

Member Alert

October 2019



President's corner

Ben Romanowski, President, Bus SA

Congratulations are in order for Michele Pole from Spencer Gulf Coaches, winner of the the 2019 SURA Bus SA Achiever Award. Michele has worked tirelessly to create public transport options for locals with mobility access issues.

The good folk at SURA Australian Bus and Coach are behind the Bus SA Achiever Award. Thanks to them Michele will be travelling to Canberra for the BIC National Conference in November, where she's nominated in the national 2019 BIC SURA Achiever Awards.

We'll share the story of Michele's hard work and dedication in the next Member Alert, and who knows, maybe we'll have photographic evidence of her winning the national award too! Let's hope so.

I encourage you to get along to the BIC Conference in Canberra this year if you can. There are many topic streams dealing with current issues and concerns that we

face today – including procurement and tendering, national safety, and regional mobility. I think will be really educational for all of us. It's not too late to register, visit: www.movingpeople.com.au.

2018 Annual General Meeting

As mentioned last edition, the Annual General Meeting of Bus SA will be held at 1.00 pm on 26 November 2019, at L11, 108 King William Street, Adelaide. You will receive formal notification and papers in the next week.

Please note we will hold an open Board Meeting from 12.00 pm in the same location and you are welcome to attend as always.

I look forward to seeing you there.



EO's report

Andrea Overall, Executive Officer, Bus SA

Here in the Bus SA office we're working on this year's Annual Report and preparing for the AGM, coming up on November 26. Please come along and show your support for our organisation. There will be cake!

Work continues on getting our public facing information up-to-date and increasing Bus SA social media activity. We're now Facebook following (not stalking, I promise) politicians on both side of the divide and engaging with their posts as much as possible - it's all about increasing name recognition, and cementing the understanding that Bus SA is the strongest advocate for industry in our state.

In early October I was fortunate to attend the Bus Vic Expo and Maintenance Conference which I really enjoyed. It was a great opportunity to meet lots of operators, industry professionals, partners and suppliers. I did a lot of wandering around and a lot of chatting with people about the current status of the public transport industry. I learned about some of the new technologies, and generally continued my steep bus and coach industry learning curve.

I also took a load of photos, hope you like them, they're on the next page.

If you want to ask me anything, to make any suggestions, or need any help/advice on all things marketing please do get in touch.

Tel: (08) 8269 1077

Email: admin@bussa.asn.au



Bus Expo & Maintenance Conference - Melbourne, October 1 & 2



Stephen and Sam Lucas with ex-PM John Howard



Matt Arthur from McConnell Seats with Peter Simpson from Bus Stop Sales



Tony Ross from iTMS, putting his tyre software through its paces





Government relations update

SA Government Policy

Lauran Huefner, Director Bus SA

At the time of writing the first tranche of Adelaide Metro tender winners are due to be announced. Hopefully this Government will have learnt from the last tender round in 2011, and make a suitable appointment of operator/s that are able to deliver a modern flexible service that meets community needs, and with capacity to grow to continue to match those needs.

In the last week the Government also announced an extension to the submission date for the last tranche of Adelaide Metro contracts which includes the train and tram network. This inclusion of rail into a privately operated public transport network has clearly provided the political gods with an opportunity that the ALP is now seeking to exploit.

The Leader of the Opposition, Peter Malinauskas, has offered a policy divergence from the Liberal Party, by declaring that the ALP, when in government, will reverse the privatisation of the rail network. From our perspective that is, of course, the ALP's political right. However the position seems to be one that stems from a simple political argument that "privatisation is bad".

The first issue is that the ALP is conflating privatisation of assets, (such as power networks, water networks, government land etc etc) with the privatisation of management of assets. In other words, bus and rail tenders are for the management of services, not the sales of road, tracks, buses, trams or trains. The evidence from the first 2 or 3 rounds of tendering of Adelaide Metro showed very strong efficiency benefits from privatisation, and it would be those benefits that the Government is seeking in this process, if not some savings as occurred in the bus privatisation.

The second issue to raise is that tenders and contracts are written by the Government. The private operator is subject to that tender. To put this simply, Government procures what it puts in the tender. If that is the wrong service, with the wrong measures, that is the Government's to own, and is not necessarily the fault of a private operator.

In other words, the role of Government is to think through the strategic outcomes it wants, articulate those through a tactical framework and procure to deliver operationally. It is our experience that governments are often poor at the first two steps, for a multitude of reasons, and then also poor at the governance around operational delivery.

This is also why it is important that Government engage with industry to properly determine what should be included in tenders, and to properly build in feedback mechanisms that require performance assessment of the operator and the Government in the delivery of a service. Furthermore this is why it is important that Government should properly resource DPTI to enable it to properly monitor contract performance, receive feedback on service delivery and be flexible around delivery to better match commuters' needs.

To that end, the position of the ALP is simplistic at best. What if a new private operator, properly funded, does make the service better? What if the efficiencies gained mean more rolling stock can be procured? What if it works out for the better? I would argue that is a good thing for SA.

And, in the event it doesn't work, Government needs to ensure that it has the mechanisms and resources to properly monitor performance and correct that. In reality it's a fairly simple business transaction, and provided the performance measurements are clear and transparent, and management is procured for a fair price, the commuters of Adelaide may be very surprised to find little happens to disrupt that morning commute.

Please free to contact me at lhuefner@bussa.asn.au or call me on 0410 422 040 if you have any questions or would like to discuss further.

Lauran Huefner
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SURA AUSTRALIAN BUS AND COACH

On the back of their generosity in financing the Bus SA Achiever Award, we think an acknowledgement of SURA Australian Bus and Coach is in order.

SURA doesn't just materialise once a year to generously send a South Aussie high achiever on a jaunt across the country (see Ben's column, page 1), and then disappear back into obscurity!

They're always here... as a Bus SA gold partner. As a company deeply involved with, and supportive of, the bus and coach industry in our state.

If you haven't yet checked them out, they provide bus and coach motor vehicle insurance; bus and coach depot and liability insurance; and liability and ISR insurance.

You can see the new SURA website here:
sura.com.au/australianbusandcoach



Bus and coach national update

View from Canberra

Michael Apps, Executive Director, Bus Industry Confederation

Join us at the BIC Conference in Canberra

We have a great line up of National leadership attending the BIC conference in the nation's capital this year November 17 to 20.

The number 1 priority in the BIC Work Program to advocate for greater federal government involvement in public transport and the bus industry. The Deputy Prime Minister, Catherine King, Albo's new transport and infrastructure spokesperson, Janet Rice, the Greens transport spokesperson, Scott Buchholz Federal Minister for Road Safety and Chris Steel ACT Minister for Transport and City Services will all provide keynote addresses and outline their policy and plans for our industry.

You couldn't ask for more from the political parties so we need operators and supplies to register and attend the BIC conference and highlight the strength and unity of our industry.

In the first term of federal government, it is an imperative for industry to return to the nation's capital to engage with government on the important moving people task undertaken by our industry and to highlight the role of the federal government in our cities and regions in relation to public transport and connectivity.

At the conference, the BIC will be focusing on buses as the core of future transport; bus operators as the "enablers" - connecting the passengers and "providers" - transporting people on a mass transit scale through to providing personal transit options. **And that is why we need you there – because you are the link as the enabler and the future provider working with governments.**

The conference program will look at how you can grow your business and be a part of the future growth of public transport and the role of bus.

We need to look at future population growth projections and recognise the enormous pressure this will place on our cities and growing regions. The most recent report from Infrastructure Australia, also be presenting at the conference, found that increased congestion and population growth pressures mean that public transport and especially bus services will be a key player in ensuring our cities and regions remain competitive, liveable and sustainable.

In our smaller regions and towns, the services will be different but once again at the core will be the local transport providers. Future

mobility can't be left to technology or commercial interest. All levels of government have a role to play.

For example, governments will need to find the sweet spot between subsidised public transport services and emerging commercial passenger services.

Governments will need to examine subsidy programs for public transport services in our cities.

Governments will need to subsidise the passenger fare to deliver key policy outcomes like congestion management.

Can you imagine any of our major urban centres without public transport services and the impact of this on congestion?

Of course it is not just about congestion, It is also about economic productivity, social inclusion for the less well off, energy security, improved road safety outcomes. These are just a few of the many benefits of good public transport and why we need to be in Canberra to make sure our federal politicians understand their role.

But we don't just want good public transport. We want great public transport services.

This is your future – no matter the size of your business.

We need all levels of government and all politicians to remember that buses carry more people than light rail and heavy rail services. Buses are the work horse of the public transport sector and critical to mass and social transit service delivery and policy outcomes.

This is the core message that the BIC will be delivering at the conference to the federal government and its role in public transport for our cities and regions of the future. So make sure you are there! Go to movingpeople.com.au.

One thing I can assure you, Canberra in mid-Spring is beautiful. And while the plenary program is one of the best I think we have seen for Industry for awhile, we also have a great day program for partners. This is an unmissable and unique look at the quirky side of Canberra. Hear from Tim the Yowie Man (TYM) and Marg Wade (Canberra Secrets) – both local legends and lovers of Canberra. This is your chance to get an insiders look of Canberra and earn some brownie points from your partner, kids or whoever else you might like to invite to join the program.

If you think you are a champion in leading industry in safety, then make sure you have your nomination in for the National Safety Award. This is a prestigious award initiated by the National Heavy Vehicle Regulator.

Nomination forms are online at movingpeople.com.au.

See you in Canberra.



Industry news

Industrial relations

Ian MacDonald, National IR Manager, APTIA

Legislation to change Paid Parental Leave

The government has introduced the Paid Parental Leave Amendment (Work Test) Bill 2019 to lower the hurdle currently in place to receive such leave.

The current scheme provides eligible working parents with 18 weeks of payment at a rate based on the national minimum wage, currently \$740.60 per week – a total of \$13,330.80 over 18 weeks. To meet the current paid parental leave work test, a parent must have worked 330 hours in 10 of the 13 months before the child's birth.

A parent can have a break of up to eight weeks between two working days in this period and will satisfy the present work test.

The government argues that some jobs, such as casual teaching, may routinely have a longer break between two workdays, which prevents mothers from accessing parental leave pay, despite having a legitimate attachment to the workforce.

The legislation will increase the break between two working days from eight to 12 weeks. The work test rules will also be modified to cover cases where women work in jobs, such as jockeys and miners, where it would be unsafe for them to continue working during their pregnancy.

Under the new rules, the work test would begin 392 days immediately before the day on which the mother ceased work because of the hazards in her job. If passed, the new PPL measures will come into force from 1 January 2020.

Religious Discrimination Bill 2019

The Religious Discrimination Bill will make it unlawful to discriminate on the basis of religious belief or activity in key areas of public life, including employment. Under the Bill an employee will be entitled to make a complaint to the Human Rights Commission alleging they have been subject to unlawful discrimination on the basis of their religious belief or activity if:

- i. The employee has or engages in a religious belief or activity
- ii. The employee has been subject to direct or indirect discrimination on the basis of their religious belief or activity
- iii. The discrimination has occurred in their employment (including partnership, qualifying bodies, registered organisations and employment agencies)

- iv. The conduct is covered by the Bill, such that an exception does not apply.

Religious belief or activity is defined under the Bill very broadly as:

- i. Holding or not holding a religious belief; or
- ii. Engaging or not engaging or refusing to engage in lawful religious activity
- iii. The accompanying explanation gives some further insight by stating that belief may include:
 - Beliefs associated with major faith traditions (e.g. Christianity, Islam, Judaism)
 - Beliefs of smaller and emerging faith traditions.

Activity may include:

- Participating in religious observances (e.g. prayers, fasting, holidays)
- Wearing religious dress (e.g. hijab, kippah or kirpan)
- Not engaging in certain conduct in accordance with religious belief (e.g. not eating meat or drinking alcohol)
- Expressing religious beliefs, such as through evangelising

Discrimination under the Bill includes:

- i. Direct and indirect discrimination on the basis of past, present or presumed religious belief or activity; or
- ii. Characteristics associated with particular religious beliefs or activities.
- iii. Employment condition, requirements or practices and indirect discrimination
- iv. In the case of a large business (over \$50M in revenue) imposes an additional restrictions such as standards of dress, appearance or behaviour which have the effect of restricting or preventing employees from making statements of religious belief outside of work, unless compliance with the standard is demonstrated to be necessary for the business to avoid unjustifiable financial hardship.

The following conduct is not discrimination on the basis of religious belief or activity for the purposes of the Bill:

- i. Conduct engaged in by religious bodies (including religious education institutions, charities or other religious bodies) in good faith that reasonably conforms to the doctrines, tenets, beliefs or teaching of their religion
- ii. Conduct intended to meet a need arising out of a person or group's religious belief or activity or to reduce a disadvantage experienced by a person or group on the basis of religious belief or activity (e.g. providing prayer rooms, flexible scheduling or uniform requirements)
- iii. Discrimination on the basis that a person is unable to carry out the inherent requirements of a job because of

... continued over

Industrial relations industry news ... continued

- iv. religious belief or activity (e.g. it would not be unlawful for an employer to not hire a prospective employee because they could not abide by workplace health and safety requirements due to their religious dress).

Note: The Australian Human Rights Commission will be given the power to grant temporary exemptions from the legislation for up to 5 years.

Private Sector Pay Growth Steady at 2.3% a Year

Growth in private sector rates of pay excluding bonuses is increasing at 2.3% a year, unchanged from the annual rise recorded in the previous two quarters, according to most recent ABS data.

The June quarter Wage Price Index shows that the 2.3% annual trend growth is nevertheless not far above the historic low of 1.8% achieved in the March quarter of 2017 and the December quarter of 2016. The private sector WPI has now been not exceeded 2.3% since the December quarter of 2014, when it was at a then historic low of 2.4%. In the public sector, rates excluding bonuses grew by 2.5% annually on a trend basis, unchanged from the three previous quarters.

Across the economy, rates, excluding bonuses, increased by 2.3% a year, also unchanged from the previous three quarters.

Consumer prices increased by 1.6% in the year to the June quarter, according to the ABS Consumer Price Index (see Related Article), so wage growth remains comfortably clear of inflation.

The RBA has projected that the current pattern of “unusually” slow wage growth will likely continue until at least 2021, Governor Philip Lowe reminding a parliamentary committee that any pick-up was “both affordable and desirable”.

Appearing before the House of Representatives Economic Committee this morning, Lowe said the central bank’s recent downward revision of annual growth in the economy largely reflected a drop-off in consumption, itself a reflection of suppressed wage growth. While the RBA had previously calculated that a tightening labour market would spark wages, Lowe said the unemployment rate had risen to 5.2% “despite employment growth having been stronger than we had expected”.

The Government’s Approach to Industrial Relations

IR Minister Christian Porter has unveiled a broad workplace reform agenda that includes the laws covering casual employment and unfair dismissal.

The insight into the government’s workplace agenda came as Porter today released discussion papers on introducing criminal penalties for the worst cases of wage theft and extending the life of greenfield projects. The Coalition made few policy pledges on IR during this year’s election campaign, while Labor promised major changes.

Porter revealed that an “initial tranche” of discussion papers would cover casual employment, the small business dismissal code, “several aspects” of enterprise bargaining and the Commonwealth construction code. Porter said that he would focus on what changes were most important to the economy and what changes could attract enough support to be approved by the Federal Parliament. He argued that Labor’s unsuccessful attempt in the Senate to disallow regulations to shield employees from “double dipping” on entitlements showed the “contestability of issues in the industrial relations space”.

Porter argued that Australia’s IR system was “far from terrible”, with common ground on having:

- a single national Industrial relations system for the vast majority of workplaces;
- the system being changed from one based on arbitration to being based on agreement making at the workplace level;
- “little legal tolerance” for industrial action outside the enterprise bargaining process;
- an independently set minimum wage which the OECD says is the highest in the world;
- a simplified system of 122 awards;
- a safety net in the 10 national employment standards and the relevant industry award; and
- freedom of association and remedies for discrimination and unfair dismissal.

Porter argued the “ACTU/Labor” policy platform at the last election was radical and sought to replace a system that Labor itself introduced. Porter said Prime Minister Scott Morrison had set three key criteria for future IR changes: that they create jobs and put “upwards pressure” on wages; that they helped business to boost productivity; and that they demonstrated they would help the overall economy to grow. These criteria would “hopefully develop a consensus for change”, while the discussion papers would target areas where change would have the most impact.

Update on Skene (Casuals) and Mondelez (Leave entitlements) cases

Skene’s case

Was the decision in which a casual employee was deemed not be a casual in view of the regular and consistent work he was undertaking and as such was able to claim NES entitlements such as annual leave.

Whilst Skene’s case was not appealed Workpac, the employer, commenced a similar proceeding in Rossato’s case which will review the decision in Skene.

The Federal Government has intervened in this case as has the CFMMEU and a solicitor purporting to act for a class action. The case will come on in the new year no doubt.

The Government’s Fair Work Amendment (Casual Loading Offset)

Industrial Relations industry news ... continued

Regulation 2018 was reinforced in the Senate this week when the Senate voted down an attempt by the ALP to lapse the regulation. This regulation affords the ability to at least seek set offs if a casual is deemed to be a part time employee or a permanent employee.

Mondelez's case

The decision determined that personal leave should be taken in days rather than hours i.e. if an employee takes leave on a day they would have worked 10 hours then the payment for the day would be 10 hours and the employee would then be entitled to 9 further days rather than 66 hours as leave entitlements.

Mondelez's case did not determine whether this would also apply to annual leave entitlements.

Mondelez has appealed the decision to the High Court and the Government has sought to intervene on the basis that common practice has been to reduce the entitlements in hours rather than days.

The OFWO has amended its Information Statement, which must be made available to all new employees, to reflect the decision in Mondelez.

What to do next?

1. It is important that employers make sure each employed casual understands that they are paid a loading which covers entitlements to which permanent or part time employees receive by reflecting it in their pay slips, employment letters and agreements.
2. Employers should also review the casuals they employ and where possible discuss with them their attitude to conversion to part time or permanent employment.
3. Any casual who works regularly or consistently over 38 hours a week should be considered for conversion where it is reasonable on business grounds to do so.
4. Given that the Mondelez case is now under Appeal and may be overturned and the cost of changes to payroll systems is high, Employers should make provisions for Mondelez's case being upheld but also should consider the amount of hours worked by permanent and part time employees over and above their 38 hours or agreed hours.

APTIA will continue to monitor both cases and is across the Government's desire to reform incrementally the IR system.

APTIA key dates

BIC and APTIA Annual General Meetings – 17 November 2019

BIC National Conference - 18 to 20 November 2019

Important decisions in Industrial relations

Bus driver resigned after caught taking "goodnight" calls

Steven Williamson v Path Transit [2019] FWC 6153 (11 September 2019)

A bus driver who in breach of a strict no-phone policy took "goodnight" calls from his children while preparing to leave the depot was not forced to resign, the FWC has found.

Accepting employer Path Transit's argument that he lacked the jurisdiction to hear the matter, Commissioner Bruce Williams said it was the bus driver's choice to resign during a disciplinary meeting rather than be dismissed for serious misconduct.

In pursuing an unfair dismissal remedy, the bus driver told the commissioner he worked at Path Transit for six years with no prior disciplinary action before being found to have breached the company's device policy on three occasions in February and March this year.

The bus driver conceded he had used his mobile phone while driving – in one instance at more than twice the depot's 15km speed limit – but argued he was not on a public road, and unaware it was a dismissible offence. The bus driver told the FWC he took the calls from his family to say "goodnight" to his two young boys.

Commissioner Williams noted that this was a different explanation to the one he offered during Path Transit's investigation of the policy breaches, when he said he "sometimes got calls from traffic controllers".

The bus driver's conduct, the commissioner said, "involved a breach of important safety requirements that bus drivers are unsurprisingly expected to comply with. He was fully aware of the prohibition of driving whilst using a mobile phone and that this was a dismissible offence."

In upholding Path Transit's jurisdictional objection, Commissioner Williams said the bus driver tendered a letter of resignation after making a "choice" to leave his job. Path Transit said that during the disciplinary meeting, the bus driver was told "it wasn't looking good for him" by a supervisor.

Commissioner Williams continued, "before [Path Transit] finally made that decision it was [the bus driver] who asked for a break in the meeting so that he could speak to his wife on the phone. When the meeting resumed, he verbally resigned. That was a choice [the bus driver] made, he was not forced to by [Path Transit]."

For completeness, the commissioner concluded that bus driver's misconduct was serious enough to warrant dismissal.

"If [Path Transit] had in fact dismissed [the bus driver] before he resigned then his dismissal was neither harsh nor unjust nor unreasonable," Commissioner Williams found.

"The bus driver was not unfairly dismissed."

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