

**IN THE FAIR WORK COMMISSION  
OF AUSTRALIA**

**Applications by Transit Systems West Services Pty Ltd  
Busways North West Pty Limited  
Keolis Downer Pty Ltd  
Transdev Australasia Pty Ltd**

**ARTBIU, AMWU and ASU Outline of Reply Submissions – 2021-2022 Annual  
Wage Review**

1. Over the course of the last five years, the NSW Government completed its privatisation of the Sydney commuter bus system to various private operators, including at various times:
  - a. Region 6 to **Transit Systems** West Services Pty Ltd;
  - b. Region 7 to **Busways** North West Pty Limited;
  - c. Region 8 to **Keolis** Downer Pty Ltd; and
  - d. Region 9 to **Transdev** John Holland Buses (NSW) Pty Ltd.
2. As part of this process, the employment of previous Crown employees transferred to the private operators. A number of copied state awards were accordingly created.
3. It is uncontroversial that the Commission, as part of the Annual Wage Review, is empowered to consider and vary the wage rates contained in copied state awards. Since 2018, the Commission has adopted a practice of varying the wage rates in all copied state awards in line with the increase awarded to modern award minimum wages.
4. Each of the employers identified above has made submissions in respect of the copied state awards that apply to them, seeking that there either be no increase to the wages they contain, or alternatively that any increase be reduced to take into account wage rises contained within those awards (albeit that Transit Systems does not accept the latter, and instead advances a fairly incomprehensible alternative position relating to the relevant modern award).

5. The collective **Unions**, being the ARTBIU, AMWU and ASU accept that wage increases that have occurred in this financial year should be taken account to avoid any double dipping, but say that the wages should be 'topped up' to the difference between those internal increases (which were subject to the NSW Government's 2.5% cap regardless of merit considerations, and were in most cases actually lower) and whatever is awarded by the Commission, in order to avoid windfall bargains for the operators.
6. Each of the Unions, separately and via the ACTU, have made detailed submissions in respect of the increase that should be granted, and more broadly why a wage increase is necessary and justified. These submissions should be read in conjunction with those; the matters set out therein are not repeated below.

### **Transit Systems**

7. Transit Systems obtained the contract to operate buses in Region 6 on 1 July 2018. It is covered by the:
  - a. *State Transit Authority Bus Operations Enterprise (State) Award 2018;*
  - b. *State Transit Authority Senior and Salaried Officers Enterprise (State) Award 2018;* and
  - c. *State Transit Authority Bus Engineering and Maintenance Enterprise (State) Award 2018,*

### **(the Transit Systems Awards).**

8. Transit Systems' submission, to the extent it can be understood, appears to be that the Expert Panel should not increase the wages in these awards at all, either:
  - a. as compensation for it not receiving retrospective relief from the 2018-19 and 2019-20 Annual Wage Review decisions which it ignored at the time; or

- b. if it *does* receive the relief it seeks, because the rates are higher than the rates in the *Passenger Vehicle Transportation Award 2020*.
9. It has not made any effort to explain why this should be done in its submissions. It also does not suggest that the rates in the modern award were themselves properly set, or adequately recognise the value of the work performed by these employees (*vis.* the copied state award rates, which are said to have been ‘*fair and reasonable*’ at the time they were set).
10. The position is unsustainable. The wages in these awards have not been increased since the last Annual Wage Review. The real value of employees’ wages has dropped in the interim and will, if not increased, drop further; wages which were once set as fair and reasonable will cease to be so.
11. There is no principled reason why these employees should not receive the same increase as any other award-covered employee. There is no attempt at all to explain why or how this fits within the minimum wages objective. Granting Transit Systems’ request would simply involve the Commission endorsing its approach of, until pressed, neglecting its wages obligations to employees.<sup>1</sup>

### **Keolis Downer**

12. Keolis Downer has held the contract to operate the Northern Beaches and Lower North Shore bus services since 31 October 2021.
13. There are two copied state awards which presently apply to it:
  - a. the *State Transit Authority Senior and Salaried **Officers** Enterprise (State) Award 2021*, to which the ARTBIU and ASU are parties; and
  - b. the *State Transit Authority Bus Engineering and **Maintenance** Enterprise (State) Award 2021*, to which the ARTBIU and AMWU are parties,

**(the Keolis Downer Awards).**

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<sup>1</sup> Or, when pressed, initially electing to simply ‘*take the law into [its] own hands...[and take] a deliberate stance to ignore or postpone fulfilling its existing legal obligations in respect of its large workforce*’: *ARTBIU v Transit Systems (No 2)* [2022] FCA 389 at [39] and [44].

14. The rates contained in the Officers Award 2021 was increased by 2.04% on 1 January 2022. The rates contained in the Maintenance Award 2021 were increased by 2.04% on 1 April 2022. Both increases were consistent with the NSW State Government's wage policy regulation.
15. Neither Award contains any future wage increases.
16. The Unions accept that the wage increases that have already been made in this financial year should be taken into account to avoid double-dipping. However, this does not lead to a conclusion that these employees should receive no wage increase at all.
17. Instead, the appropriate course is that suggested at [10] of Keolis Downer's submission: the general increase should be reduced by the 2.04%. This removes any aspect of 'double-dipping'; to go further would instead provide a windfall to the employer for no good reason (noting that Keolis Downer has made no substantive submissions as to *why* its application should be granted). It should also be recognised that this increase related to only part of the financial year, such that inflationary pressures after January 2023 have not been taken into account in the wage fixing exercise.
18. This would also have the advantage of bringing the copied state awards into line with the financial year wage increase basis used in the Annual Wage Review. It is far more desirable that these employees, absent bargaining, continue to be provided with an annual wage increase like any other award-covered employee, rather than enduring up to 18 months without one.

### **Busways**

19. Busways has held the contract to operate Region 7 buses since January 2022. There are three copied state award that apply to it:
  - a. the Officers Award 2021;
  - b. the Maintenance Award 2021; and

- c. the *State Transit Authority Bus Operations Enterprise (State) Award 2021*, to which the ARTBIU is a party,

(the **Busways Awards**).

20. The rates in the Bus Award 2021 were increased by 2.04% on 1 January 2022. It contains no further increases.
21. Busways submits that these wages should not be increased at all in this annual wage review. Alone of the operators, it has advanced some submissions in support of this. These are, in summary:
  - a. the contention that the copied state awards reflect paid rather than minimum rates, and are set at a level which is not amenable to minimum rates adjustments;
  - b. the proposition that it would be unfair to Busways to pay two increases within a 12 month period, as this would involve a '*double dip hit*' and the award was made by consent originally;
  - c. an observation that the rates in the copied state awards are higher than those in the relevant modern awards; and
  - d. finally, a claim that this will decrease Busways' willingness to bargain.
22. As to the first, it is true the task for the NSW Industrial Relations Commission is to set '*fair and reasonable*' wages. However, even if it is assumed that the Commission succeeded in its task, this does not lead to a conclusion that the rates *remain so indefinitely*.
23. In respect of the second, the double-dipping issue is adequately addressed by simply reducing the increase by that awarded in the preceding financial year. It is worth observing that Busways throughout their submission mistake the relevant period as being the calendar year (see, e.g. [88]); that will leave these employees (absent bargaining) without an increase to their wages for up to 18 months. This is, as set out above, undesirable; it is the preferable and

appropriate course to instead bring these federal employees in line with the timing used in the federal system.

24. As to the third, this is true, but it is meaningless in circumstances where Busways has not and cannot say that these rates were ever properly set, or adequately recognise the value of the relevant work.
25. Finally, the assertion that providing any increase will discourage Busways from bargaining is fairly bald. It is easy enough to say, but ignores that the benefits of bargaining – including *wage certainty* – remain. Additionally, it cuts both ways: if Busway's claim is granted it will enjoy both a binding industrial instrument tailor-made for its operations *and* a 18 month period with no risk of being required to increase wages. This itself could be equally seen as a disincentive for Busways to bargain.
26. Similarly, although Busways has indicated that the increase will be *expensive*:
  - a. these calculations assume the full increase, rather than the reduced amount sought by the Unions to remove double-dipping; and
  - b. are made without any *context*: the number itself is meaningless without an understanding of what it really means within the business, and there is no support for the proposition that this will affect Busways' viability.
27. It should also be observed that the risk was an entirely foreseeable one. Notwithstanding its claims of surprise and a particular expectation, Busways knew it was moving into the federal system, and at least ought to have known that the instruments would be subject to review, and possible (indeed likely) increase by the Annual Wage Review.

### **Transdev**

28. Transdev has held the contract to operate Region 9 buses since April 2022. There are three copied state award that apply to it:
  - a. the Officers Award 2021;

- b. the Maintenance Award 2021; and
- c. the Bus Award 2021,

**(the Transdev Awards).**

- 29. The rates contained in the Officers Award 2021 and the Bus Award 2021 were increased by 2.04% on 1 January 2022. The rates contained in the Maintenance Award 2021 were increased by 2.04% on 1 April 2022.
- 30. Transdev submits that no increase should be applied to these awards. For the same reasons as those submitted above, this is not the appropriate or reasonable course, and instead the wages should be 'topped up' to match the AWR increase.

### **Conclusions**

- 31. The Commission ought to:
  - a. increase the wages in the Transit Systems Awards by the full amount determined in the Annual Wage Review as applicable to modern awards; and
  - b. increase the wages in the Keolis Downer, Busways and Transdev Awards by that amount less 2.04%.

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