APTIA
Industrial Arm of the Bus Industry Confederation
moving people

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Committee Secretary

Education and Employment Legislation Committee

Department of the Senate

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Parliament House

Canberra ACT 2600

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Dear Committee Secretary

Subject: Fair Work Amendment (Right to Request Casual Conversion) Bill 2019

The Australian Public Transport Industrial Association (APTIA) seeks to make a submission to your Committee considering the **Fair Work Amendment (Right to Request Casual Conversion) Bill 2019**. The Australian Public Transport Industrial Association (APTIA) is the industrial arm of the Bus Industry Confederation (BIC), which is the peak national body, representing bus and coach operators across the country.

There is an estimated thirty thousand (30,000) employees who are employed by members of BIC or members of the respective State Associations. Our industry is a labour-intensive industry that is an essential public service and is directly impacted by Australia's industrial laws.

The Passenger Vehicle Transportation Award 2010 primarily deals with the employment terms and conditions of our bus and coach drivers.

Two critical aspects of our industry with respect to employment are:

1. A large number of employees are employed as casual employees, and
2. The average age of all employees is 55 years of age or plus.

- Casual employees are used in the public transport industry in the following circumstances:
  In a temporary one-off situation when a permanent employee either is off on leave or is not available due to some legitimate reason or simply doesn't volunteer for weekend work or late-night work when it is available. Such a casual employee because of the nature of the industry might be otherwise regularly employed.
- As a school bus driver, often in isolated rural areas, to take school children to and from school. This type of work is regular and consistent and occurs 201 school days a year (40 weeks) and generally between 7.00am and 9.00am in the morning and 3.00pm and 5.00pm in the afternoons (20 hours a week).
- Casual work is usually available to the school bus drivers to take school excursions or charter during the school days or even other non-school charters. This type of work can be regular and consistent.
- In the mining industry the FIFO casual is utilised when an employee works usually part of the month and is off the remainder of the month.

In a lot of cases casual employees receive regular and consistent work but either do not want or are not suitable for part time or permanent work.

The reasonable business conditions that are outlined in the decision of the Fair Work Commission and duplicated by the legislation (Section 66D) are a reflection of evidence placed by the APTIA before the Full Bench of the Fair Work Commission and should be protected in any legislation considered by your Committee.

APTIA relied upon evidence from its members, some in New South Wales, who have had a casual conversion clause in their pre-modern awards and agreements since 2004, that the take up to part time work is small because of a variety of reasons.

Some of the feedback we have received is set out below. The unfortunate thing, however, is that neither the legislation nor the decision of the Full Bench in the Fair Work Commission recognised any of these identified social aspects of employment in support of a permanent casual category.

Some of the social impacts of conversion to part time employment not recognised by legislation or the FWC include:

(i) The mature age demographic of the cohort of drivers has a significant bearing on the choice made. A significant majority of these employees live on a week to week basis and prefer the money in their pocket rather than have leave accrual benefits.

(ii) The other big one for our drivers about casual conversion is the drivers want the ability to vary their income to suit their pension entitlements etc.

(iii) Anecdotally, with an ageing workforce, there is a greater focus on work/life balance to spend time with family, less/casual hours are favourable due to health and wellbeing and the higher hourly rate is favourable whilst on the pathway to retirement. This group of employees also enjoys the flexibility of not having to accept work and ability to request days off the roster – true nature of casual employment.

(iv) Money in the pocket each week is a greater incentive for an ageing work force which feels discriminated by the strictness of laws which seek to reduce their weekly income.

(v) An aging workforce are not interested in increasing their super and they can govern their own income threshold if they remain casual.

(vi) A school bus driver, especially those who each school day (201 days a year), work regularly and consistently taking school children to and from school do not work during school holidays as no work is available and would be substantially disadvantaged if they had to average out their employment over 52 weeks a year or take a 25% reduction in wages.

(vii) In each State contracted route and school bus services are funded by State Government and any attempts to increase or decrease wages for bus drivers would impact on the transport budgets of each State and might cause reduction in services just to meet a broad-based definition of a casual employee.

Professor Andrew Stewart in his "Guide to Employment Law, Fourth Edition, Chapter 4, 'Special Types of Employment'", page 62, highlighted the anomaly that exists with the way in which casual employees are employed in some industries.

He referred to permanent casuals, i.e. employees who have regular and systematic work over lengthy periods of time and who don't meet the definition of a casual employee as defined by most modern awards (i.e. employed by the hour with uncertain and irregular work).

It is APTIA's submission that any legislation recognising casual conversion needs to recognise that 'one size does not fit all' and that industries such as public transport have a practical application for a 'permanent casual' category as highlighted by Professor Stewart.

APTIA supports the legislation but warns that it would be bad legislation that tried to create a 'one size fits all' category for casual employees and did not recognise that permanent casuals are a feature of the employment landscape.

APTIA recommends that the Committee considers an amendment to Section 66 D (2) by adding s.66D (2) (f) along these lines:

"That a casual employee chooses to remain a permanent casual and that it would disadvantageous to the employee to be considered or offered any other types of employment."

Yours sincerely

Ian MacDonald

National IR Manager