



3 April 2008

Workplace Relations Policy Group
Department of Education, Employment and Workplace Relations
GPO Box 9897
CANBERRA
ACT 2601

Re: National Employment Standards Exposure Draft

Please find enclosed the Bus Industry Confederation of Australia submission regarding the Exposure Draft of the proposed National Employment Standards.

This submission has been developed by the Bus Industry Confederation Industrial Relations Working Group, which is made up of representatives from each State.

The Industrial Relations Working Group would welcome the opportunity to make a further verbal submission to the Workplace Relations Policy Group.

Kind Regards,

A handwritten signature in black ink, appearing to read "M Apps".

Michael Apps
Executive Director

**NES EXPOSURE DRAFT SUBMISSION
GC 31**

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Department of Education, Employment and Workplace Relations
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PREAMBLE:

The Bus Industry Confederation is Australia's peak organisation, representing the interests of the bus industry. This encompasses bus operators, suppliers and associated businesses. The Bus Industry Confederation members represent over 4000 businesses, employing over 30,000 multi-skilled persons (i.e. drivers, clerks, cleaners, mechanics, engineers, designers, manufacturers, technicians) throughout Australia, with an annual turnover, which exceeds \$2 billion dollars. Approximately 75% of employees are drivers. Its members carry more than one billion passengers annually in Australia.

The main core business of the bus industry is passenger transport, both school student and adults. Each year private bus and coaches, approximately 17,000 in number, travel over 640 million kilometres with each school bus travelling approximately 50,000 kilometres per year and each school bus around 24,000 kilometres per year.

Bus and coach operations employ a mixture of permanent and casual labour depending on the nature of the work which can vary between contracted route services, morning and afternoon school services, short charters and long distance overnight tourist services.

The Bus Industry Confederation has initiated the formation of an Industrial Working Group whose role is to monitor changes in IR law, to collectively advocate an industry position and to act as a link between each State Bus and Coach Association with regard to future federal industrial instruments.

As a consequence and in response to the invitation of the Department of Education, Employment and Workplace Relations I wish to make the following comments in regards to the National Employment Standards Exposure Draft.

MAXIMUM WEEKLY HOURS:

The draft standard proposes that an employee's hours of work does not exceed 38 hours and that whilst extra hours may be required of an employee nevertheless an employee may refuse unreasonable additional hours.

RESPONSE

- The Bus Industry supports the introduction of a 38 hour week.
- The Bus Industry does however seek assurances that the Standard will not prevent the averaging of the 38 hour week over a 7 day week nor prevent the ability to negotiate hours of work over a 14, 21 or 28 day period.
- The issue of reasonableness to determine whether an employer can require hours of work needs to be defined so as to avoid extended conflict.
- The NES should stipulate that an employer will not be in breach where an employee works additional hours above the NES at their own volition.

FLEXIBLE WORKING HOURS:

The draft standard permits certain employees to request flexible work arrangements. That employee must be a parent of a child under school age with care and control. That request can be refused on reasonable business grounds.

RESPONSE

- The concept of flexible working arrangements can include reduction in hours, change to start and finishing times, working from home and job sharing. Most of these arrangements in the bus industry need to be fixed so that bus operators who are limited to fixed costs can accurately understand their costs. To do otherwise might result in financial losses.
- There should be a definition of what constitutes “reasonable business grounds” to avoid possible dispute resolution as to its constitution.
- There will be a significant cost to a bus operator for flexibility and this may necessitate additional cost to Government for contracts that are ‘cost plus’.
- Whilst the draft indicates that the standard is not subject to third party intervention it is hard to see how other jurisdictions such as HREOC can be excluded.

PARENTAL LEAVE

Families are recognized as carers for a two year period after the birth of a child in the family. This includes special maternity leave, pre-adoption, transfer to a safe job and consultation on the work undertaken on return.

RESPONSE

- The standard allows an employee to take 12 months and then give another 4 weeks notice that another 12 months is to be taken. This notice is too short as employers will have trouble getting other employees to work on the basis of the uncertainty of when the parent will return to work.
- The concept of a pregnant person being transferred to a safe job and if one is not available being paid notwithstanding can be abused and strict rules needed to be established.
- The transfer to a safe job should, if agreed to, be calculated at the base rate of pay for ordinary hours and should not include any previous entitlements. It is not practical in the bus industry where a previous job might have included significant overtime or penalty rates for weekend work for instance. A safe job may not provide the same hours and the jobs would be significantly different.
- An unintended outcome of the draft Exposure is the issue of how parental leave will/may relate to Long Service leave in the various States. In Victoria, for instance, the LSL Act provides for any absence approved by the employer as being continuous service and LSL accrues up until the absence from work is more than 48 weeks in any 52 week period.
- Whilst the draft indicates that the standard is not subject to third party intervention it is hard to see how other jurisdictions such as HREOC can be excluded.

- The issue of reasonableness to determine whether an employee can require parental leave needs to be defined so as to avoid extended conflict.

ANNUAL LEAVE:

An employee is entitled to 4 weeks leave for each year of service. An employer must not unreasonably refuse to agree to a request for leave and an employer cannot require an employee to take excessive leave.

RESPONSE

- The standard does not make it clear how the employer is required to accrue the leave. If it is to accrue progressively then does this mean that an employer is duty bound to record hourly accruals?
- To not provide for an accrual method is nonsense. Notwithstanding that the Regulations relating to record keeping and pay slips may be amended in the future under the Substantive Act it will be more onerous for business to have an ill defined accrual system. Making the record keeping requirement is a recipe for disputes between employer and employee. The current AFPC require monthly accruals.
- In the bus industry there are times when the work is less, such as school holiday times or at Christmas. Bus Operators need the opportunity to have some ability to require employees to take leave during non productive times.
- The issue of what is reasonable should be stated to avoid further dispute.
- To provide an accrual if an employee is sick whilst on leave will could result in considerable abuse of the process.

PERSONAL/ CARERS/ COMPASSIONATE LEAVE:

10 days paid leave is permitted along with 2 days unpaid leave.

RESPONSE

- BIC supports the concept of paying employees at their current base rate of pay, excluding overtime, bonuses, loadings etc.
- The ability to accrue progressively should be modified to allow for some period of service before it commences to accrue.
- To not provide for this accrual method is nonsense. Notwithstanding that the Regulations relating to record keeping and pay slips may be amended in the future under the Substantive Act it will be more onerous for business to have an ill defined accrual system. Making the record keeping requirement is a recipe for disputes between employer and employee. The current AFPC require monthly accruals.
- There is a concern that sick leave may accrue as carers' leave and will become a cost to the business rather than an accrual.
- The Bus industry has always had strict medical criteria and it is a requirement that bus drivers undergo periodic medical assessments.

COMMUNITY SERVICE LEAVE:

Employees are now entitled to leave for community service including jury service, voluntary emergency services and other prescribed services, along with travel time and rest time.

RESPONSE

- Bus Operators will need to be able to recoup the extra costs associated with this standard and should be able to offset against any payments permitted by the community service provider.
- Bus Operators should be able to submit application for exemption as an essential service for their employees that are required to provide essential services. (e.g. a single school bus operator)
- BIC takes the view that community service should be paid for by the community being served and that services should be co-ordinated to assist employers in prioritizing the use of the services.
- The circumstance where it would be reasonable for an employee to carry out the community service activity may mean that an employer has to make full payment where the employee has simply volunteered. This does not seem equitable to the employer.

LONG SERVICE LEAVE:

The standard will work in tandem with the various state legislations.

RESPONSE

- The standard needs to acknowledge that there are different provisions in various states and should not attempt to change those mechanisms. (e.g. Long service leave can be applied pro rata after 5 years in NSW and after 10 years. In Victoria long service leave is taken pro rata after 7 years)
- There should be no consideration of Long Service Leave being portable as this could lead to abuse.
- The key position for the bus industry is how the LSL provisions relate to redundancy. The justification used by the AIRC several years ago in The Redundancy test Case was that LSL did not become an entitlement until 10 years. In some States LSL is payable after 7 years and any redundancy provision needs to take account of the length and eligibility for LSL.

PUBLIC HOLIDAYS:

Employees are entitled to public holidays and an employer may request an employee to work on a public holiday.

RESPONSE

- The standard does not deal with how an employer should roster its employees on a public holiday.

TERMINATION AND REDUNDANCY:

The standard allows for reasonable notice for termination and a severance payment for employers of 15 or more.

RESPONSE

- BIC supports limiting this provision to employers with more than 15 employees and to those who have not been terminated for serious misconduct or during a probation period.
- BIC also supports those provisions that limit redundancies where there is a transmission of businesses and an employee transfers to the new employer or where an employer assist an employee to find a new job.
- The standard should be specific as to the circumstances under which these exemptions apply so that the prospect of dispute is minimized.
- It is interesting that previously the extra week for over 45's was considered discriminatory under other legislation.
- The key position for the bus industry is how the redundancy provision relates to LSL. The justification used by the AIRC several years ago in The Redundancy Test Case to support the provision of redundancy was that LSL did not become an entitlement until 10 years. In some States LSL is payable after 7 years and any redundancy provision needs to take account of the length and eligibility for LSL.
- It is not clear whether redundancy applies to all casuals including long term casual and this should be clarified.

FAIR WORK INFORMATION STATEMENT:

Fair Work Australia will publish a statement containing information about modern awards, agreement making, the right of association and their role of Fair Work Australia.

RESPONSE

- BIC supports the dissemination of information but queries whether industry will have the opportunity of making comments on the information to be disseminated before it goes out.
- There is no indication of penalties or record keeping requirements relating to the Information Statement. This could be important in relation to casuals where it is required to give information at each engagement, but not more frequently than once a year.

**Michael Apps, Chief Executive Officer
Bus Industry Confederation
2 April 2008**