



18 July 2023

Senator Malcolm Roberts  
Senator for Queensland  
PO BOX 6100  
PARLIAMENT HOUSE CANBERRA ACT 2600

**Emailed: [senator.roberts@aph.gov.au](mailto:senator.roberts@aph.gov.au)**

Dear Senator Roberts,

I write in regard to my offer following the Senate Estimates Committee meeting on 30 May 2023, and your letter to Employment Minister Tony Burke dated 26 June 2023, which you have published on your website and which contains multiple false allegations about my Union and misguided assertions about how enterprise agreements are made.

I'm writing to:

- Invite you again to a meeting to talk through the issues you have raised and answer your questions about them.
- Provide a basic explanation of some of the issues you raise about the Chandler Macleod Enterprise Agreement.
- Invite you to meet with Queensland labour hire mineworkers who are being exploited under our current laws and are relying on Same Job Same Pay legislation to restore fairness to the industry.

## **About the 2015 Chandler Macleod Enterprise Agreement**

In 2015 Chandler Macleod won a contract at Mount Arthur coal mine in the Hunter Valley, by undercutting the existing contractor TESA and cutting workers' wages. At the time, our Union successfully challenged the validity of the Chandler Macleod agreement. We then negotiated a new agreement that restored pay to rates received under the TESA Enterprise Agreement and pay rises going forward plus a backpay component of \$3 an hour to the start of the contract.

**Workers voted in favour of these terms by secret ballot** and the new Enterprise Agreement was approved by the Fair Work Commission.

The Union did not pursue Award leave entitlements for the period between Chandler Macleod starting its contract at Mt Arthur and the approval of the new Enterprise Agreement **because the backpay of \$3 an hour for the period was substantially more financially beneficial to workers than back paid Award leave entitlements would have been.**

You reference a letter from Chandler Macleod to the Union dated 14 April 2015 outlining terms proposed by the company. As subsequent correspondence shows, the Union did not agree to all the terms proposed by Chandler Macleod. In particular, the Union explicitly maintained the right to initiate future action to pursue entitlements if employees were found by law to not be

properly classified as casuals (as subsequently occurred with our landmark legal victories against WorkPac, which were unfortunately overturned by Parliament with the support of One Nation). **There was no special deal with Chandler Macleod.** When Chandler Macleod started its contract at Mt Arthur and cut workers' wages, the Union stepped in and negotiated a better agreement with pay rises and substantial back pay. There was a transparent bargaining process that lifted workers' pay and maintained the Union's legal right to fight the unfair casual work model, which we were already doing and which we continue to do.

### **Why can mineworkers be employed as casuals?**

As you rightly point out, the Black Coal Industry Award does not allow for casual work. However, most coal miners are employed under Enterprise Agreements, which nearly always do allow for casual work.

**Neither the Fair Work Commission nor Federal Court have accepted the argument that casual work cannot be included in agreements because it is not allowed for in the Black Coal Industry Award.**

There are multiple cases where courts have affirmed the legality of casual work being included in coal industry enterprise agreements, as long as there is appropriate loading and other requirements such as the Better Off Overall Test (BOOT) are met.

When the Union has argued that casual work should be considered a detriment to workers when assessing if they are better off overall, this has also not been accepted by the Commission or Courts. Sometimes Enterprise Agreements containing casual provisions are deemed by the Fair Work Commission to pass the BOOT even when they contain pay rates just 2% above the Award.

**You and I may disagree with this approach, but that doesn't make it unlawful.**

The Union can challenge Enterprise Agreements we believe don't meet specific legal requirements and we have successfully challenged many such Enterprise Agreements in the mining industry. However, if Enterprise Agreements are voted up by a majority of workers (these workers are not all members of the Union) and meet the legal requirements set out by the Fair Work Commission, then generally the Agreement is made and is valid.

Mining companies know that current workplace laws allow them to casualise jobs and drive down conditions by outsourcing jobs to labour hire outfits like Chandler Macleod. This is why we have worked for many years to change these laws.

If the law precluded coal mineworkers from being employed as casuals because of the lack of Award provisions for casuals, a series of class actions for casual miners in 2021 would have been successful. Instead, the class actions relied on the WorkPac judgments won by our Union, which were overturned by the Federal Parliament (with the support of One Nation) in the first instance and then as determined by the High Court of Australia.

### **Labour hire exploitation is widespread in Queensland**

Our members note your strong interest in representing a very small and vocal group of disgruntled non-union coal miners in the Hunter Valley while ignoring the exploitation of labour hire miners across the Queensland coal industry.

As at Mount Arthur, BHP has been a driver of the labour hire business model across its operations, including extensively across its Queensland coal operations. BHP has even set up its own in-house labour subsidiary to employ people for tens of thousands of dollars a year less than the direct BHP employees working next to them.

If you are genuinely interested in stamping out unfair work practices in coal mining, we invite you to meet some Queensland labour hire miners struggling under deeply unfair work arrangements which are currently lawful.

### **Other Matters**

Your letter raises a number of other matters which are difficult to understand but pertain to the Union's involvement with a range of industry bodies including Coal Long Service Leave. The Union uses its involvement in industry bodies to actively represent the interests of workers in the coal industry and we are happy to discuss any issues with you.

We agree with you that labour hire is a scourge in the mining industry. I look forward to meeting with you at your convenience to discuss the issues you have raised repeatedly regarding our Union and the exploitation of labour hire workers in the mining industry.

Yours faithfully,



**Grahame Kelly**  
**General Secretary**

cc The Honorable Tony Burke, Minister for Employment