

## MEDIA RELEASE

18 June 2020

### Casual Employment within the Bus and Coach Industry

Buses and coaches represent an important mode of public transport. Every day, Australians, especially school children, are transported by bus and coach on the nation's road network by an estimated 50,000 bus and coach drivers Australia wide.

A vast number of these employees include skilled drivers, many of whom are employed on a casual basis. Many of those casual employees are at the end of their full-time careers who want to 'work when they feel like it', such as a morning or afternoon school shift, take leave when they need and earn limited amounts, often to protect their pension payments, and find working as a casual employee ideal for their situation as well as the companies they work for.

On Wednesday, 20 May 2020, the long-awaited decision in the *Workpac Pty Ltd v. Rossato* was handed down. The case related to Mr Rossato, a casual worker who was employed by the labour hire company WorkPac as a drive in/drive out production employee engaged to work on various mines within the Glencore Group. Some of the employment contracts required Mr Rossato to work in accordance with a roster which allocated shifts up to 7 months in advance.

Most of Mr Rossato's contracts contemplated the payment of a casual loading, without specifically referring to the casual loading and Rossato was paid at a higher rate than those stipulated in the Enterprise Agreement.

Rossato's case has upheld the previous decision in the *Workpac Pty Ltd v. Skene* case, in which an employee with a 'firm advance commitment' of employment was deemed not to be a casual employee, but a permanent part time employee with all the entitlements provided under the National Employment Standards, such as annual and sick leave.

On Friday, 12 June 2020, BIC's Industrial Working Group held an online seminar with Professor Andrew Stewart, Professor at Law, Adelaide University, who gave his views on what the decision means for the bus industry.

Over 50 BIC and APTIA members heard from Professor Stewart who advised that they should try to persuade long term casuals to convert to permanent employment or at least consider amending employment contracts to clearly stipulate casual loadings and their purpose, and to allow for set off or restitution if deemed otherwise.

#### Bus Australia Network



The issue of casual employment is at the forefront of the round table discussions to take place between the Attorney General and the employee representatives lead by the Australian Council of Trade Unions and the employer representatives lead by the Australian Chamber of Commerce and Industry (ACCI). As a member of ACCI, the BIC has been active in providing input into ACCI's agenda and held discussions directly with the Attorney General and Minister for Industrial Relations, the Hon. Christian Porter.

Michael Apps, Executive Director of the Bus Industry Confederation said:

“The Bus Industry Confederation has advocated to its members a ‘wait and see’ approach to the decision and has sought legal advice on its implications for our employers.

It is evident however that the implication for our industry from the decision is that employment for casual school bus drivers, who work regularly for 40 weeks a year, will have to be re-assessed by their employers and casual coach and charter drivers also may no longer be able to be employed as casuals.”

The Attorney General has indicated that government is seeking consensus agreements between employers and employees on issues such as 'job security' as a means of stimulating the economy as it emerges from the Covid-19 shut down.

"No doubt there will be a lot of public debate, the need for legal advice and perhaps, legislative reform following this decision.", Apps said.

The BIC believes that it is probably safe to assume that if an employee has a ‘firm advance commitment’ of work, within the meaning of Skene and Rossato, then these employees are not casual employees.

National IR Manager of the BIC, Ian MacDonald said “it is likely however, that there will be relief by way of set off, as it is clear that the decision creates inequities...(such as) a casual school bus driver, working regularly for 20 hours a week, 40 weeks a year and no longer deemed a casual employee (under the principles set out in Rossato’s case) could be paid 25% more for working 20 hours a week than a part-time employee who is not entitled to a loading but working the same 20 hours. Each driver would be then entitled to pro-rata leave entitlements.”

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“APTIA, the industrial arm of the BIC and its Industrial Working Group will be exploring all options”, MacDonald said. In the meantime, he suggests that Employers consider the following actions:

- (i) Is it possible to convert casual employees to part-time or full-time employment. Noting a school bus driver working 20 hours a week, 40 weeks of the year, may not fit into this category.
- (ii) Write to each casual employee and advise them that they are employed as casual employees and that they receive an additional hourly payment which covers them for the paid leave entitlements, which part-time or permanent employees receive and that the additional payment is set off against any paid NES entitlement.
- (iii) Where possible pay slips should record the additional payment along with the base rate of pay so that the additional payment (loading) is clearly designated.
- (iv) Seek to add to Enterprise Agreement negotiations a clause which aims to protect an employer from double dipping by an employee, who is deemed not to be a casual whilst they are receiving the casual loading.

It is irrefutable that if the decision stands, operators will be required to make dramatic changes to their work forces and perhaps further changes made to the Awards and Enterprise Agreements that have served them well, so far.

For more information visit the Industrial Relations-Industry News web page on [OzeBus](#) or contact the Bus Industry Confederation on 02 6247 5990.

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