

April 2021

The not so ominous Industrial Relations Bill

There has been a lot of muddy ground in recent months (since Dec 2020) relating to the government's 'ominous' IR Omnibus Bill. No less emphasised than the 'mud-pie' campaign by the CFMEU aimed squarely at the Prime Minister Scott Morrison depicted as a bus driver speeding towards a crowd of workers.

We think it is fair to say that many Australians and an even greater number of bus enthusiasts would have found the advertisement offensive. And yet the ad continued to run on paid-commercial outlets as late as end-March during a robust week in federal parliament when the Bill was undergoing scrutiny in both houses.

We thought it might be helpful to put some context around this Bill and why it all started in the first place.

In the beginning, it started with Covid-19 (in recent times – what hasn't?)

In May 2020, the PM announced his Job Keeper Plan to restart the economy post Covid. Part of this plan was to explore reforms to the industrial relations system to regrow jobs lost in the pandemic.

And so – the Attorney-General set about assembling five working groups made up of employees, employers, and industry representatives. The groups were tasked with the reform of five key areas that a) were known to be insufficient under current IR laws and b) had the greatest potential for job creation.

In essence, the outcome was particularly focussed on simplifying awards, measures to encourage enterprise agreements and fixing the vague definition of a "casual worker" – all good reform elements that would ultimately create and sustain jobs. APTIA (BIC's industrial relations arm) presented at one of the IR Reform Roundtables (August) considering casual and fixed term employment.

So far so good.

Well – not quite. By the end of October, the unions and businesses in these working groups, whilst agreeing that change was needed failed to reach a consensus.

Ok – so what was the Morrison government going to do now? No problems. How about putting the IR overhaul into one omnibus bill and negotiate amendment with the opposition bench and cross bench.

On 10 December, the government introduced its Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Bill 2020, representing the most significant change in industrial relations law since the Fair Work Act was introduced in 2009.

APTIA at this point revved its lobbying engine and started bothering members of parliament, Senators, Ministers and the Attorney-General to ensure that the most important component of the Bill did not fall off the 'truck' i.e., to provide a definition of casual employment and to allow those many school bus drivers of older age to remain casual as is their want.

A particular component of our agenda was to advocate our support for a definition of casual employment to end uncertainty within our industry, especially for school bus drivers and school bus operators. We also supported the need to ensure double dipping did not occur and that casual conversion would not be compulsory for those who chose to remain casual employees and enjoy the higher rates of pay.



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Regrettably, the opposition and the trade union movement decided not to negotiate for a better Bill but to oppose the Bill in its entirety. This strategy was hard to understand given the common ground achieved during the height of the pandemic and the fact that the Union movement had campaigned so hard for a definition of casual employment and for stronger penalties for underpayment of wages.

It was left to the cross bench who APTIA was able to meet with and impress that this Omnibus Bill was an opportunity that should not pass by.

On 18 March, the Bill underwent a chaotic debate between government and the crossbench in the Senate house. After a 10-month negotiation, the Bill now watered-down with one of the five components still intact, was sent back to the lower house for approval.

On 23 March, both houses finally reached a majority vote for the Bill and sent it onto the Governor-General for royal assent (law) which was completed on 27 March.

The most important thing for employers to consider right now is that all new casual employees should be employed under the umbrella of this amendment and it is important to ensure that the casual definition and the rights to casual conversion are clearly identified in any new letter or contract of employment.

APTIA will be reviewing how the legislation changes the way casuals are employed in public transport and what terms and conditions are now applicable when a casual is employed as such.

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