



# Bosses' \$14bn double-dip backpay risk

EWIN HANNAN  
WORKPLACE EDITOR

Labour-hire firm WorkPac has sought special leave to appeal against a landmark casuals ruling to the High Court, submitting new evidence claiming employers are exposed to \$14.2bn in backpay claims.

WorkPac will seek to overturn last month's full Federal Court ruling that workers on regular casual shifts will be entitled to seek paid leave.

On Wednesday, Attorney-General Christian Porter said: "Given the significance of the full Federal Court's decision, I can confirm, as I indicated the day after the decision, that the government will intervene in the appeal to the High Court.

"This decision has caused confusion and uncertainty and has the potential to expose businesses to significant financial liability during a period where (they) are facing their greatest challenge."

Australian Mines and Metals Association chief executive Steve Knott said the government should seek to legislate a new definition of casual employment and "not await the outcome of a tortuous High Court appeal process".

In a major win for unions, the full Federal Court upheld a ruling that casuals who had worked regular and predictable shifts — and been paid a 25 per cent loading — were entitled to paid leave.

It rejected a bid by WorkPac to have a former employee, Robert Rossato, declared a casual em-

ployee who was not entitled to paid leave.

WorkPac, which has engaged Bret Walker SC and Ian Neil SC, said the Rossato decision would "overturn the commonly accepted understanding of casual employment in Australia, where employees receive a higher rate of pay in lieu of leave entitlements".

"This judgment, if it stands, would expose tens of thousands of Australian businesses to double-dipping backpay claims for up to

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ACTU SECRETARY

six years," it said. "This would have a devastating impact on small, medium and large businesses already reeling from the COVID-19 pandemic."

In economic evidence filed in support of the special leave application, the Australian Industry Group estimates the Federal Court decision, if it stands, would potentially expose small, medium and large businesses to up to \$14.2bn in double-dipping claims.

Of 2.6 million casual employees in Australia, 1.35 million have worked regular shifts for a current employer for 12 months or more.

Ai Group says the total aggregate cost of granting past annual

leave entitlements to casual employees who work regular shifts and who have been employed for at least 12 months by their current employer would be approximately \$10.3bn. It says the total cost of granting past personal/carer's leave entitlements to this category of casual employees would be about \$2.3bn, and redundancy pay would cost \$1.6bn.

Mr Porter said given the potential for the full Federal Court decision "to further weaken the economy at a time when so many Australians have lost their jobs, it may also be necessary to consider legislative options. I am continuing to take advice on potential legislative options."

ACTU secretary Sally McManus said "employers need to accept that if people are working in permanent jobs with regular ongoing hours, they should have permanent rights like sick leave and annual leave".

"The practice of labelling a permanent worker a casual and leaving them with less rights needs to stop," she said. "What's even worse in this case is that the so-called 'casual' workers were earning less than the permanent workers they worked alongside of."

"It would be better for everyone if the employers in question just accepted that casualisation has gone too far and worked with us on solutions."

CFMEU national president Tony Maher said WorkPac and the employer lobby should stop throwing money at lawyers and address this issue by stopping the unlawful treatment of casuals.