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20 February 2019

Senator Brian Burston
PO Box 6100
Parliament House
CANBERRA ACT 2600

email: senator.burston@aph.gov.au

Dear Senator,

Fair Work Amendment (Casual Loading Offset) Regulations 2018

Members of Australian Resources and Energy Group AMMA are highly concerned by a disallowance motion tabled by Australian Labor Party Senator for New South Wales, Doug Cameron, on 13 February 2019, which seeks to overturn the *Fair Work Amendment (Casual Loading Offset) Regulations 2018* (**Regulation**).

The retention of this Regulation is critical for upholding the longstanding common understanding of casual employment. This, in turn, is critical for ensuring employers which support hundreds of thousands of Australian jobs are not put at risk by unfair exposure to mass claims for back-paid entitlements, including those organised by opportunistic and overseas-funded class action law firms.

The Regulation was introduced by the Minister for Jobs and Industrial Relations in December 2018 in response to the urgent need for clarity around the rights and responsibilities of employers and employees in relation to casual employment.

The cause for this urgency was the Full Federal Court decision in *Workpac v Skene* which effectively overturned the common understanding of the right to entitlements of casual employees. While there were unique circumstances to this matter, the Court seemingly reversed the general principle that where an employee had accepted a higher rate of pay for being casually engaged, they should not be able to also claim for back-paid permanent entitlements such as annual leave and redundancy.

By challenging this principle, the decision exposed hundreds (if not thousands) of Australian employers to potential claims for back-paid entitlements from former casual employees who had knowingly and willingly accepted a higher rate of hourly pay in lieu of those entitlements.

Importantly, the Regulation does not prevent any casual employee from challenging the status of their employment (e.g. by arguing they are in fact permanent based on their employment characteristics), nor does it prevent any casual or permanent employee from making a claim for unpaid entitlements. Its function is simply to clarify that where an employee had accepted a higher rate of pay for being casual (a “casual loading”), that loading could be potentially deducted from any entitlements awarded in the case the employee was later deemed to have in fact been permanent.

The Regulation therefore brings the legislation in-line with the common understanding of casual arrangements in Australian workplaces and ensures casual workers cannot “double dip” on both casual loading in their hourly pay rate as well as entitlements reserved for permanent employees. It is highly irresponsible of the Federal Opposition to attempt to throw this important clarification out the door, effectively recreating the uncertainty for employers both small and large, which impacted hiring decisions and business confidence in 2018.

We urge you to vote in support of business confidence, clarity and common sense if and when the ALP’s disallowance motion comes before you. For more information on this matter, I can be contacted via Tara.Diamond@amma.org.au or 0418 324 181.

Yours faithfully,

Tara Diamond
Acting Chief Executive