

The Associate to his Honour Justice Iain Ross AO
Fair Work Commission
11 Exhibition Street
Melbourne VIC 3000
Email: amod@fwc.gov.au

20 February 2015

Dear Associate

Subject: Alleged NES Inconsistencies AM 2014/1

The Australian Public Transport Industrial Association (APTIA) wishes to advise that it will oppose the various applications made by the Transport Workers Union, National Office (TWU) as outlined in their letters of 21 November 2014 and 23 January 2015.

APTIA opposes more specifically, the position taken by the TWU with respect to the following:

- AM 2014/208 – Clause 12.2 (Redundancy) of the Passenger Vehicle Transportation Award 2010 (MA000063), and
- AM 2014/208 – Clause 23.2 (Annual Leave Loading) of the Passenger Vehicle Transportation Award 2010 (MA000063).

APTIA notes the correspondence of the TWU, dated 23 January 2015 in which it is stated:

“Upon further consideration TWU is of the view that the deletion of the relevant clauses in each of the above awards may not be appropriate as it may impact on other awards with similar provisions”

The correspondence indicated that further discussions with other industrial organisation were needed and additional time sought by the TWU for further submissions. APTIA opposes any request by the TWU for further time.

In any event the changes flagged by the TWU as being inconsistent with the NES are not supported or identified by the Fair Work Ombudsman who provided to the Fair Work Commission a detailed analysis of inconsistencies with the NES and modern awards in their document tot the Fair Work Commission on 4 April 2014 filed AM2014/1.

APTIA further disputes that there is an inconsistency with the current clause 24.3 of the Passenger Vehicle Transportation Award 2010 and has made a substantial submission on 1 August 2014, AM 2014/47 – Annual Leave.

In summary APTIA will oppose the variation sought by the TWU to remove the exemption for payment of leave loading on termination from the Passenger Vehicle Transportation Award 2010 (MA00063) on the basis that:

- No evidence has been provided by the TWU to justifying such a variation.

- APTIA has relied in support of the Submissions in Reply by the Australian Chamber of Commerce and Industry to support its contention that the current clause 24.3 of the PVTA does not contravene the NES.
- In any event, historically the PVTA was determined on the basis of an exemption for leave loading payments on termination and at no stage in either the Award Modernisation process or the Two Year Review has there been any suggestion by any party, employer or employee group, of an anomaly or inconsistency with the provisions of the Fair Work Act.
- APTIA acknowledges that S. 90 (2) of the Fair Work Act 2009 has created an anomaly and the Fair Work Commission has the opportunity to rectify the situation which has been supported by amendments to the Fair Work Act currently before the Parliament.

Yours faithfully

Ian MacDonald, National Industrial Relations Manager