



Senator Malcolm Roberts
One Nation Senator for Queensland

26 June 2023

Hon. Tony Burke MP
Minister for Employment and Workplace Relations
PO Box 156
PUNCHBOWL NSW 2196

Dear Minister Burke

I am writing to you with respect to the meetings that have taken place with members of your department, the Department of Employment and Workplace Relations (DEWR).

The first meeting took place in Sydney at 1 Bligh Street on April 26, 2023.

The parties involved from your DEWR included Mr Daryl Watkins, Mr Alistair Sage and Ms Sophie Ismail.

I attended this meeting with my legal advisor, Mr Hugh Carter, together with Mr Simon Turner and Mr Sam Stephens, the affected coal miners who hold key documents and evidence that show the direct failings and cover up of statutory Award entitlements not being paid.

We discussed the serious issue of the Fair Work Commission (FWC) proceeding to approve an Enterprise Agreement (EA) that does not pass the Better Off Overall Test (BOOT) and contained false and misleading statutory declarations made by the employer, Chandler MacLeod, and the CFMEU's Mr Shane Thompson.

This evidence was provided to your most senior departmental representatives.

Furthermore, they have been sent emails containing additional documents that cement the failings of the FWC in all matters that were encompassed in the meeting.

At the same time that this FWC hearing and the submission of the 2015 EA was submitted, Chandler Macleod sent a letter to Mr Peter Jordan, CFMMEU Mining and Energy Northern NSW President dated 14 April 2015.

The first part of this letter states:

"I refer to our meeting on Monday 13 April 2015, where Col Ongley and I attended a meeting with yourself, Shane Thomson –Vice President and Alex Bukarica-National Legal Director.

The CFEMU convened the meeting to discuss its views and a possible resolution to the issues it has with respect to Chandler Macleod's:

- *variation process of the Gunnedah Basin Coal Mining Agreement 2014 to extend coverage to employees engaged at other sites including the Hunter Valley;*
- *engagement of casual employees at the Mount Arthur Coal (MAC) site."*

This meeting took place after the FWC hearing on 23 March 2015, which was a hearing to deal with a dispute for the failure of Chandler Macleod to meet the terms and conditions of the Black Coal Mining Award 2010.

The employees involved in this dispute have never been paid all statutory legal entitlements that the Black Coal Mining Award confers.

Mr Burke, this matter must be re-examined and all back pay and entitlements paid with additional compensation for severe economic and social suffering.

It is clear to see from this meeting on 13 April 2015, at which the union's Mr Shane Thompson, Vice President and Alex Bukarica, National Legal Director agreed that *"The CFMEU would agree to cease from any current and future actions and claims (in its own right or on behalf of members) directed towards ventilating and agitating its view that employees currently engaged by Chandler Macleod companies as casuals to perform black coal mining production work may be entitled to "leave and other entitlements" associated with permanent employment or that Chandler Macleod is not paying employees their "lawful terms and conditions".*

This letter, which we hold a copy of, is damning as to the cosy deal the CFMEU in the Hunter made with Chandler McLeod. Miners in the Hunter would be stunned to know their union was working against the members.

It is now abundantly clear that the CFMEU and the employer, Chandler Macleod, along with the approval of the FWC, denied the back payment of all Black Coal entitlements for full time employees and then doubled down on these actions by negotiating and endorsing an enterprise agreement that removed the legal minimum statutory requirements.

This EA could not have satisfied the BOOT. Mr Turner holds evidence supplied from the FWC that shows the BOOT was not applied to the EA before it was put in place. This is industrial relations fraud.

I have in my possession more documents provided to me by Mr Turner and Mr Stephens that prove this beyond doubt.

Mr Turner and Mr Stephens have emailed additional documents to Mr Sage and Ms Ismail and have not received a response or acknowledgement.

On 18 May 2023 Mr Turner and Mr Stephens attended a second meeting at the offices of DEWR, Marcus Street, Canberra between your senior officers, Mr Daniel Tracey and Ms Jen Wettinger.

At this meeting Mr Turner and Mr Stephens discussed in great detail the following issues.

- The FWC's Stanton matter, where workers were employed illegally under the Award.
- Going from full time under the Award to an EA covered employee as a casual but working the same full-time roster.
- The hours worked under the roster were above the threshold of full- time employment as set out in both the Award and the NES.
- Coal LSL is keeper of these illegal records.
- Coal LSL had zero employees from 1993 to 2017.
- Coal LSL contracted out the administration and record keeping to Auscoal.
- Auscoal is owned 50% by the CFMMEU, 25% by the NSW Minerals Council and 25% by the Queensland Resources Council.

- The DEWR has always overseen Coal LSL.
- In 2018 the FWO declared in writing to Mr Turner - *“there is no enterprise agreement capable of covering the employer and employees”*.
- In November 2021 the FWO Investigator, Mr Robert Evans, opened a new investigation into this issue.
- On 9 May 2022 FWO closed the investigation and determined that Mr Turner’s employer was Ready Workforce, not Chandler Macleod and therefore the Award did not apply.
- The FWO Investigator used a falsified PAYG Summary to arrive at this decision.
- This was in direct conflict with the following: the FWC Stanton matter, Altobelli Decision, Australian Taxation Office (ATO) held documents, Coal LSL records, Mine Super Records, all employee’s pay slips and the letter to Mr Turner from the ATO that stated there was no employment relationship between Mr Turner and Ready Workforce.
- This Fair Work Ombudsman (FWO) decision is now under review and the DEWR’s assistance at this level would be timely.

At the end of the meeting Mr Tracey gave Mr Turner and Mr Stephens a commitment that he would go to the FWO seeking answers as to how this happened and how to rectify the situation.

Ms Wettinger gave a commitment that she would meet with the Coal LSL Board and CEO to get some answers regarding all Coal LSL issues.

Have these promised actions taken place yet?

Mr Turner and Mr Stephens have emailed Mr Tracey and Ms Wettinger additional documentation to prove beyond doubt these very serious and concerning issues.

Mr Burke, you are the Minister responsible for the FWC, who have sanctioned these EA that do not satisfy the BOOT. This **must** be remedied.

You are the Minister responsible for the poor response from the FWO.

You are the Minister responsible for the total failure of governance of Coal LSL. This failure is enabling and hiding serious conflicts of interest and fraud.

All the miscalculations on pay must be remedied first, as all other actions related to superannuation and long service will need to be recalculated.

We have noted connections in some matters between CFMEU owned or connected labour-hire companies and Eddie Obeid, Ian MacDonald and John Maitland.

Senator Watt wishes to have my support for Same Job, Same Pay Bill, but the solution in the case of the Hunter Valley coal miners is simple. Restore the superior minimum terms and conditions of the Black Coal Award and enforce them.

An EA can be overturned and deemed void. The EA covering the miners in the Hunter needs to be overturned immediately and the miners paid their award entitlements. **We need full application of the law as it stood when these breaches occurred. All of the necessary lawful protections were in place to stop this abuse of casual miners, yet the FWC and FWO went around it, or at the least, ignored it.**

The inhuman treatment of Mr Turner over the last nine years has its roots in the inadequacy of the Fair Work Act (FWA) and its instruments including the FWC and FWO. The FWA is overly complex, needlessly prescriptive, excessively lengthy and structured such that it does not protect workers and small businesses.

The FWA's complexity of entrenching the current system favours the industrial relations club, which consists of lawyers, consultants, industry and employer associations, large moribund unions, including union bosses wielding personal power and monopolising coverage, and large multinationals. This creates and exploits loopholes inherent in complex legislation and avoids accountability. The FWA has comprehensively failed and is not fit for purpose.

Instead of the current system protecting the "IR Club", workers need a system protecting all workers and honest small businesses, honest employers and honest union delegates. It must be a system with simple, clear protections that all workers and employers can readily understand and access. It must be a system with severe penalties, including jail, for employers and union bosses who violate fundamental and basic rights, protections and entitlements.

Rather than adding more complexity and length to the FWA, it needs to be terminated and replaced with new legislation that is simpler, principles-based and contains real penalties for breaches.

Minister, your actions need to be now. The injured and broken coal miners deserve this, immediately.

Mr Turner needs to be paid his legal and lawful entitlements. These practices need to cease and be rectified in both the Queensland and New South Wales coal industries.

Mr Turner's quest for justice being brought against his employer Chandler MacLeod, its commercial partner Hunter CFMEU and relevant senior office holders and the mine owner BHP, need to be fulfilled.

Yours sincerely



Malcolm Roberts
Senator for Queensland