

# MEDIA RELEASE

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## High Court ruling on striking FIFO workers shows legislative change needed

AMMA is calling on the next Federal Government to enact legislative change in the wake of today's High Court [decision](#) which will risk rewarding workers for taking industrial action on remote sites while employers are left hemorrhaging cash and forced to pick up the tab for high-quality accommodation.

Today's decision was the latest in a series involving the CFMEU and Mammoet Australia Pty Ltd in relation to industrial action taken by workers on Woodside's Pluto Project in April 2010.

Originally, the Federal Magistrates Court found that providing accommodation to striking workers was prohibited under the Fair Work Act because it constituted 'strike pay' and the employer was right to withdraw it. In 2012 the Federal Court upheld this decision after the CFMEU appealed.

However this morning the High Court set aside the decisions of both the Federal Court and Federal Magistrates Court (now the Federal Circuit Court), remitting the matter back to the Federal Circuit Court to be heard and determined afresh.

The High Court's key finding was that the enterprise agreement covering the parties meant the employer was required to provide accommodation for as long as the employment relationship continued, regardless of whether employees were performing work day-to-day. But regardless of that, the company's denial of accommodation constituted an alteration of employees' position to their prejudice and constituted "adverse action" against them, it said.

AMMA chief executive Steve Knott said if the current legislation was to operate even remotely fairly, employers would have the right to mitigate their costs by withdrawing accommodation from striking workers who were acting against their commercial interests.

"It appears that under Labor's 'Fair Work' laws, union bosses can now organise strikes and have their members work on their suntans around the pool, all while the employer is not only hemorrhaging millions of dollars a day in lost production, but is also obliged to provide them with catering and accommodation," Mr Knott said.

"Periods of extended strike action and the idle time this presents for employees on remote sites also creates unacceptable risks to employers and adds to their insurance and work health and safety liabilities.

"In this way, the damages bill resulting from legally sanctioned strike action can quickly run into millions of dollars a day on mega resource projects. The notion of employers being forced to provide employees with food and lodging when they are both not working and damaging the commercial interests of the employer is absurd."

An AMMA-commissioned Deloitte Access Economics [report](#) highlighted the business case for a number of potential projects in the investment pipeline was dissolving, and further cost pressures could see major projects foregone.

"With Australia's resource industry already being high-cost and low-productivity, additional business costs arising from decisions such as this one must have the international investment community scratching their heads," Mr Knott said.

"Accordingly, AMMA will be making representations to the major political parties on the need for reform of the Fair Work Act in the wake of this decision."

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