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EDITION**

Everybody Out is an industry newsletter produced by the Australian Public Transport Industrial Association (APTIA), the industrial arm of the Bus Industry Confederation (BIC). The editor of this newsletter is Ian MacDonald, National IR Manager of the BIC. Enquiries relating to the contents of this newsletter can be directed to:

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Wayne Patch
APTIA Chairman

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- APTIA breakfasts – Sydney (Tuesday 4 October 2022).
- Australasian Bus and Coach Expo, Sydney – Wednesday, 5 & Thursday, 6 October 2022.
- APTIA AGM – Sunday 13 November 2022 (Brisbane)
- BIC National Conference – Monday 14 November 2022 to Wednesday 16 November 2022.

MEMBERSHIP NEWS

The Bus Industry Confederation National Bus Industry Summit



The Bus Industry Confederation has held a very successful Industry Summit in Canberra over 28 and 29 June. On the Wednesday it was ZEB day with the issue of transition to zero emission buses forming the bulk of the forum. On Thursday BIC staff member, Luke Hardy led the discussions on technical requirements for ADR compliance and the proposed changes to disability access, whilst in the other room BIC staff member, Ian MacDonald chaired an industrial relations seminar which considered the anticipated changes to industrial relations because of the recent change of Government, the perplexing issue of recruitment and retention within the industry and what 'insecure employment' means to casual employment.

APTIA Breakfasts



APTIA held its second IR breakfast for the year in Melbourne on Wednesday 6 July 2022, hosted by Chris Gianatti, and James Allen from KHQ Lawyers. Victorian Bus Operators well attended the breakfast along with Peter Kavanagh from BusVic and APTIA Council member, Sam Lucas.

The issues discussed around the table included:

- Reasonable directions to cover decisions relating to vaccinations and the pandemic
- Casual employment and the prospect of leave entitlements being provided for casual employment
- The added responsibilities that flow from the onus of proof shifting to employers with respect to sexual harassment.

Of course, there was also much discussion about recruitment and retention and the various approaches of different parties around the table.

The next APTIA breakfast is scheduled in Sydney for Tuesday 4 October 2022.

Geoffrey Lewis



TasBus recently held its annual national conference which once again well attended by bus operators, manufacturers, Government officials and politicians of all persuasions.

There was one constant behind this success of this Conference and that was the Executive Director Geoffrey Lewis who had the respect of all comers.

Over a period more than 20 years Geoffrey had earned the respect of his peers and to the benefit of Tasmanian bus operators their respect of the Tasmanian bureaucrats and political parties.

Geoffrey will have neared the conclusion of his tenure as Executive Director of TasBus when this edition is made available.

From all of us, especially from BIC and APTIA, we say thank you Geoffrey for your endeavours and good luck into the future. We hope to see more of you.

At the same time APTIA/ BIC wishes Steve Henty, the new TasBus Executive Director our support and best wishes.

INDUSTRY NEWS – What you need to know?

Minimum Wage Determination

The FWC's expert panel has approved a 5.2% (\$40) rise to the national minimum wage, while workers covered by award rates will get an increase of at least 4.6%, after it considered the effects of the sharp inflationary rise on low-paid workers and accepted the need for moderation.

The increase will lift the NMW to \$812.60 a week or \$21.38 an hour.

FWC president and panel head Iain Ross said that award rates **below** \$869.60 a week - about the level of the C10 tradespersons level - will increase by \$40.

Rates **above** \$869.60 will rise by 4.6% or \$40.00.

However, workers under 10 awards will have to wait till October 1 for their increases, after the panel accepted the aviation, tourism and hospitality sectors had not yet fully recovered from the pandemic's economic effects.

The Awards that will not increase until October 1 include:

- Aircraft Cabin Crew Award 2020
- Airline Operations – Ground Staff Award 2020
- Air Pilots Award 2020 • Airport Employees Award 2020
- Air Services Australia Enterprise Award 2016
- Alpine Resorts Award 2020
- Hospitality Industry (General) Award 2020
- Marine Tourism and Charter Vessels Award 2020
- Registered and Licensed Clubs Award 2020
- Restaurant Industry Award 2020. [30]

Key differences in economic indicators between 2020–21 Review and 2021–22 Review that led to the decision included:

- CPI growth 1.1 per cent over year to March quarter 2021, but 5.1 per cent over year to March quarter 2022
- Trimmed mean inflation 1.1 per cent over year to March quarter, but 2021 3.7 per cent over year to March quarter 2022
- Unemployment rate 5.5 per cent in April 2021, but 3.9 per cent in April 2022
- Persons employed 13,040,400 in April 2021, but 13,401,700 in April 2022
- WPI growth 1.5 per cent over year to March quarter 2021, but 2.4 per cent over year to March quarter 2022.

Other changes announced before the end of the current financial year include:

From 1 July 2022 the application fee will increase to **\$77.80**.

The fee applies to dismissal, general protections, bullying and sexual harassment at work applications made under sections 365, 372, 394, 773 and 789FC of the *Fair Work Act 2009*.

Also effective from 1 July, the high-income threshold in unfair dismissal cases will increase to \$162,000 and the compensation limit will be \$81,000 for dismissals occurring on or after 1 July 2022.

The Table set out below, covers the changes, effective from 1 July 2022.

AWARD		BASE RATE	CASUAL RATE
Passenger Vehicle Transportation Award 2020	Grade 1	\$22.98	\$28.73
	Grade 2	\$23.52	\$29.40
	Grade 3	\$24.84	\$31.05
	Grade 4	\$25.72	\$32.15
	Grade 5	\$27.13	\$33.91
	Grade 6	\$28.33	\$35.41
	Clerks-Private Sector Award 20202	Level 1-Year 1	\$22.67
Level 1-Year2		\$23.74	\$29.68
Level 1-Year 3		\$24.47	\$30.59
Level 2-Year 1		\$24.76	\$30.95
Level 2-Year 2		\$25.22	\$31.53
Level 3		\$26.15	\$32.69
Level 4		\$27.46	\$34.33
Level 5		\$28.58	\$35.73
Manufacturing and Associated Industries and Occupations Award 2020			

Note: All workshop persons in the bus and coach industry now come under this one Award	C10	\$24.76	\$30.95
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Trends in Enterprise Bargaining

In the wake of the RBA governor's warning about the risks of a wage-price spiral, new A-G's department data shows that bargained pay rises are flatlining at 2.7% a year in the private sector, rising at little more than half the 5.1% rate of headline consumer price inflation.

The department's [Trends in Federal Enterprise Bargaining Report](#) shows that the 941 private sector agreements approved by the FWC in the March quarter delivered 130,000 employees an average pay rise of 2.7% a year.

Increases in the private sector have hovered between 2.6% and 2.7% for the past seven quarters.

The figures, however, are firmly a look in the rear-view mirror, representing the picture three months ago, when nevertheless the big inflationary rise was on the horizon (and then confirmed in the official figures in the last week of April).

They mean bargained pay rises are running at little more than half of the March quarter headline inflation rate of 5.1%, which the RBA expects to rise to 5.5% in the June quarter and 7% by the end of the year.

The March quarter WPI, a broader measure of wage rises, showed rates of pay excluding bonuses growing at 2.4% in the private sector.

RBA Governor Philip Lowe cautioned last week about the risks of a wage-price spiral and urged a cap of 3.5% on pay rises, but today's figures show no movement in that direction.

Meanwhile, today's data shows that the 69 *public sector* agreements approved by the FWC in the March quarter paid 120,000 employees an average annualised wage increase of 2.5%, up from 2.3% in the December quarter.

Across the economy, the 1,010 deals endorsed by the tribunal in the March quarter provided average rises to 247,000 employees of 2.6%, unchanged from the previous quarter.

None of the 15 large agreements (covering at least 2,000 employees) approved in the quarter contained increases exceeding 3% (the department could not quantify rises in the [Optus](#) and [NT public sector](#) deals).

The department could not quantify increases in 148 agreements covering 34,500 employees, due to reasons such as their links with the CPI or minimum wage rulings.

The A-G's department's IR responsibilities, including its wages data collection and analysis, will move from tomorrow to the new Department of Employment and Workplace Relations, overseen by Minister Tony Burke.

Online Hearings

The Fair Work Commission has published an interim report into the review of Online proceedings.

APTIA provided a submission to the original request on behalf of its membership.

The interim report supports online hearings, in the following circumstances:

- To better support accessibility requirements of participants
- To reduce travel cost and time for participants
- To hear the case, or a specific part of the case, quicker or more efficiently
- Where any of the participants involved have concerns about meeting in-person

- Where government health restrictions prevent participants meeting in person

It will be at the discretion of the Member hearing the case to decide whether the proceedings will be in person, partly online, or fully online

The default position for online hearings will occur for urgent applications, including protected action ballot orders and orders to stop industrial action, short matters, including mentions and most conciliations, hearings and determinative conferences that do not involve disputed facts, proceedings where a participant has significant concerns about physically attending Commission premises or where at least one party is based in a state or territory other than the presiding Member’s ‘home’ state, or lives at a significant distance from Commission premises.

The report goes on to say that the Commission will usually vacate this default position where the attributes of individual participants would result in them being unable to effectively participate in the proceeding if it was held online and the Member(s) dealing with the matter considers that it is more appropriate to conduct the proceedings (or part of the proceedings) in person, for example, where the Member considers it critical to assess the credibility of each of the witnesses involved by observing them in person, or one of the parties is strongly opposed to the proceeding being conducted online.

My view is that this approach recommended by the FWC is acceptable. The FWC has invited further comment by 6 July 2022, and I would appreciate any feedback you may wish to give me. Otherwise, I propose to advise the FWC that the process suggested for future hearings is acceptable.

Recruitment and Retention in the Bus and Coach Industry



It appears that in our industry, particularly from a bus and coach operator position, there is a substantial diminution of staff.

Staff are leaving and it is increasingly difficult to recruit.

From the recent IR summit the following issues were raised, to counter the crisis:

- Greater diversification to ensure more females come into our industry by recognising the different needs of a female workforce, especially in relation to workplace facilities and the need for greater worktime flexibility. The TWU has identified the need to have breaks taken at the depots and shorter period to allow for breaks, i.e., after 4 hours.
- Prospects of involvement in seniors’ groups to espouse the benefits of a part time job, driving buses.
- A change to immigration laws to allow for a special category of passenger transport drivers to be accepted for visa applications.
- Greater flexibility for apprenticeships, Cert III transport diplomas and reduced age to 20 years to obtain a license to drive a bus.

These are just some of the suggestions at this early stage, but groups are forming to address the problem. BIC Council has approved the progression of a project which includes BIC full membership, and which hopes to provide solutions.

The project will involve

- Consider how to fund the project i.e., options include Government funding with the support of ACCI, support of the BIC, support of members who will directly benefit.
- Undertake a survey of members to understand the extent of the problem
- Develop recommendations from expert advice based upon the survey results
- Undertake a trial of the recommendations
- Assess the outcomes and develop a plan to disseminate the results to our membership

This project is a 12-month project and could be a BIC/ APTIA project.

IMPORTANT DECISIONS

Reinstatement Upheld for Sexual Harassment claim

Qantas Airways Limited v Daniel Matthews [2022] FWCFB 111 (21 June 2022)

A FWC full bench has thrown out a Qantas bid to overturn the reinstatement of a trainer accused of staring at a flight attendant's breasts and gazing into her eyes in a "distinguishably lewd" manner during a safety demonstration.

Qantas challenged multiple findings Commissioner Donna McKenna made in March this year, including that it lacked a valid reason to dismiss the trainer and that it should reinstate him.

The airline dismissed the trainer in August last year after substantiating the bulk of a flight attendant's claims that he looked at her chest and made personal comments about it while delivering a medical and security aviation course.

Describing the situation as "distinguishably lewd", she accused the trainer of stating "you can look into a person's eyes to see if they are responsive", before sniggering or laughing and saying words to the effect of "and then you may have noticed that I was deliberately staring at [the flight attendant's] chest to see if she was breathing".

She claimed he also disregarded her request to stop and when she blushed and said, "Oh look, [the flight attendant's] face is the same colour as [another course participant's] top" (assumed to be the red in the blue, red and fuchsia/pink of the airline's uniform).

Commissioner McKenna held, however, that the trainer made any such comments "in the context of first aid instruction and in an entirely innocuous way – and not as, for example, some form of *double entendre* as the complainant seemed to suggest".

Nor did she accept the participant's claim that the trainer asked the class whether they noticed he deliberately stared at her chest to see "if she was breathing", as opposed to something related to observing breathing or the rate of breathing.

Qantas argued on appeal that Commissioner McKenna wrongly found the trainer did not make the comment about the flight attendant blushing, wrongly rejected its finding that he was dishonest and should not have drawn a *Jones v Dunkel* inference from its failure to call another course participant as a witness.

The airline also challenged her findings that it lacked a valid reason for dismissal and that it should reinstate the trainer.

Vice President Adam Hatcher and commissioners Tim Lee and Tanya Cirkovic refused permission to appeal, however, and rejected the airline's submission that it raised issues of general importance.

Even if it had accepted the Qantas claims that three of Commissioner McKenna's nine key findings of fact were incorrect, the bench said her remaining unchallenged findings involved a "wholesale rejection" of the bulk of the flight attendant's original complaint and "almost entirely dispose" of the investigation findings Qantas relied on in dismissing the trainer.

On these findings, the trainer engaged in a "legitimate demonstration exercise as part of a training session concerned with first aid, did not direct any comments of a personal nature to the complainant about her chest, and did not engage in conduct which, assessed objectively, was of a humiliating, intimidatory or sexual nature", the bench said.

The bench held that Commissioner McKenna justifiably drew a *Jones and Dunkel* inference in finding the trainer did not comment on the flight attendant's blushing but was merely telling the class how to check for allergic reactions.

It noted that Qantas did not explain a failure to call a witness in circumstances where it had a signed investigation statement from her ostensibly supporting the flight attendant's evidence.

The bench said there would "undoubtedly have been serious issues raised as to [the witness'] credibility" if she had been cross-examined.

Supporting the commissioner's observation that Qantas was not entitled to "cherry pick" from investigation statements where some aspects were "seriously at odds" with the case it sought to advance, the bench also noted the flight attendant wore a "surgical face-mask and glasses at the time, thus seeing her face colour less than probable".

Turning to Commissioner McKenna's reinstatement order, Qantas challenged her finding that the trainer's prior disciplinary history could not be relied upon to establish the inappropriateness of giving him back his job, given it did not dismiss him over any past incident.

The bench concluded, however, that she took an "entirely orthodox approach", with no issue of genuine novelty or controversy raised the airline's appeal.

Commissioner McKenna also took aim in March at a sexual harassment Qantas training video that, while not relevant to her determination, "just cannot go unremarked".

"The video and what the training module identified as to the correct responses in relation to it were, frankly, ludicrous in terms of contemporary notions of what constitutes sexual harassment (and should have been recognised as ludicrous even in its day in its descriptive references to, for example, a woman dancing 'provocatively' and the repeated, unwanted conduct of the man in the video)," she said.

Sacking Indefensible for non-vaccination

Ms Anna Gikas v The Commissioner for Public Employment [2022] FWC 1133 (8 June 2022)

The FWC has reinstated a teacher who delayed her COVID-19 vaccination so she could consult a heart specialist but lost her job before she could do so.

On October 13 last year, the Northern Territory chief health officer's issued direction 55, which ordered workers to obtain coronavirus inoculations, or lose their jobs.

These directions applied to most NT workers, including teachers.

From November 13, workers had to receive one dose to continue to attend their workplaces.

From December 24, they needed two doses.

The mathematics teacher, employed by the Northern Territory public service, began working at Dripstone Middle School in Darwin on a full-time fixed-term contract in early 2020.

Following the public health direction, she booked a COVID-19 vaccine appointment for November 9 last year.

She tried to enter this appointment into the public service's online HR system, but she was informed that an appointment card did not constitute sufficient evidence and she needed an SMS appointment confirmation.

She cancelled her initial appointment and rebooked for November 11 at a different clinic so she would receive an SMS confirmation.

She cancelled this appointment after her sister suffered a severe adverse reaction to the Pfizer vaccine, which included pericarditis, resulting in a week's hospitalisation and a continuing disability.

The teacher saw her general practitioner who advised her to consult a cardiologist before receiving her first COVID-19 inoculation.

Her school principal allowed her to take two weeks of carer's leave to look after her sister and agreed she could take further leave while she awaited her specialist appointment.

But the chief executive of the Department of Education emailed the teacher on November 15 saying that the department was considering ending her contract because she couldn't perform the inherent requirements of her job.

The teacher responded by affirming her intention to be vaccinated and outlining why she hadn't yet done so.

The chief executive dismissed the teacher, saying "while I acknowledge your health concerns, you make no mention of a pre-existing medical condition that would indicate a possible contraindication, nor have you provided the required Commonwealth-approved medical certificate".

After her dismissal, the teacher saw Dr Marcus Alton, director of cardiology at Royal Darwin Hospital, in January.

He told her it was reasonable to have a cardiac assessment given her sister's condition.

He found no cardiac concerns that would prevent her from receiving a COVID-19 vaccine.

The teacher received her first dose of Novavax in March and her second in April.

She is waiting the recommended 16 weeks for her third dose, which she can receive next month.

The teacher submitted her unfair dismissal claim to the Commission seeking reinstatement, backpay and continuity of service.

She told the Commission that she was not an "anti-vaxxer" and that her immediately family had been vaccinated.

She was on a fixed-term contract set to expire on January 27 of this year.

The teacher had several discussions before her dismissal during which the assistant principal indicated that it was likely she would receive a further 12-month contract or could apply for a permanent position.

The Department of Education told the Commission that the teacher "could have had no such expectation" of receiving a further contract.

The teacher initially sought reinstatement at Dripstone Middle School but has since said she would accept a vacancy at Palmerston College, acting on a suggestion by the Commissioner for Public Employment's representative, employee relations manager Brian Mappas.

During Commission proceedings, the chief executive conceded that it had been unfair to fail to give the teacher the opportunity to seek medical advice before dismissing her.

She also said she was unaware of the teacher's arrangement with Dripstone Middle School that she would remain on leave until she received medical advice.

The chief executive raised concerns that the teacher had cancelled her first vaccine appointment but said the appointment card should have been accepted as evidence.

Commissioner Bernie Riordan said the department "should have investigated this issue rather than simply conclude that there was some sinister and predicated motive of [the teacher]".

"The decision to terminate was indefensible and lacked common sense."

He ordered the teacher's reinstatement under s391(1) of the Fair Work Act and that she be appointed to the vacant position at Palmerston College.

"I can see no reason why reinstatement is not the appropriate remedy in this situation.

"Quality maths teachers are a scarce resource throughout Australia.

"It would be unfair to penalise [the teacher] from working for the major employer in the education sector in the Northern Territory simply because she followed her doctor's advice."

He further ordered that the department pay the teacher up to the end of her previous contract because she was on approved leave, which counts as time worked.

Commissioner Riordan found that "as a result of a conscious, yet quite understandable decision of [the teacher] to wait for the Novavax vaccine" she couldn't comply with the mandatory vaccine direction until she received her second dose on April 1.

He ordered backpay from this date.

He found that the teacher would have been awarded a new contract at Dripstone and ordered that the teacher's long service leave be calculated as if a contract was in place.

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