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## **EMBARGOED FOR PUBLICATION**

### **MONDAY 25 FEBRUARY**

#### **TEXT OF LETTER TO CROSSBENCH SENATORS**

Dear Senator

We are writing to urge you to reject Senator Doug Cameron's disallowance motion for the [\*Fair Work Amendment \(Casual Loading Offset\) Regulations 2018\*](#) (Regulations). Senator Cameron gave Notice of this motion on 13 February 2019 (see *Journals of the Senate*, page 4625). On 14 February, the Senate postponed consideration of the disallowance motion until 2 April 2019 (see *Journals of the Senate*, page 4671).

The Regulations are critical to protect businesses, small and large, against unfair 'double-dipping' claims for annual leave back payments by employees and ex-employees who were engaged as casuals and paid a casual loading in lieu of annual leave.

It is obviously unfair for an employee who applied for employment as a casual and who has been paid a 25% casual loading throughout their employment to turn around years later and claim thousands of dollars in back pay for annual leave. Casual loadings are paid in lieu of annual leave.

The Regulations were made following the unworkable decision of the Full Court of the Federal Court in the *WorkPac v Skene* case. In its decision, the Federal Court held that the term "casual employee" in the *Fair Work Act 2009* has no precise meaning and whether any employee is a casual for the purposes of the Act depends upon the circumstances, including the work patterns that occur after the employee has been engaged.

The very widespread and longstanding practice across virtually all industries is that an employee engaged as a casual and paid as a casual, is a casual. It is very common for casuals to work on a regular and systematic basis for extended periods, as this is what a large proportion of casuals prefer.

It is critical that all Senators reject Senator Cameron's disallowance motion. The disallowance of the Regulations would threaten the livelihoods of thousands of small business people and those who work for them.



As set out in the [Characteristics and Use of Casual Employment in Australia](#) report, published last year by the Commonwealth Parliamentary Library, over 80% of casuals work for Small and Medium Enterprises (SMEs):

- Over 51.4% of casuals work for small businesses with less than 20 employees;
- Over 30.7% of casuals work for businesses with 20-99 employees; and
- Less than 17.9% of casuals work for businesses with 100 or more employees.

There are a very large number of casual employees in every State.

Based on Ai Group's [analysis](#) of statistics from the ABS and the Household Income and Labour Dynamics in Australia (HILDA) survey, there are at least 1.6 million casuals who work on a regular, ongoing basis; and the potential cost impacts of the Federal Court's *WorkPac v Skene* decision on employers for annual leave alone are between \$5.7 billion and \$8 billion. No businesses would have made provision for these costs as they have already paid a casual loading in lieu of annual leave and other entitlements.

The number of casual employees who work for SMEs in each State and the potential costs of 'double-dipping' annual leave claims against SMEs is set out in the following table. The potential costs to SMEs range from \$2.165 billion in NSW to \$65.6 million in Tasmania.

State or Territory	Number of Casual Employees in the State / Territory <sup>a</sup>	Number of casual employees who work for SMEs in the State / Territory <sup>b</sup>	Proportion of the casual employees in Australia who work for SMEs in each State <sup>c</sup>	Potential cost of "double-dipping" annual leave claims by casuals against SMEs <sup>d</sup>
NSW	842,000	690,440	33%	\$2.165 billion
VIC	581,000	476,420	22%	\$1.443 billion
QLD	573,000	469,860	22%	\$1.443 billion
SA	195,900	160,638	8%	\$524.8 million
WA	269,400	220,908	10%	\$656 million
Tas	51,500	42,230	2%	\$131.2 million
NT	25,500	20,910	1%	\$65.6 million
ACT	45,300	37,146	2%	\$131.2 million
Australia	2,583,500	2,118,552	100%	\$6.56 billion

<sup>a</sup> ABS 6333.0 *Characteristics of Employment*, August 2018, Table 1c.3.

<sup>b</sup> 82% of the number of casual employees in the second column. 82% of casuals work for businesses with 0-99 employees.

<sup>c</sup> The numbers in column 3 converted to a proportion of the 2,118,552 casual employees who work for SMEs

<sup>d</sup> 82% of the potential \$8 billion cost (see Ai Group's [analysis](#)) of "double-dipping" claims by casual employees (i.e. \$6.56 billion). This is an estimate of the potential claims against SMEs. The relevant proportions in the fourth column have been applied to the \$6.56 billion total.



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The cost risks will drive many businesses, small, medium and large, into insolvency, leaving taxpayers to fund the entitlements through the Fair Entitlements Guarantee Legislation.

This issue threatens thousands of jobs, including the jobs of young people who rely heavily on casual employment.

It is therefore vital that Senator Cameron's disallowance motion is roundly rejected by the Senate. Your decision to reject the motion would be greatly appreciated.

We would be happy to provide any further information that you may require about this important matter.

Yours sincerely

**Innes Willox**  
Chief Executive