

**FAIR WORK COMMISSION**

**FOUR YEARLY REVIEW OF MODERN AWARD**

**MATTER NO. AM 2014/196 and AM2014/197**

**AWARD: Passenger Vehicle Transportation Award 2010**

**AWARD CODE: MA000063**



**SUBMISSION of THE AUSTRALIAN PUBLIC TRANSPORT INDUSTRIAL ASSOCIATION**

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## BACKGROUND:

1. This submission is provided in response to Directions of Vice President Hatcher of 29 June 2015, which required any party seeking variations to any modern awards, in respect of any issues identified in the said Directions, relating to casual employment and part time employment to file comprehensive written submissions and any witness statements and documentary material upon which they seek to rely by 5.00pm Monday 12 October 2015. .
2. On 17 July 2015, the Australian Public Transport Industrial Association (**APTIA**) filed an application in the Fair Work Commission (**FWC**) which sought variations to the Passenger Vehicle Transportation Award 2010 (MA000063) with respect to Item 1.6 of the Directions.
3. APTIA, an employer organisation is a registered organisation, pursuant to the Fair Work (Registered Organisations) Act 2009 and is the industrial arm of the Bus Industry Confederation, which is the peak national body representing bus and coach operators, bus and coach chassis suppliers, bus and coach body manufacturers and associated provider groups, which employ over 30,000.00 persons across the Country.
4. 90% of those persons employed in the passenger transport industry are either bus or coach drivers, whose terms and conditions of employment are underpinned by a modern award, the Passenger Vehicle Transportation Award 2010, MA000063 (**PVTA**).
5. APTIA’s submissions are presented to the Full Bench, constituted by the President, Justice Iain Ross AO to deal with issues relating to casual and part time employment.

## OUTLINE OF SUBMISSIONS



6. APTIA seeks to vary clause 6.5 (d) (ii) of the draft Exposure Draft of the PVTA 2014 (Clause 10.5 (d) of the PVTA) to provide:

*“A casual employee is to be paid a minimum payment of three hours pay for each shift. A casual employee solely engaged for the purpose of transportation of school children to and from school is to be paid a minimum payment of two hours for each engagement/start. Provided that the employer and employee may agree to a lesser minimum payment of hours in any of the following specific circumstances:*

- (a) Where the employee has secondary employment;*
- (b) Where the employee is in receipt of other income or benefit;*
- (c) Where the employer does not have enough work for the entire shift or engagement; or*
- (d) When the employee cannot complete the entire shift or engagement.”*

7. The proposed variation outlined above seeks to address an anomaly referred to the Full Bench by the Fair Work Ombudsman, on 24 November 2014, in which clause 6.5 (d) (ii) of the exposure draft Passenger Vehicle Transport Award 2014 identified, for minimum engagements for casuals, that it was unclear whether a casual employee employed to collect school children in the morning and then again in the afternoon is entitled to be paid a minimum of two hours for each run.
8. The draft amendment of APTIA to clause 6.5 (d) (ii), formerly clause 10.5 (d) of the Passenger Vehicle Transportation Award 2010, is designed to give certainty that the two hour minimum payment should be available to employees for each start during the day whether it is a morning start in taking school children to school or whether it is for a start at the end of the school day to allow the school children to be taken home.
9. The minimum engagement in the APTIA’s variation allows a school bus driver to undertake one or two engagements on any day and makes it clear that a two hour minimum payment applies to either start.
10. The proposed further variation to clause 6.5 (d) (ii) (a) to (d), as outlined above, seeks to provide employment flexibility to allow greater employment opportunities in the public transport industry, which might not be available, but for the flexibility amendments.

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11. The variation recognizes the specific use of casual employees/ drivers in the public transport industry, whether as school bus drivers or charter drivers. It recognizes that there are circumstances where a driver is using the casual bus driving job purely to supplement other income and benefits, which may be impacted or eroded if additional pay is made for hours that are not worked or deliberately intended not to be worked.
12. The variation also allows flexibility to employers and casual employees to rearrange hours of work, where broken shifts are rostered and where different hours are worked during each period of work in that broken shift.
13. APTIA submits that the proposed variations outlined above meets the scope and nature of the section 156 Review as anticipated by the Fair Work Commission in its Decision of 17 March 2014, **4 Yearly Review Of Modern Awards: Preliminary Jurisdictional Issues; [2014] FWCFB 1788** and more particularly the objectives of the modern awards as set out section 134 of the Act.
14. The variation set out in paragraph 6 above, more specifically addresses the issues referred to in the modern award objectives, outlined in subsections(c) and (d) of section 134 of the Fair Work Act 2009 **(the Act)**.
  - (i) *“ the need to promote social inclusion through increased work force participation (sub clause c), and*
  - (ii) *the need to promote flexible modern work practices and the efficient productive performance of work (sub clause d).”*

## COMPREHENSIVE SUBMISSIONS

15. In his Decision referred to in paragraph 13 above Justice Ross clearly enunciated those principles that would apply to any application to vary a modern award during the four yearly reviews.

At paragraph 36 justice Ross stated:

*“Relevantly, s.138 provides that such terms only be included in a modern award ‘to the extent necessary to achieve the modern awards objective. To comply with Section 138 the formulation of terms which must be included in modern award or terms which are permitted to be included*

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*in modern awards must be in terms 'necessary to achieve the modern awards objective.' What is 'necessary' in a particular case is a value judgement based on an assessment of the considerations in s. 134(1) (a) to (h), having regard to the submissions and evidence directed to those considerations. In the Review the proponent of a variation to a modern award must demonstrate that if the modern award is varied in the manner proposed then it would only include terms to the extent necessary to achieve the modern awards objective."*

16. The application of APTIA can be divided into two aspects:

- (i) The definition of engagement in clause 6.5 (d) (ii), and
- (ii) The flexibility in clause 6.5 (d) (ii) (a) to (d) to allow, by agreement, between an employer and employee, in defined circumstances, to agree to a lesser minimum engagement.

### **Definition of an 'Engagement'**

17. The word 'engagement', referred to in clause 10.5 (d) of the PVT 2010, has been identified by the Office of the Fair Work Ombudsman, in correspondence to the FWC, dated 24 November 2014, as unclear whether a casual employee, employed to collect school children in the morning and then in the afternoon is entitled to be paid a minimum of two hours for each run.

18. APTIA supports the view that the term 'engagement' is meant to refer to a start so that, during the day, a school bus driver, who takes school students to school, in the morning and who brings the school children back home, in the afternoon, is entitled to a 2 hour minimum payment, for each of those two starts.

19. APTIA supports the inference made by Commissioner Bissett, during the 2 yearly review of the modern awards, in **Transport Workers Union of Australia and Australian Public Transport Industrial Association [2013] FWC 3221, 7 June 2013** that the current clause does not of itself create an anomaly and the current clause 10.5 (d) acknowledges the differences in the type of work undertaken by a school bus driver. Commissioner Bissett noted:

*"Whilst different language is used in the PVT Award to describe the basis of the minimum payment due to full-time employees (per 'shift/day engaged<sup>i</sup>'); part time employees ('for each day engaged<sup>ii</sup>'); casual employees ('for each shift'); and casual employees engaged solely for the purpose of the transportation of school children to and from school ('each engagement') this does not, of itself, create an anomaly. It may actually support the view that it was intended that*

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*casual employees engaged solely in the transportation of school children to and from school should be treated differently to other employees - whether casual, part-time or full-time.”*  
(Paragraph 28)

20. Commissioner Bissett was highlighting an issue which was at the forefront during the Award Modernisation process. Commissioner Bissett referred to the decision of the Full Bench in the **Award Modernisation process, [2009] AIRFCB 450**, at paragraph 187 when the Full Bench acknowledged that the transport of school bus children gave rise to special circumstances.

21. The Full Bench, **Award Modernisation [2009] AIRCFB 826** at paragraph 229 of their decision introduced the current clause 10.5 (d) of the PVT A 2010 stating:

*“In the case of casual employees we have retained a three hour minimum for each shift but where the transportation of school children is undertaken then we have provided for a two hour minimum for each engagement.”*

22. APTIA accepts that the AIRC had determined that school bus drivers would get a two hour minimum payment each time they had transported school children to or from school, whether that shift or engagement was twice a day or only a single engagement.

23. In this regard APTIA further relies on the pre-modern, Federal Award, the **AW818060CR, Transport Workers (Passenger Vehicles) Award 2002, Part C**, which is Attachment G and which clearly states at clause 12.1.1:

*“A casual employed as a Driver of Conductor shall perform a minimum of three hours work and shall receive payment for each start on any day.”*

24. The proposed amendment by APTIA to clarify the issue of what constitutes an engagement is a simple, easily understood approach which has been adopted in previous pre-modern awards.

25. The proposed changes by the Transport Workers Union of Australia (TWU) to clause 10.5 (d) are very similar to the Application made by the TWU during the 2 yearly review of modern awards, reference **Amended Application by the TWU, [2012] /198**, (Attachment L) which sought the following amendment:

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*“A casual employee solely engaged for the purposes of transportation of school children to and from school may be rostered on a broken shift with a minimum payment of two hours for each of the two engagements per day.”*

26. It was APTIA’s submission at the time that the proposed clause, as with the current proposals by the TWU is ambiguous and confusing in that it pre-empts that all school bus drivers will undertake two engagements each day.
27. APTIA’s position was supported by Commissioner Bissett, **Transport Workers Union of Australia and Australian Public Transport Industrial Association [2013] FWC 3221, 7 June 2013** who confirmed in her Decision at paragraph 32:

*“As to the application by the TWU for an additional clause with respect to broken shifts (which goes to the same matter as the APTIA application), it seems to me that the variation sought by the TWU has the potential to create more confusion than it might solve. The change proposed by the TWU would allow a casual employee to be engaged on one shift but have two engagements for that shift. Such amendment is not appropriate for the PVT Award. There is no utility in granting the TWU application. It is dismissed.”*

28. Certainly Deputy President Sams in **Jarman Ace Pty Ltd t/as Ace Buses [2014] FWCA 3338** when determining whether the **Ace Enterprise Agreement 2014** should be approved had to consider whether a more flexible minimum engagement clause met not only the better off overall test but if not would meet the public interest test provided for in section 189 of the Act.
29. DP Sams firstly looked at Commissioner Bissett’s decision (Refer paragraph 19 above), which was relied upon by the TWU in opposition to the approval of the Ace Enterprise Agreement 2014 and made the observation:

*“Notwithstanding the decision of Bissett C in TWU v APTIA, I do not accept that this matter is definitively settled and certainly not by a full bench, which I would be bound to follow. I do not understand the Full Bench decision [2009] ARICFB 826, cited by Bissett c in TWU v APTIA to have determined the issue of whether the term ‘engagement’ in the Modern Award meant that casual school bus drivers who transport school children to and from school, and who work a split shift, should be entitled to two minimum engagement payments of two hours. In my view, the Unions interpretation of an engagement for the purposes of the BOOT, in this case, is open to different*

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*interpretations and cannot be said to be conclusive. I note that Bissett C said that the Union's proposed clause in that case had the potential to create more confusion than it solved."*

**30.** The Decision of DP Sams was supported by the Full Bench on appeal **Transport Workers Union of Australia v. Jarman Ace Pty Ltd t/a/ Ace Buses, [2014] FWCFB 7079.**

31. It is APTIA's submission that the intended consequence of the original draft of the PVTA was to ensure that each start whether it was two a day or just one in the morning or one in the afternoon attracted a minimum payment of two hours for each start.

32. APTIA submits that the evidence points to the fact that some school bus drivers actually only undertake one shift per day and at times will not complete an afternoon shift. Therefore it is the submission of APTIA that the definition of 'engagement' should merely refer to the start, which is being undertaken by the employer and not prescribed as two single engagements each day.

33. In support of this submission APTIA refers to the following evidence before the FWC at:

- (i) The Statement of Ben Romanowski at paragraphs 16 & 17
- (ii) The Statement of Geoffrey Ferris at paragraphs 19 & 20

34. It is the further submission of APTIA that the defining of the term 'engagement' as a start during the day meets the specific modern award objectives such as:

- (i) *"The need to promote social inclusion through increased work force participation (Section 134 (c)), and*
- (ii) *"The need to promote flexible modern work practices and the efficient productive performance of work (Section 134 (d)).*

35. The need for greater flexibility for casual employees in the passenger transport industry is demonstrated by the type of employment mix found within the industry that APTIA represents.  
Reference:

- (i) Statement of Ben Doolan at paragraph 10
- (ii) Statement of Ben Romanowski at paragraph 8
- (iii) Statement of Shane Dewsbery at paragraph 9

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(iv) Statement of Geoffrey Ferris at paragraph 10

36. By providing the ability for an employee to work single starts during the day opens to door to a greater mix of employee in an industry in which the evidence suggests that the demographics is an ageing workforce in which second careers are available to the ageing workforce to supplement part time work.

37. The evidence presented by APTIA shows that in an aged population in an industry in which the demographic is weighted in favour of older employees that flexible workplace arrangements will enhance the meeting of the modern award objectives as set out in paragraph 14 above. APTIA relies upon:

- (i) The statement of Geoffrey Ferris at paragraph 21
- (ii) Moving People – Operator Guidelines “Health and Wellbeing Awareness Guide”
- (iii) Issues Paper: Employment Discrimination against the Older; Willing to Work \: National Inquiry into Employment Discrimination against Older Australians and Disability

#### **Agreement on Minimum Engagements**

38. The evidence referred to above also reflects that the passenger transport industry relies upon a significant casual labour work force. This trend does not reflect the broader Australian work force but the nature of bus driving, which is substantially to provide transport to and from schools for students is only casual work and predominantly no more than 4 hours a day or 20 hours a week for the total number of school days a year, which is traditionally 201 days a year.

39. For that reason and for the reason that the public transport industry offers work for an ageing population it is APTIA’s submission that a higher degree of flexibility is required to maintain the work force and which meets the requirements of section 134 (c) and (d).

40. APTIA further submits that the evidence provided by its members in the Statements attached to this submission supports the contention that the proposed amendments would provide greater flexibility and promote social inclusion in a specific section of the work force which is currently the subject much debate in the community as to how to keep older people in the workforce.

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41. In its submissions APTIA relies on statements provided by bus operators from various States of the Commonwealth where the issues are common across the industry. APTIA refers to the specific evidence in

- (i) Statement of Ben Doolan at paragraphs 16 to 18 10
- (ii) Statement of Ben Romanowski at paragraphs 18 to 21
- (iii) Statement of Shane Dewsbery at paragraphs 17 to 19
- (iv) Statement of Geoffrey Ferris at paragraphs 21 to 25

42. In meeting the objectives outlined in section 134 of the Act APTIA relies on evidence about the changing nature of the work force which is evidenced in the passenger transport industry, more specifically as identified herein and submits that the proposed amendment will allow greater participation by those who may otherwise have been socially excluded.

43. Issues of flexibility in relation to minimum engagements in the retail industry have previously been canvassed by the FWC.

44. In the Decision, **National Retail Association Limited [2011] FWA 3777**, 20 June 2011 Vice President Watson considered an application by the National Retail Association Limited pursuant to section 188 of the Act to reduce the minimum engagement period for casual employees who were secondary school student to one hour thirty minutes from three hours. This decision was the subject of Appeal and Judicial review and in all instances the Decision of VP Watson was upheld ([appealed by [2011] FWAFB 6251 - judicial review of this decision [2012] FCA 480 - appeal dismissed]).

45. It is the submission of APTIA that this meritorious decision supports the application of APTIA to provide, by agreement, greater flexibility to an industry in which it is identified that a specific and special part of the workforce may be discriminated against without such flexibility.

46. The particular passage which APTIA relies upon includes paragraph 46 in which VP Watson stated:

*“The issue of promoting social inclusion by increased workforce participation addressed by the Victorian Minister and the employers is a significant matter in the retail industry because of the importance of this issue to youth employment.”*

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47. Furthermore APTIA points to the current national inquiry, initiated by Attorney General on 10 December 2014 and being undertaken by the Australian Human Rights Commission into employment discrimination against older Australians and Australians with disability, in which the Issues Paper (**Employment Discrimination against the Older; Willing to Work \: National Inquiry into Employment Discrimination against Older Australians and Disability**) makes the following crucial points:

*“The 2015 Intergenerational Report projects that the population aged 65 and over, will more than double by 2054-55. Life expectancy is also increasing such that by 2055, life expectancy at birth will be 95.1 years for men and 96.6 for women in Australia. As a result of the growing population of older people and life expectancy, there will be greater pressure for older Australians to remain in the workforce.”*

48. The need for the passenger transport industry to fully recognise the demographics of its industry and to fully capitalise upon the aged population has been recognised in studies undertaken by APTIA, who has released a Health and Well Being Guide, specifically directed at the aged demographic of the passenger transport industry, as evidence undertaken in a series of surveys in the compilation of the Guide (**Moving People – Operator Guidelines “Health and Wellbeing Awareness Guide**).

49. The surveys upon which the Guide was based showed initially in the six large operators surveyed across the country that 66.40% of those surveyed were over 50 years old whilst 90% were over 40 years old. (**Bus and Coach Driver Health and Well Being Survey – Interact Management, 7 June 2013**)

50. The demographics were further confirmed in a later survey of a single large Sydney metropolitan bus operator where 59% of those surveyed were over 50 years of age. (**Bus and Coach Driver Health and Well Being Survey – Interact Management, 1 September 2014**)

## CONCLUSIONS

51. APTIA has sought to provide an evidentiary base so that the FWC is able to approve proposed variations to clause 6.5 (d) (ii) to better define an ‘engagement’ and to allow flexibility between an employer and employee to agree upon reduced minimum engagement in circumstances where an employee seeks to reduce work hours to satisfy their specific circumstances.

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52. APTIA has provided evidence across the passenger vehicle transport industry in which employees have sought reduced hours to protect pension entitlements, because they hold second jobs or simply because they only wish to work less hours.
53. APTIA has sought to demonstrate to the FWC to issue of aged employment and how the passenger transport industry is specifically at the forefront as an aged population employer.
54. APTIA has argued in its submissions that the passenger transport industry is in a similar position to that of the retail industry in which lower minimum engagements were supported by the FWC. In the national retail case it was youth unemployment that needed to be addresses. IN the passenger transport industry it is the aged population that needs similar support.
55. Finally APTIA argues that the confusion that exists with the definition of ‘engagement’ can easily be overcome with the additional ‘start’ to reflect the work undertaken each school day by its drivers.

## ATTACHMENTS

56. Statement of Ben Doolan, dated 9 October 2015
57. Statement of Ben Romanowski, dated 9 October 2015
58. Statement of Shane Dewsbery, dated 9 October 2015
59. Statement of Geoffrey Ferris, dated 10 October 2015.



**Ian MacDonald**

**National IR Manager**

**12 October 2015**

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## **FAIR WORK COMMISSION**

**MATTER NO. AM 2014/196 and AM2014/197**

**AWARD: Passenger Vehicle Transportation Award 2010**

**AWARD CODE: MA000063**

### **STATEMENT**

On the 9 day of October 2015, I, Benjamin James Doolan of 87 Hammond Road, Cockburn Western Australia 6164, Managing Director say;

#### **My Business**

1. I am the Managing Director of Australian Transit Group Pty Ltd, (ATG), which operates regional, rural and city bus services in Western Australia and the Northern Territory.
2. ATG operates bus and coach services involving dedicated school services, to long distance charter, to contracted services to the mines in Karratha and Geraldton and route and school service sin Alice Springs.
3. I have been involved in public transport and the business for over 11 years and am a Council member of the Australian Public Transport Industrial Association (APTIA).
4. I am aware that APTIA has made an application to vary the Passenger Vehicle Transportation Award 2010 to better define the minimum hours of engagement for school bus drivers and to provide the opportunity for ATG and its employee drivers to agree upon a reduced hours of work in circumstances that is agreeable to them.
5. ATG employs up over 500 employees, mainly bus drivers to provide the services utilising some 450 buses and coaches. The terms and conditions relating to the passenger transport drivers are governed by the Passenger Vehicle Transport Industry Award 2010 (the PVTA). In some circumstances ATG has entered into an enterprise agreement with its employees which is underpinned by the PVTA.
6. The nature of the services varies in that some services are contracted with the WA Department of Transport, whilst others are direct contracts with either a mining Company or a private school. In all cases ATG has had to tender for the services and has based its wages

assumptions upon the PVTA and therefore any change to the PVTA would have a significant impact upon the viability of the services, given that the labour costs represents at least 50% of the expenditure to operate the services.

7. In all cases however the transport service contracts are performance based contracts which either provides for the regular, daily transport of school student to and from school or the transport of regular passenger to fixed destinations if they are mining contracts or scheduled destinations if they are route services.

### **The Role of Casual Employment in my Business**

8. Casuals provide the bulk of the bus drivers, especially those who operate school services. In this regard we operate 250 Government contracted school bus services and some 50 non Government school bus services. These are dedicated school services and solely allow for the driver to transport school students to school in the morning and from school in the afternoon.
9. These services operate only during school terms and therefore there is very little work for casual employees during school holidays.
10. Of the employees, in the case of administration and workshop staff some 75% are casual employees whilst in the case of the drivers we have only 6 full time drivers whilst of the remaining drivers 90% are casual employees and 10% are permanent part time employees.
11. In regional areas in which ATG operates it is not possible to entertain additional work as the work is simply not there.

### **The Meaning of an Engagement**

12. Traditionally a dedicated school bus service will involve the driver taking children to and from school. This will involve two starts in the school day. One in the morning and one in the afternoon.
13. Each start is considered an engagement and is currently a minimum payment of two hours is required.
14. However a dedicated casual school bus driver may only work the morning for a variety of reasons including that they have another undertaking, outside of their bus employment in the afternoon or perhaps they only wish to work morning work or sometimes only afternoon work, such is the nature of casual work.
15. In other instances a casual dedicated school bus driver might work more than two starts because they will undertake charter work either taking school children to another

destination and adult group for a charter. In this case the minimum payment becomes three hours for the whole day.

### **The Need for Flexibility**

16. ATG has many employees, up to 50%, who seek to work as casuals also seek lesser hours for a variety of reasons which includes:

- (i) Because of their semi-retired status and age profile
- (ii) So they can take leave whenever they feel like it
- (iii) Too many hours affects other benefits like pension/health cards etc.
- (iv) As we have 190 school days where we rely on them, by nature sick leave absenteeism is very low and they rather it paid out through casual wage
- (v) Many have other jobs
- (vi) Many have "carer" responsibilities where they need flexibility
- (vii) They enjoy the freedom of casual employment after many years of full time work and often the job represents a second career after retirement
- (viii) Many have future travel/family/leisure plans and don't want commitment of full time work – want to keep options open
- (ix) Ironical as it sounds, many of our employees believe that being casual gives them the "upper hand" in employee/employer relationship, and
- (x) The very flexibility of the type of employment suits the lifestyle they pursue.

17. I have tried to accommodate my workforce with their requests and have looked at a range of flexible outcomes ranging from time off in lieu to postponement of leave entitlements. In all of the cases I am thwarted however by the obligation to meet the minimum engagement, which sets a minimum payment which is unwelcomed by some in my workforce.

18. I would be hugely beneficial if the PVTa was amended to allow for such flexibility as it would directly benefit the employee who seeks lesser hours of employment and also make ATG more cost efficient and better able to give value for money to Government and its private contractors, ensuring continuity of its business.

Signed by Ben Doolan at Perth

On: 9 October 2015

A handwritten signature in black ink, consisting of a stylized 'B' followed by a long horizontal line.



**FAIR WORK COMMISSION**

**MATTER NO. AM 2014/196 and AM2014/197**

**AWARD: Passenger Vehicle Transportation Award 2010**

**AWARD CODE: MA000063**

**STATEMENT**

On the 9<sup>th</sup> day of October 2015, I, Ben Adam Campbell Romanowski of 3-5 Jay Drive, Willunga, South Australia, 5172, Managing Director say;

**My Business**

1. I am the Managing Director of Willunga Charter Pty Ltd which is part of the public transport industry in South Australia and which provides school services and charter services in or around the Willunga district of South Australia.
2. I have been involved in public transport and the business for over 14 years and am a Board member of Bus South Australia.
3. I am aware that the Australian Public Transport Industrial Association (APTIA) has made an application to vary the Passenger Vehicle Transportation Award 2010 to better define the minimum hours of engagement for school bus drivers and to provide the opportunity for Willunga Charters and its employee drivers to agree upon a reduced hours of work in circumstances that is agreeable to them.
4. Willunga Charter employs up to 46 employees, mainly bus drivers to provide the services utilising some 36 buses.
5. The school services are contracted with the South Australian Department of Education and some with individual private schools in the area. The employment terms and conditions relating to the passenger transport drivers are governed by the Passenger Vehicle Transport Industry Award 2010 (the PVTI).
6. The transport service contracts are performance based contracts which provides for the regular, daily transport of school student to and from school. The Government funds the services based upon the applicable rates of pay under the PVTI.

7. Of the 46 employees some 39 are casual drivers. Or a ratio of 6 to 1 employees.

#### **The Role of Casual Employment in my Business**

8. Casuals play a vital role in our business as they allow the flexibility that we require to manage seasonal fluctuations of the work load. AT Willunga Charters we have reduced our full time drivers by 50% over the last two years as there was not enough flexibility to cater for our overflow.
9. In most instances our school bus drivers will take school student to their schools in the morning and then have no further work during the day until later in the afternoon when they are required to take their school students home.
10. In some instances a driver might get a charter job during the day which may be a school charter or even non school charters. In these instances the drivers will take passengers to a destination, remain at the destination (waiting time) and then return to the depot with the passengers at the end of the charter.
11. Willunga Charters does not have route services which operate in large cities or town and which depend upon set scheduled services during peak time and off peak.
12. During the school terms the casual drivers are employed but in school holidays the work force reduces to 30% of the total work force.
13. In regional areas in which Willunga Charters operates it is not possible to entertain additional work as the work is simply not there.

#### **The Meaning of an Engagement**

14. Traditionally a dedicated school bus service will involve the driver taking children to and from school. This will involve two starts in the school day. One in the morning and one in the afternoon.
15. Each start is considered an engagement and is currently a minimum payment of two hours is required.
16. However a dedicated casual school bus driver may only work the morning for a variety of reasons including that they have another undertaking, outside of their bus employment in the afternoon or perhaps they only wish to work morning work or sometimes only afternoon work, such is the nature of casual work.
17. In other instances a casual dedicated school bus driver might work more than two starts because they will undertake charter work either taking school children to another

destination and adult group for a charter. In this case the minimum payment becomes three hours for the whole day.

### The Need for Flexibility

18. Willunga Charters operates 32 dedicated school bus services and all of them are less than 2 hours for each engagement i.e. less than two hours in the morning and less than two hours in the evening.
19. Presently under the PVTa we are funded for two hours for each engagement however an increase in the hours of work would create a financial disaster as the Government would not increase payments and our business simply could not absorb any increase.
20. Willunga Charters has various circumstances where drivers have requested shorter hours of work to allow them to maintain their benefits or to fit in with other jobs that they employed in. Attachment A sets out some examples of pay slips for such requests which are agreed to.
21. Further examples of drivers who have requested lesser hours include:
  - (i) Employees who are self employed in seasonal businesses (e.g. horticulture and viticulture) and who work for us during quiet times, which in turn provides them with sustainable income all year round.
  - (ii) Employees who are retirees and who wish to supplement their superannuation or pension payments or in some cases, who just enjoy contributing to the workforce for a few days an week.
  - (iii) Employees who, because of ill health are unable to work full time and wish work part time.
  - (iv) Employees who are part time carers for family members and who seek employment to supplement their carer's allowances and as a means of social interaction.
22. My difficulty is accommodating these requests whilst there is no flexibility permissible between myself and my employee to provide access to this type of employment , of which I am subjected to requests on a regular basis.

Signed by Ben Adam Campbell

Romanowski



At: WILLUNGA

On: 09<sup>TH</sup> Day of OCTOBER 2015

**FAIR WORK COMMISSION**

**MATTER NO. AM 2014/196 and AM2014/197**

**AWARD: Passenger Vehicle Transportation Award 2010**

**AWARD CODE: MA000063**

**STATEMENT**

On the 9<sup>th</sup> day of October 2015, I, Shane Dewsbery of P.O. Box 46 Moonah, Tasmania, 7009, Managing Director say;

**My Business**

1. I am the Managing Director of Tasmanian Tours and Travel (Fleet) Pty Ltd, known as Tassielink Transit, which operates regional and rural bus services with limited tours and charters.
2. Tassielink Transit operates general bus services, which includes transporting school students to and from school in or around Hobart and Launceston and their regional areas around Tasmania. Tassielink Transit also runs charter services in these centres and long distance passenger transport services from Hobart to the West Coast of Tasmania and to the East Coast of Tasmania, including a daily service from Devonport, through Launceston to Hobart.
3. These services are not dedicated school bus services and therefore in most occasions my drivers are required to pick up adult fare paying passengers. Therefore the minimum engagements differ in circumstances where casual driver do not only take school students to and from school.
4. I have been involved in public transport and the business for over 20 years and am the President of the Tasmanian Bus and Coach Association, known as Tasbus.
5. I am aware that the Australian Public Transport Industrial Association (APTIA) has made an application to vary the Passenger Vehicle Transportation Award 2010 to better define the minimum hours of engagement for school bus drivers and to provide the opportunity for Tassielink Transit and its employee drivers to agree upon a reduced hours of work in circumstances that is agreeable to them.

6. Tassielink employs up to 40 employees, mainly bus drivers to provide the services utilising some 28 buses and coaches. The terms and conditions relating to the passenger transport drivers are governed by the Passenger Vehicle Transport Industry Award 2010 (the PVTI).
7. Most of the transport services are contracted with the Tasmanian Department of Transport who provide funding to Tassielink Transit based upon the PVTI rates of pay.
8. The transport service contracts are performance based contracts which provides for the regular, daily transport of school student to and from school and the collection of public passengers based upon scheduled services and routes.
9. Of the 40 employees some 70% are casual employees and 30% are permanent or permanent part time employees.

### **The Role of Casual Employment in my Business**

10. Casuals provide the bulk of the drivers as the schedules are based around school times. Casual employees also provide administrative support for the transport services and are also not full time positions as the services are limited to school times.
11. In most instances our bus drivers will take school student to their schools in the morning and then have no further work during the day until later in the afternoon when they are required to take their school students home. However as indicated most of our drivers are required also to pick up adult fare paying passengers which differs from dedicated school services.
12. In some instances a driver might get a charter job during the day which may be a school charter or even non school charters. In these instances the drivers will take passengers to a destination, remain at the destination (waiting time) and then return to the depot with the passengers at the end of the charter.
13. In regional areas in which Tassielink Transit operates it is not possible to entertain additional work as the work is simply not there.

### **The Meaning of an Engagement**

14. Traditionally a dedicated school bus service will involve the driver taking children to and from school. This will involve two starts in the school day i.e. one in the morning and one in the afternoon.
15. Each start is considered an engagement and is currently a minimum payment of two hours is required.
16. However a casual school bus driver may only work the morning for a variety of reasons including that they have another undertaking, outside of their bus employment in the

afternoon or perhaps they only wish to work morning work or sometimes only afternoon work, such is the nature of casual work.

17. In other instances a casual school bus driver might work more than two starts because they will undertake charter work either taking school children to another destination and adult group for a charter. In this case the minimum payment becomes three hours for the whole day.

### **The Need for Flexibility**

18. Tassielink has employees who seek to work lesser hours because they are:

- (i) Semi retired
- (ii) Students, who are undertaking education or various studies, and
- (iii) Receive higher wages would impact upon social welfare benefits.

- 18 The workforce is an aged workforce with the majority of drivers over the age of 50 years and who usually take up the employment as a seachange to their previous employment. It is not easy in the industry to get bus drivers and the ability to offer casual and flexible work hours is critical to ensure that our industry has a big enough pool to choose from.

- 19 Presently under the PVTa the industry is funded by our Government for two hours for each school engagement however an increase in the hours of work would create a financial disaster as the Government would not increase payments and our business simply could not absorb any increase.

- 20 In our circumstances currently we pay three hours minimum per shift which is also calculated in our funding by our Government.

- 21 I would welcome the opportunity to provide flexible working hours to my workforce as requested by that workforce.

Signed by Shane Dewsbery



At: HOBART

On: 9<sup>TH</sup> OCTOBER 2015

**FAIR WORK COMMISSION**

**MATTER NO. AM 2014/196 and AM2014/197**

**AWARD: Passenger Vehicle Transportation Award 2010**

**AWARD CODE: MA000063**

**STATEMENT**

On the 10th day of October 2015, I, Geoffrey Ivan Ferris of 1 Burwood Road Burwood, NSW 2134, Group Operations Manager say;

**The Business**

1. I am the Group Operations Manager for the Buslines Group Pty Ltd (Buslines) which operates rural and regional route and school services across 12 regional towns in New South Wales.
2. The Company operates school bus services and some route services from the following locations:
  - Lismore
  - Ballina
  - Tamworth
  - Dubbo
  - Orange
  - Bathurst
  - Lithgow
  - Picton
  - Berrima (Southern Highlands)
  - Griffith
  - Forster
  - Wingham
3. I have been involved in public transport industry all my life, and in my current position as Group Operations Manager with Buslines Group for 14 years.



4. I am aware that the Australian Public Transport Industrial Association (APTIA) has made an application to vary the Passenger Vehicle Transportation Award 2010 to better define the minimum hours of engagement for school bus drivers and to provide the opportunity for Buslines and its employee drivers to agree upon a reduced hours of work in circumstances that is agreeable to them.
5. Buslines employs up over 430 employees, mainly bus drivers to provide the services utilising over 340 buses.
6. The route and school services are contracted with the NSW Government through Transport for NSW.
7. The transport service contracts are performance based contracts which provides for the regular, daily transport of school student to and from school through dedicated services and for scheduled route services.
8. Transport for NSW provides funds to Buslines to operate their services based upon the cost of providing such services.
9. In the case of labour costs the funding base is the pre-modern award, the Transport Industry – Motor Bus Drivers and Conductors (State) Award No. IRC 19444 of 2008 (the Bus Award).
10. Clause 6 ii) states:  
*“Subject to Clause 15, Casual Employees shall be paid in the following manner:*  
*a) Monday to Friday – Casual employees shall be engaged by the hour and paid for all time worked to the nearest minute, with a minimum engagement of one hour;”*
11. Of the current employees 15.12% are permanent employees (65), 0.23% are part time employees (1) and 84.65% are casual employees (364). Of those casual employees some 250 work regular hours during school holidays.

#### **The Role of Casual Employment in my Business**

12. Casual employees are an important part of the business as they allow the flexibility that we require to manage seasonal fluctuations of the work load.
13. In most instances our school bus drivers will take school student to their schools in the morning and then have no further work during the day until later in the afternoon when they are required to take their school students home.
14. In some instances a driver may receive a charter job during the day which may be a school charter or even non school charters. In these instances the drivers will take passengers to a destination, remain at the destination (waiting time) and then return to the depot with the passengers at the end of the charter.

15. Buslines does provide scheduled route services in the country towns and therefore has a small percentage of drivers to whom we can offer 38 hours a week.
16. During the school terms the casual drivers are employed but in school holidays the casual work force reduces significantly.
17. In regional areas in which Buslines operates it is not possible to entertain additional work to casual employees as the work is simply not there.

#### **The Meaning of an Engagement**

18. Traditionally a dedicated school bus service will involve the driver taking children to and from school. This will involve two starts in the school day i.e. one in the morning and one in the afternoon.
19. Each start is considered an engagement and is currently a minimum payment of two hours is required.
20. However a dedicated casual school bus driver may only work the morning for a variety of reasons including that they have another undertaking, outside of their bus employment in the afternoon or perhaps they only wish to work morning work or sometimes only afternoon work, such is the nature of casual work.
21. In other instances a casual dedicated school bus driver might work more than two starts because they will undertake charter work either taking school children to another destination and adult group for a charter. In this case the minimum payment becomes three hours for the whole day.
22. A standard shift for a casual school bus driver would be:
  - (i) Morning: commence at 7.45am and finish at 9.15 am after cleaning the bus (
  - (ii) Midday: commence 12 noon and finish at 12.45pm
  - (iii) Afternoon: commence 2.30pm and finish 4.30pm
  - (iv) Total Hour: 4 hours 15 minutes

#### **The Need for Flexibility**

23. The mix of workers at the Buslines group is an ageing one. The average age of our drivers would be well above 55 years old with most drivers either in partial retirement or simply staying in the workforce to supplement their income which is either part of a pension or as a self funded retiree.
24. In most of our depots we have employees who seek to work lesser hours. In fact at least 50% of our workforce provides this request to us for a variety of reasons.
25. We have approximately 3 to 4% of our drivers that receive Centrelink benefits and to receive their full entitlements they are restricted in money they earn over a month. Whilst it is not

the cash that they are reduced by in the benefits it is the ancillary benefits such as health benefits, rate reductions, reduced registration fees and cheaper

26. Attachment A sets out some examples of pay slips for such requests which are agreed to. These include drivers from our Tamworth, Bathurst, Lithgow, Picton and Northern Rivers depots.

27. The specific reasons for each includes:

- (i) In Ballina we have a cabinet maker who works only an hour in the morning and an hour in the afternoon as a secondary job, in between his profession as a cabinet maker.
- (ii) In Orange, Ballina, Dubbo and Tamworth we have gardeners and lawn mowers who also only want two hours a day or 10 hours a week.
- (iii) Across our network we have self funded retirees who are happy to receive 10 hours a week just to supplement their other incomes and to avoid dipping into those funds.
- (iv) Also across our network we have pensioners who would lose their pension entitlements if their incomes exceed the threshold. Two hours a day is all these pensioners seek to earn.
- (v) In some instances we have had school teachers who take class during the day and simply drive the school students to work in the morning for an hour and then take them home in the afternoon for an hour.
- (vi) In Berrima we have an auto electrician who enjoys driving the school bus in the morning and afternoon for an hour and then going to his main job during the day.
- (vii) In Griffith we have a builder who downs his tools to simply help us out in the event that we need a shift on any one day.

Signed by Geoffrey Ivan Ferris

At: **BATHURST**

On: **10 OCTOBER 2015**

