Industrial Relations Manager, APTIA

Payment of wages

There is an application by the Australian Business Limited to reform the standard 'payment of wages' clause in the PVTA, along with other modern awards which has been opposed by the Transport Workers Union. APTIA has not entered the discussion on the issue as members do not see any need for change as the current clause is accepted.

In a recent decision the Fair Work Commission has decided to make the following change to the PVTA 'Payment on termination of employment' clause.

19.3 Payment on termination of employment

(a) The employer must pay an employee no later than 7 days after the day on which the employee's employment terminates:

- (i) the employee's wages under this award for any complete or incomplete pay period up to the end of the day of termination; and
- (ii) all other amounts that are due to the employee under this award and the NES.

(b) The requirement to pay wages and other amounts under paragraph (a) is subject to further order of the Commission and the employer making deductions authorised by this award or the Act.

Note 1: Section 117(2) of the Act provides that an employer must not terminate an employee's employment unless the employer has given the employee the required minimum period of notice or "has paid" to the employee payment instead of giving notice.

Note 2: Paragraph (b) allows the Commission to make an order delaying the requirement to make a payment under this clause. For example, the Commission could make an order delaying the requirement to pay redundancy pay if an employer makes an application under s.120 of the Act for the Commission to reduce the amount of redundancy pay an employee is entitled to under the NES.

Note 3: State and Territory long service leave laws or long service leave entitlements under s.113 of the Act, may require an employer to pay an employee for accrued long service leave on the day on which the employee's employment terminates or shortly after.

Note: The current PVTA clause 19.3 states:

"Notwithstanding anything contained within this clause, the employer must pay to an employee who leaves or is dismissed all moneys due to the employee within two working days."

It is not sure that these timelines will be met but as far as the PVTA is concerned the process is concluded and at some stage prior to the end of the year an entirely new Award will be released.

Where is the Government heading?

The Morrison government's new industrial relations minister Christian Porter has launched a major review of the nation's workplace laws, seizing upon the Coalition's electoral victory as a mandate for reform. The strategies can be summarised as follows:

1. The reintroduction of two previous Bills i.e. "Ensuring Integrity" and "Proper Use of Workers Benefits" Bills.
2. Consideration of three major IR issues
 - i. Enterprise Bargaining
 - ii. Casual employment
 - iii. Labour Hire
3. Dealing with wage theft

The minister, who is also the Attorney-General, will consider submissions about the definition of a casual employee - which business leaders and unions had told him caused "frustrations" amid disputes over workers' "double dipping" claims - as part of the review.

While Porter has not committed to legislating an objective test, as promised by the ALP ahead of last month's federal election, Porter acknowledged that "there is a view that there is a lack of clarity" under the current law. Everyone benefits from having clarity in the system," he stated recently.

Mr Porter said he would seek submissions over the next six to nine months, vowing only to make changes that were "evidence based" and would benefit both workers and employers.

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Ian MacDonald, National Industrial Relations Manager, APTIA

"First of all, I want to be convinced that there is sufficient uncertainty that it's actually creating a problem," he said. "What I don't want to do is assume problems based on advocacy." Employers have been concerned about the casual issue since the Federal Court ruled that a former truck driver who worked for Rio Tinto through a labour hire company was a permanent employee owed annual leave and other entitlements, despite having been hired as a casual.

The case has sparked a number of class action lawsuits in the mining industry, with retail and hospitality employers fearing they could be next.

A government regulation enacted by former minister Kelly O'Dwyer last term aims to stop workers from "double dipping" on entitlements and the casual loadings that are supposed to compensate for them, but is yet to be tested in court. The review will also examine the enterprise bargaining system and "better off overall" test, which enterprise agreements must meet before the Fair Work Commission approves them and consider if changes can be made to speed up approvals. The Shadow IR Minister, Tony Burke has called upon the Morrison Government to spell out the terms of its IR review and whether it extends to changing unfair dismissal laws.

Burke claimed that Porter had consulted with business and announced his intention to review the IR system, despite the Coalition failing to pledge major changes during the election campaign. Burke claimed further that Government MPs are "giving interviews, specifically talking about wanting to make it easier to fire people."

"Now what people want with their jobs is to make sure that their jobs are reliable. "They want their jobs to be secure." "And what people are finding at the moment is they have a Government that wants them to be paid less and wants their jobs to be less secure. "Now it's for the Government to put forward exactly what these industrial relations changes will involve."

Burke said the Coalition took the same stance at the 2004 election when it also won control of the Senate and "that landed us with Work Choices." "We'll see what they do this time."

Increases to the super guarantee charge

Unions have welcomed the Morrison Government ruling out any change to the timetable for raising employer super contributions to 12%. The current 9.5% contribution is set to rise to 10% in July 2021, before reaching 12% in 2025 by annual increments of 0.5%.

The ALP used the resumption of Federal Parliament to quiz the Coalition about its commitment to the legislated timetable, in the wake of a group of Coalition MPs arguing against increasing the SGC while a think-tank, the Grattan Institute says that increases in compulsory super come at the expense of wage increases that most workers would lose in the compulsory super trade-off.

In the Senate the ALP asked Finance Minister Mathias Cormann if he would rule out any changes to the timeline and he replied in the affirmative. The ACTU said the proposed Super Guarantee Contribution increase would mean that a worker paid \$60,000 per year will increase their retirement savings from \$299,000 to \$368,000, with a corresponding increase in retirement income from \$38,900 year to \$40,950.

The peak body's president, Michele O'Neil, said the freeze in the SGC had also exacerbated the gender gap on super which stands at 47% per cent at retirement. "The current rate was frozen five years ago and we welcome Minister Cormann's commitment to the established timetable, which will see increased contributions from 2021/2022," O'Neil said.

"Increasing the superannuation guarantee will mean thousands of dollars more in retirement income for someone on the median wage, this is a real difference in quality of life" she said.





Industry News

Industrial Relations

Ian MacDonald, National Industrial Relations Manager, APTIA

Important decisions

Business efficiencies not relevant to redundancies

Mr. Brian Broudou v Eurolinx Pty Ltd [2019] FWC 4469 (8 July 2019)

The FWC has rejected a service manager's attempt to establish that his dismissal did not constitute a genuine redundancy, finding the employer was under no obligation to address its business efficiency issues when it put him off. In handing down his decision on the unfair dismissal application, FWC Deputy President Gerard Boyce has given a clear-eyed description of the employer's managerial discretion in the context of a purported genuine redundancy. The Commission heard that Eurolinx Pty Ltd restructured its business after a 15% drop in sales and 16% decline in service activity and had redistributed the service manager's duties among four other employees.

The company told the FWC it made the decision with "the commercial challenges at hand and sustainability of the business in mind". The employee, dismissed in February this year, argued that Eurolinx would have had no need to make his job redundant if it had addressed efficiency issues across the business. However, Deputy President Boyce said Eurolinx was entitled to structure its business as it saw fit. "It is worth noting the [employee] was critical of the employer's management of the business in general," Deputy President Boyce said. "The [employee] submitted that there were issues with efficiency across the business, which he suggested should have been dealt in order to save on costs.

"The [employee] claims there would have been no need to make his job redundant had those issues been addressed.

"While [Eurolinx] conceded there may be efficiency issues in the business, this argument is not to the point. "The law more or less permits an employer to structure their business as they see fit. "In this instance, the Fair Work Commission can take no recourse against what is clearly within the bounds of managerial discretion."

The service manager also claimed his redundancy could not be genuine as Eurolinx allocated some of his duties to an employee hired after he had been dismissed. However, Deputy President Boyce said even if some of the employee's duties were still required,

his job ceased to exist. "The [employee's] argument is untenable.

"Section 389 of the Act is not concerned with whether duties survive. "The section is concerned with whether the job previously performed by the applicant still exists. "[Eurolinx] reacted to a downturn in business by redistributing duties among employees.

"Those duties were the [employee's] duties. "Following that redistribution, it became apparent that there were no substantive duties left for the [employee] to perform. "Stated in the language of the Act, there was a change in the operational requirements of the [Eurolinx] enterprise and, as a result, no one was required to perform the [employee's] job."

Deputy President Boyce also accepted that Eurolinx complied with its redeployment obligations and that there was no longer a suitable job for the service manager to perform within the business. "As aggrieved as [the employee] is by [Eurolinx] decision to make the role redundant, I have determined on the evidence before me that decision was not made contrary to the Act."

Finding the redundancy genuine, Commissioner Boyce rejected the service manager's unfair dismissal application.

Sacking by text not acceptable

Van-Son Thai v Email Ventilation Pty Lt [2019] FWC 4116 (27 June 2019)

A senior FWC member has reiterated that no employer should dismiss a worker by electronic means, finding the sacking of a supervisor via text message "disgraceful and grossly unfair". Deputy President Peter Sams rebuked Email Ventilation Pty Ltd's sole director for his "hopeless manner" in dismissing a supervisor in July last year after he refused to work the same hours for 22% less pay. The deputy president found the director's lack of IR expertise and the size of his roof ventilation supplies business "does not wash" as an excuse for denying the supervisor fair procedures. The Commission heard that the director told the supervisor, who worked 38 to 40 hours a week, that his rate of pay would be cut from \$31.78 an hour to \$25.

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Ian MacDonald, National Industrial Relations Manager, APTIA

After refusing the lower rate and leaving the workplace, the supervisor received a text from the director saying: "Effective immediately I give notice of termination of your employment, please note you are required to work your notice period" and adding that "note that [you] are entitled to 4 to 5 weeks employment termination notice period".

The supervisor, who had worked at Email Ventilation for 12 years, served out his notice, but the employer failed to pay his full entitlements and superannuation balance.

He took his concerns to the AMWU, which filed an unfair dismissal application in September, but the director failed to attend the two conciliations the Commission scheduled in October and December.

When the matter went to a hearing, the director told the tribunal he rejected the supervisor's claim that he had a good employment record. Under cross-examination, the director told the Commission he had spoken to the supervisor many times about his conduct and performance, which included blocking other employees from using machinery and abusing new workers. However, the director acknowledged the supervisor had never been issued with a written warning and conceded he might have made a mistake when calculating his outstanding entitlements.

Deputy President Sams considered the director's evidence, which included a two-page document he described as "a potpourri

submission and commentary, conjecture and opinions" that provided no valid reason for the supervisor's employment to be terminated. "In my view there can be no room to doubt that the reasons for the dismissal were not only capricious and fanciful but were contradictory and irreconcilable," he said. Deputy President Sams saved his most scathing observations for the "deliberate and calculated" manner in which the director notified the supervisor he had been dismissed. "It was disgraceful and grossly unfair."

Deputy President Sams said only rare cases warranted termination of employment other than in person. "It is not the first time I have had cause to point out that informing an employee of their dismissal by phone, text or email is an inappropriate means of conveying a decision, which has such serious ramifications for an employee." Deputy President Sams said the entire procedure was "breathtaking in its complete disregard for any modicum of natural justice, particularly given the applicant's considerable period of service of 12 years."

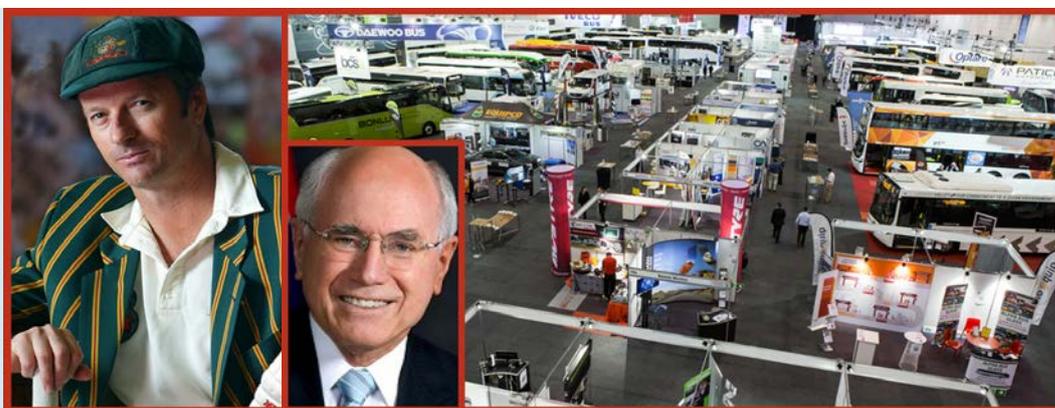
Ruling against reinstating the supervisor, he asked both parties for more evidence and submissions on compensation. In another unfair dismissal case before the FWC recently, a long-serving member took aim at an employer's claim that summarily sacking a worker by text was a "generational thing", describing the method as "unconscionably undignified" while insisting that dismissals should always be conducted face-to-face.

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Suite 515, 147 Pirie Street, Adelaide SA 5000

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