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ROBERT GOTTLIEBSEN

The decade-long 'scam' robbing some of our miners



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Before being elected to the Senate, Malcolm Roberts was a coal miner, following in the tradition of Australia's sixth Prime Minister Joseph Cook.

Some five years ago, a small group of coal miners came to Roberts telling him they believed they were not being paid correctly — but they couldn't work out what was wrong.

At the time, Roberts had no idea he was on the edge of uncovering what he calls a "scam" which has the potential to be Australia's largest ever wage underpayment scheme.

It involves thousands of NSW coal miners who for over a decade have worked long hours underground as casual labour, but did not receive the 25 per cent "casual" premium workers all over Australia receive.

There are some 227 members in the Australian parliament, covering almost every political persuasion. I would have thought this is an issue which would unite all of them irrespective of party.

The loophole needs to be closed and some estimate of back pay calculated. It is the nation's greatest loophole and could involve hundreds of millions because it has been in existence for up to 10 years in some cases.

Roberts' underpayment allegation is backed by independent experts who have trawled through endless documents to discover how the workers came to be underpaid.

And what makes Roberts' discoveries alarming for all involved in the industrial relations system is the underpayments were engineered by a government body, a union and the employers. This was no accident.

Roberts — now part of the One Nation party — explained to parliament on Wednesday how the scheme was constructed.

First, a clause in the Black Coal Mining Industry Award covering some central Queensland and Hunter Valley coal mines actually makes it illegal for mine employers to have casual employees.

Second, labour hire companies tell the mining companies they have found a way to offer them casual labour and the miners quickly agree to allow casuals to mine their coal, given the attractive price offered by the labour hire companies.

Third, five labour hire companies negotiate casual labour enterprise agreements either with the CFMEU directly or where the mining union endorses the agreements. These agreements, some of which date back to 2018 and beyond, enable labour hire companies to hire miners on a casual basis without paying the Australian standard 25 per cent premium for casual labour.

Fourth, these radical agreements are then presented to the Fair Work Commission for approval. In almost every other situation in Australia, the Fair Work Commission would throw them out with little debate.

Instead, they approved the casual labour with no 25 per cent margin deals.

The coal agreements are subject to what is called the "better off overall" or BOOT test. In any normal situation, there is no way a coal miner can be better off not receiving a 25 per cent premium when compared to all other awards that have the standard premium.

But because the black coal award makes it illegal for coal miners to hire casuals, the better off test is matched against an award which does not include casuals.

Fair Work therefore decided the BOOT test does not apply because there is no casual rate to compare it with.

Roberts describes this arrangement as “legal trickery” and one would have thought an active union would have torn the no casual pay arguments to shreds. The Fair Work Commission after lengthy legal arguments approved the enterprise agreements.

Fifth, Roberts made representations to Fair Work, but they would make no change. He also made direct representation to workplace relations minister Tony Burke, seeking responses to the coal miner's wage theft in the light of the labour government's loophole bill. Nothing has happened.

Roberts has moved an amendment to the current legislation to close the loophole, demanding the three involved groups — the work hire employers, the CFMEU and Fair Work — repay the money.

I emphasise because of the way the underpayment was deliberately structured, there is no allegation any of the parties involved broke the law by allowing the underpayment to take place.

This is why parliament must be involved to close the loophole and arrange for the money to be repaid.

But the fact the CFMEU — one of Australia's most militant unions in working for higher pay for employees in areas like construction — would be involved in a scheme to pay workers less than national awards is, to me, almost beyond belief.

I add a personal note. Albeit many years ago, working coal miners took me deep down a NSW coal mine and I didn't find it pleasant.

Coal mines operate 24 hours a day, seven days a week, covering 365 days a year. Most coal miners work 12.5-hour shifts. The average work week is 43.75 hours worked any day, anytime Monday to Sunday. The agreements convert to a flat hourly rate, so whatever hours worked the miner is paid the standard flat hourly rate.

The independent experts calculate these casual mine workers working under their awards should be paid \$151,606 annually, but instead receive an average of \$118,315.

Roberts says under any normal understanding of the BOOT test, the agreements should not have been approved or endorsed by the Fair Work Commission

With tongue in cheek, I would add coal miners in NSW need a “real union” — like the one which represents building workers in WA and achieved the 25 per cent pay rise with no productivity improvement.

They also need politicians with a sense of fair play.

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Robert Gottlieb has spent more than 50 years writing and commenting about business and investment in Australia. He has won the Walkley award and Australian Journalist of the Year award. He has a place in the A... [Read more](#)



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