



## Don't legislate Skene away: Unions

Wednesday, October 10, 2018, 2:02pm

The ACTU's national executive has called on the Morrison Government to rule out changing the Fair Work Act to overturn the full Federal Court's Workpac decision, in which it found that a regular casual employee was entitled to leave payments.

The resolution, passed today in Melbourne, also queries whether a lobbyist and advisory firm acting for Workpac has told Senate crossbenchers that the Government has asked him and the company to explain the "significance and urgency of this matter".

The email by SAS principal consultant [John Short](#) reportedly asks senators to meet himself and Workpac's chair in coming days.

"We are currently in discussions with the Government on a simple amendment that would address the double-dipping issue," the email reportedly says.

"It would not involve any changes to the definition of what is a casual i.e. we believe this matter should not be regarded as an IR matter and, instead, should be seen as an issue as to fairness and protecting small and medium businesses."

The executive resolution condemns WorkPac for trying to "regulate away wages and conditions" after having lost the case (see [Related Article](#)).

"The ACTU executive calls on the Morrison Government to immediately rule out any legislation that would allow labour hire firms, or any employer, to continue to mis-classify workers simply to reduce their wages," the resolution says.

It also calls on the Government to "immediately reassure the Australian people that they have not directed, met with, engaged or otherwise used a lobbying firm to assist WorkPac in lobbying the Senate."

Employers led by the Australian Industry Group have called for legislative change in the wake of *WorkPac Pty Ltd v Skene*, arguing that it could cost billions of dollar in backpay (see [Related Article](#)).

In the decision, the court held that a FIFO mine driver's regular predictable working arrangements meant he was an employee entitled to benefits under s86 of the Fair Work Act, even though he was engaged as a labour hire casual.

WorkPac has decided not to appeal that decision, but the Ai Group has called for urgent changes to avoid "double dipping" by casual employees and the NSW Business Chamber has responded by applying to the FWC to create a new "perma--flexi" employment category (see [Related Article](#)).

Comment is being sought from WorkPac and IR Minister Kelly O'Dwyer.

**Meanwhile**, CFMMEU mining and energy division general president Tony Maher has written to Senate crossbenchers (see its [letter](#) to Senator Stirling Griff), saying the union is concerned that WorkPac and employer are misrepresenting the fact of the Skene case to exaggerate its impact.

"We believe they are fear mongering about 'double-dipping' in order to distract from the real issue – the misuse of "casual" employment by the big mining companies," Maher says in the letter.

Maher argues that the facts in *WorkPac v Skene* are unlikely to be replicated in other industries where casual employment is used in a manner closer to the legal definition of work that is genuinely irregular, intermittent and unpredictable.

He says the "permanent casual model" has been driven by the big mining companies using labour hire workers who are paid substantially less than directly-employed workers, even after the casual loading is applied.

In a statement, Maher said the Government should not be "encouraging big companies to hoodwink the crossbench senators into supporting legislative changes to further disadvantage casual workers."

"The *Skene decision* exposes the 'permanent casual' rot in mining, driven by multinational resource companies.

"Employer claims of a 'double-dipping' bonanza hitting small business are a straight-out con.

"Our decision-makers in parliament deserve to know the truth about the deliberate destruction of permanent jobs in regional communities."

## ACTU resolution – the rights of workers

The ACTU Executive condemns the labour hire company WorkPac for its attempts to deny workers access to fair wages and conditions. Having recently lost a federal court case where they had attempted to pretend an ongoing worker was casual in order to reduce that worker's, and thousands of others, pay and conditions, Workpac is now attempting to have the Morrison government intervene and legislate or regulate away the wages and conditions of thousands of workers in Australia.

The ACTU Executive is appalled to hear that WorkPac and the Morrison government have been conspiring together either with or through a lobbying firm in order to make representations to the Senate that would facilitate the cutting of wages and the stripping of conditions for thousands of workers who are not casuals but are ongoing employees.

The Morrison government's attempts to suggest that these workers who, having been engaged as casuals by this labour hire firm, are paid less than other ongoing employees they work alongside are anything other than the victims of a big business's attempts to maximise their profits by minimising workers wages are disgusting and demonstrate the Morrison government's contempt for working people.

The ACTU Executive calls on the Morrison government to immediately rule out any legislation that would allow labour hire firms, or any employer, to continue to mis-classify workers simply to reduce their wages.

The ACTU Executive calls on the Morrison government to immediately reassure the Australian people that they have not directed, met with, engaged or otherwise used a lobbying firm to assist WorkPac in lobbying the Senate.

The ACTU Executive reaffirms its commitment to the principle that workers doing the same job, having the same skills, needing the same experience should be paid the same rate of pay without being undercut by labour hire, sham casualisation or other mechanisms designed to undercut wages.

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