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## New union battleground in oil and gas sector

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The ACTU wants to expand the Albanese government's "same job, same pay" laws into the lucrative oil and gas sector and extend their reach into rosters and leave conditions as part of a review of the workplace reforms.

The proposed expansion clashes with the resources employer group, which argues the service contractor exemption it negotiated with Labor was already not working as intended and needed to be strengthened to ward off meritless union claims on major LNG projects.

The laws' coverage of the offshore sector is expected to face its first major test in May, when the Fair Work Commission hears the Electrical Trades Union's claim against a tier-one service contractor at Ichthys LNG plant.

The "same job same pay" laws ensure labour hire workers earn the same as direct hires and were part of the Closing Loopholes legislation.

In a draft copy of the ACTU's submission to the statutory review obtained by *The Australian Financial Review*, the union body accepted the laws had been mostly successful, but needed to extend to other conditions – such as paid leave, rosters and redundancy – and capture state and local government agencies.

The government should also narrow the service contractor exemption, the ACTU said, as this had "significantly hampered the ability to use this new framework to assist employees in offshore hydrocarbons".

"The offshore hydrocarbons sector is completely rife with contractors taking up most of the work being performed," the submission said.

"They are very rarely specialist workers and almost always paid far less."

The Australian Resources and Energy Employer Association said offshore contractors were "precisely the type of arrangements AREEA envisaged would fall outside the scope of the SJSP regime when negotiating the service contractor exemption".

Recent rulings, however, have raised the level of discretionary interpretation and evidence required for employers to trigger the exemption.

"FWC's interpretative approach has materially lowered the practical threshold for initiating SJSP applications against genuine service arrangements, exposing businesses to significant cost, disruption and uncertainty and creating strong commercial incentives to settle rather than litigate jurisdictional questions to finality," the submission said.

Since the laws came into effect in 2024, unions have launched applications against labour hire firms in the coal industry, including BHP subsidiaries, as well as at major retail distribution centres such as Kmart and Metcash.

But the offshore oil and gas is new territory and has a higher price.

Unions have in the past year lodged four claims against service contractors at LNG projects, including Esso's Bass Strait facility and Chevron's Barrow Island LNG facility, in pursuit of big pay rises between \$60,000 and \$120,000 per worker.

In all but one of the cases, unions have either resolved the claims privately or withdrawn them before a ruling.

However, at the end of last year, the ETU lodged a claim against tier-one maintenance contractor Monadelph-

ous over 50 electrical workers at Inpex's Ichthys LNG project.

"We intend to test these laws to the full and make sure employers are not trying to circumvent them by introducing tricky corporate structures in an effort to avoid paying workers properly," ETU West Australian secretary Adam Woodage said.

Monadelphous is preparing to fight the claim at a hearing in May on the grounds that it is excluded as a specialist services contractor.

A decision in the union's favour is expected to have broad ramifications for the contractor's workforce.

But the ACTU urged the government to change the legislation to capture the sector's non-traditional labour hire by allowing the commission to consider the past work of direct-hires when determining if there was a "same job".

It cited Shell's Prelude LNG facility, which used to directly hire storepeople and material controllers before putting the work out to tender in 2021.

It said the successful contractor now offered wages 40 per cent less than the direct hires.

AREEA argued the exemption needed to be more robust and warned that uncertainty threatened to clog up FWC even further after its president warned of an unsustainable workload from artificial intelligence-driven dismissal claims.

"The last thing the FWC needs is to be dealing with a large number of contested, speculative SJSP matters."