Senator Malcolm Roberts
One Nation Senator for Queensland

19 September 2023

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

Dear Minister Burke

Your so-called "Closing the Loophole" and "Same Job Same Pay" legislation is a cover up of what has occurred in the Coal Mining Industry using labour-hire in illegal CFMEU enterprise agreements.

There is no loophole!

Simply doing your job to enforce the *Fair Work Act 2009* will rectify the problem and lead to miners being paid potentially billions of dollars in back pay.

Miners must be paid their unpaid, lawful minimum statutory entitlements for which the Black Coal Award 2010 (BCMIA, the Award) and the National Employment Standards (NES) legally provide.

Both these statutory laws have been comprehensively breached.

An enterprise agreement or an employment contract cannot remove or displace statutory law.

Chandler Macleod employees at Mt Arthur coal mine were fulltime Black Coal Mining Award covered employees and were NOT paid all their lawful statutory entitlements. Those same fulltime employees then became illegal casual employees under an enterprise agreement that was approved by the Fair Work Commission (FWC). The agreement application contained false and misleading statutory declarations by the employer and CFMEU representative.

The FWC did not apply the agreement analysis checklist or the BOOT test for this agreement. The employees continued to work the same fulltime rostered hours, were called casual in the agreement, took a pay cut and were paid much less than the Award. All statutory entitlements that could NOT be removed or displaced under the agreement or contract were removed.

The CFMEU ran a matter at the FWC for this breach in March 2015 and no back pay of entitlements occurred. The illegal classification of C (casual) is on record still with Coal LSL. The CFMEU owned company Auscoal / Mine Super administered all Coal LSL functions at that time.

The FWC and Fair Work Ombudsman (FWO) are responsible for administering the law and simply need to do their jobs enforcing the Fair Work Act.

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The core problem exploiting central Queensland and Hunter miners can be rectified easily.

Your failure to do so will make you complicit in covering up the exploitation of tens of thousands of hardworking miners.

I remind you that I worked at the coalface in central Queensland and in the Hunter Valley mines as a member of the mining union. I later managed Central Queensland and Hunter mines, where I witnessed the mining union initiate the coal industry's first labour-hire firm in the 1980/1990s.

More recently, the Hunter CFMEU negotiated and endorsed unlawful enterprise agreements that removed statutory entitlements that the Award and NES provided. "Casual" labour-hire employment could only be introduced into the black coal mining industry when under an agreement and not under the Award.

These coal mining labour hire enterprise agreements fail the legislative checklist, including the Better Off Overall Test (BOOT), and pay less than the Black Coal Mining Industry Award, which is the legal statutory minimum that must be paid.

The FWC defines what better off means:

> "*EVERY Award covered employee or prospective employee must be better off overall*".

If ANY employee is not better off overall, the relevant enterprise Agreement does not pass the BOOT.

The FWC should never have endorsed these Enterprise Awards that the CFMEU signed with labour-hire firms, because these enterprise agreements failed the BOOT test.

This failure and deliberate avoidance of statutory entitlements can only happen with the contribution of the FWC turning a blind eye and failing to administer the legislation that they are obliged to carry out under the Fair Work Act 2009.

The FWO, senior management and an investigator using fake documents and ignoring all legislation and law that applies, constructed a false employment relationship and removed statutory law and legislation that applies.

Both Commonwealth agencies have failed to enforce the *Fair Work Act 2009*, the NES and the Award.

I suggest corrupt conduct may have occurred. The National Anti-Corruption Commission (NAAC) defines corrupt conduct in annexure "A" (see attached).

At best, this was a fatal error that has led to stolen wages on a massive scale and unprotected workers whose working conditions have been unlawfully removed.

The Department of Education and Workplace Relations (DEWR) is responsible for the following departments that are all involved in unlawfully applying the *Fair Work Act 2009*:

- Fair Work Ombudsman;
- Fair Work Commission; and
- Coal Mining Industry Long Service Leave Funding Corporation (Coal LSL).

Others involved include:

- Commonwealth employees of these government authorities;
- Past and present Ministers;
- The CEO, Board and others from Coal LSL;
- CFMEU union bosses; and
- The company the CFMEU jointly owns, Auscoal Super, which had contracts to administer and carry out all functions of Coal LSL from 1993 up until 2017.

Coal LSL had zero employees for those years. Employees of the CFMEU-owned company carried out all of Coal LSL's administrative functions.

Yet the Government entity is legislated to carry out these functions.

Auscoal collected Coal LSL monthly payroll levies on behalf of Coal LSL. These funds are sent to the Commonwealth Government Consolidated Revenue Fund and then appropriated back to the Coal LSL corporation via the DEWR.

Coal LSL must submit yearly annual reports to the employment minister.

Auscoal managed Coal LSL's records of employed miners. Yet from 1993 to 2017 these yearly annual reports that Auscoal provided on behalf of Coal LSL failed to report any issues or disputes.

Coal LSL had zero employees for those years, because the CFMEU-owned company Auscoal, under contract, managed Coal LSL's administration and record keeping.

Others involved are:

- The labour-hire firm Chandler Macleod Group Limited (CMG), ABN 33090555052;
- Its senior managers;
- Their lawyers; and
- EY Accountants (employer payroll audit).

These groups relied on false documents provided to the FWC, FWO, the Federal Court, Centrelink, Australian Taxation Office (ATO) and Coal LSL. These documents included false and misleading documents given to CMG employees.

The CFMEU owns 50% of Auscoal. The NSW Minerals Council owns 25% and QLD Resources Council owns 25%.

Coal LSL has been collecting money and keeping records of coal miners on behalf of the Commonwealth Government for an illegal employment classification in the coal industry. All those employees are employed illegally and have all been paid well below the legal statutory minimum of the Black Coal Award. That classification does not exist in the Black Coal Award and has no legally identifiable pay rates that can be found in the relevant FWC/FWO pay guide.

The Black Coal Award underpins the Coal LSL legislation. Coal LSL is a government corporation. The only way a coal miner can be employed in the Black Coal industry as a "casual" is via a CFMEU negotiated and endorsed unlawful enterprise agreement which does not comply with the Fair Work Act 2009 safety net.

Enterprise agreements cannot contain offensive terms. A term such as "casual" is offensive because hours of employment on the roster are all above the full-time threshold under the award, as discussed below.

Auscoal kept the records of all employees in the coal industry via Coal LSL and Auscoal superannuation. Auscoal entities knew the weekly wage of each black coal miner.

Auscoal was given a contract with the government to administer and carry-out Coal LSL's legislated functions.

Many full time labour-hire coal miners work on a 12.5 hr four-panel roster that is exactly the same as the roster that directly employed mine owner employees work. Yet on this roster, calculation of the award value reveals that CFMEU enterprise agreements pay much less than the Award.

A coal mine worker who works this 12.5 hr 4 panel rotating roster has weekly work hours above the fulltime threshold of 35 hours for the Award and 38 hours for the NES. That makes it impossible to be casual.

Why does the FWC not check these enterprise agreement applications? What has happened to due diligence?

The CFMEU makes these illegal agreements and the CFMEU part owns the companies that hold the records of the illegal casual employees' weekly wages. These companies currently include Mine Super Services Pty Ltd, holders of the vast majority of miners superannuation accounts and records of the compulsory employer Superannuation Guarantee payments. The other company is Coal Mines Insurance, holding certificates of currency for the employer's yearly wage declaration for workers compensation. Coal Services owns Coal Mines Insurance, and the mining union owns 50% of Coal Services.

In the past, Auscoal Superannuation holds the records of the compulsory employer contribution of the weekly wage, as well as the Coal LSL compulsory employer weekly levy payments, because Auscoal had the contracts to administer Coal LSL on behalf of the Commonwealth Government from 1993 to 2017.

The Hunter mining union had conflicts of interest and opportunity to access, use and hide miners' employment details.

I met with officials from the DEWR at the Commonwealth Parliamentary Offices, Bligh Street, Sydney. At that meeting former coal miners, Mr Simon Turner and Mr Sam Stephens, provided them with numerous hard copy documents as evidence.

Subsequently, Mr Turner and Mr Stephens met with more senior personnel at the DEWR offices in Canberra. Again, Mr Turner and Mr Stephens gave a detailed briefing and provided written evidence.

Mr Stephens, Mr Turner and I are concerned that since your "*Same Job Same Pay"* and "*Closing the Loophole"* Bills have been introduced, and since the FWO has refused to provide further assistance to Mr Turner, this looks like an attempt to quash their efforts to obtain their legal and lawful minimum statutory entitlements that must be paid.

This is really dirty politics!

I expect better of a government that claims it is interested in transparency and in fixing a broken industrial system.

On numerous occasions Mr Turner and I have separately written to the previous and current member for the federal seat of the Hunter Valley, Mr Joel Fitzgibbon and Mr Dan Repacholi. Neither have replied.

Enforce the FWA to give Mr Turner and thousands of miners their entitlements and fix the broken system!

Yours sincerely

Malcolm Roberts
Senator for Queensland

c.c. Mr Simon Turner
Mr Sam Stephens

Annexure A

The National Anti-Corruption Commission has defined the meaning of corruption as:

"conduct of any person that adversely affects a public official's honest or impartial exercise of powers or performance of official duties

- *conduct of a public official that involves a breach of public trust*
- *conduct of a public official that involves abuse of office; and*
- *conduct of a public official or former public official that involves the misuse of documents or information they have gained in their capacity as a public official, involves, or could involve, a public official.*
- *is, or could be, corrupt conduct under the NACC Act, and*
- *could involve serious or systemic corrupt conduct*

Public officials include ministers, parliamentarians and their staff, and staff members of Commonwealth agencies. Staff members of Commonwealth agencies include individuals employed by or engaged in assisting the agency, and contracted service providers under Commonwealth contracts administered by the agency. However, the National Anti- Corruption Commission can investigate any person, even if they are not a public official, if they do something that might cause a public official to carry out their official role other than honestly or impartially.