

Fair Work Legislation Amendment (Closing the Loopholes) Bill 2023

The Minister for Workplace Relations, the Hon Tony Burke, MP, introduced the 3rd Tranche of IR Reforms into the Parliament, yesterday, 4 September 2023.

It is a comprehensive, significant piece of legislation which will have ramifications for our industry in several major areas.

Casual Employment

1. The proposed repeal of section 15A of the Fair Work Act 2009, (The Act), will change the meaning of casual employee to the “basis of the real substance, practical reality and true nature of the employment relationship” and enable the introduction of sanctions for employers, under section 359A of the Act, who misrepresent the contract of employment. This will add more pressure upon employers who employ, particularly school bus drivers, as casual employees, but employ them for continued and indefinite work. This may in fact be a breach of section 359A.

Section 359B also makes it an offence to dismiss an employee who is part time with a casual to do the same work.

Workplace Delegates Rights

2. A definition of ‘delegates rights’ in section 12 of the Act will provide Union delegates with guaranteed rights in all modern Awards and enterprise agreements. Some of the entrenched rights will be the right to represent the industrial interests of members, the right to communicate, not only with members but also other persons, eligible to become members. The draft Bill will provide for reasonable access to the workplace and workplace facilities and, unless a business is a small business, reasonable access to paid time during normal working hours for the purpose of related training.

The proposed Bill also allows for extended rights of entry to Union official if there is a suspicion of underpayment of wages. The Union needs to seek a specific order from the FWC which give them immediate right of entry without notice to the employer.

Wage Theft

3. Section 327A will make it a sanctionable offence to fail to pay certain amounts on their due date which will include payments under the Act or any fair work instrument. Sanction can be 3 times the amount unpaid, or up to \$1,500,000 for an individual and 10 years goal. The Fair Work Ombudsman will be given specific powers to enter a co-operation agreement with an employer to rectify the underpayment. Small businesses will also be given the opportunity to sign up to a voluntary small business wage compliance code (S327B) to avoid prosecution.

Road Transport Matters

4. This part of the Bill looks like a replacement for the previously abolished Road Safety Remuneration Tribunal which was created in 2012 and then dissolved in 2016. Previously it only applied to Road transport (freight, waste management and cash in transit), which excluded road passenger transport.

The Bill specifically includes the 'passenger vehicle transportation industry, (Section 15S of the Act).

There are references to the creation of a Road Transport Advisory Group, the setting of minimum standards to apply to 'regulated workers', including the rights of the FWC to determine awards, unfair dismissal, and wages claims.

Most of this section applies to employee like independent contractors (regulated workers). But the powers also extend to the Minister to make regulations as seen fit for the road transport industry, which is also passenger transport.

Other aspects of the draft legislation include.

- An addition to section 58 of the Act will now allow an employer to exit a multiple agreement, by bargaining for and entering into a new single enterprise agreement with their workforce, at any time.
- A direction to the FWC to determine model terms (flexibility, consultation, and dispute resolution) for enterprise agreements. Previously the model terms only applied to the modern awards, and it was implied that they would also apply to enterprise agreements. By drafting model terms for agreements, it would mean those clauses could not be watered down in negotiations.
- Section 30A introduces an offence of Industrial manslaughter which will extend to anyone in the workforce who is the person conducting the business, has the health and safety responsibilities, causes a death, or acts recklessly or negligent in causing death. Penalties range as high as 25 years in prison and a sanction up to \$18,000,000.00.
- Establishes a 'employee like' category and allows the FWC to set minimum standards for employees in digital platform and gig workers and to ensure that labour hire workers are paid the same rates as ordinary workers.

APTIA will spend the next few months working with its Industrial Working Group to understand the impacts of the new Bill. APTIA will also advocate changes where it is thought the Bill needs to be amended.

Eventually the Bill will pass in some form later this year and that will lead to the release of Industry Advisories dealing with the main topics.

Please contact APTIA – Ian MacDonald (mobile: 0427 206 326 or on email imacdonald@bic.asn.au) with your queries or thoughts.

The Bill is attached with this Industry E-Alert and will be placed on the APTIA website www.aptia.com.au

IMPORTANT DATES

- Recruitment and Retention Working Group “Think Tank” meeting – Thursday 21 September 2023
- Sydney - Thursday 14 September 2023, hosted by Navigate Work, NSW Parliament House
- APTIA Annual General Meeting – Sunday 29 October 2023, Adelaide
- National Conference (IR session) – Tuesday 31 October 2023

5 September 2023

Bus Australia Network

