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Common Cause.



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General President Tony Maher



CLASS ACTION DROPPED

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Authorised by T.Maher CFMEU Mining and Energy Sydney

CLASS ACTION DROPPED AS NEW LAWS HIT CASUAL RIGHTS



A CLASS ACTION LAUNCHED BY OUR UNION SEEKING TO RECOVER ENTITLEMENTS FOR CURRENT AND FORMER CASUAL MINERS EMPLOYED BY LABOUR HIRE COMPANY WORKPAC WAS DROPPED THIS WEEK, WITH NEW LAWS MEANING THERE WAS NO REALISTIC CHANCE OF SUCCESS.

A High Court decision earlier this month, along with new, retrospective laws passed by the Morrison Government in March, has overturned our Federal Court wins and set back casuals' rights.

The Renyard v WorkPac class action sought to recover an estimated \$16 million in entitlements for about 900 of our eligible members. The action would have paved the way for claims by other groups of current and former casual coal miners.

The lead claimant Ben Renyard worked at the Hunter Valley's Mount Thorley Warkworth mine through WorkPac for nearly three years.

As is typical in the coal industry, Ben did the same work on the same roster under the same supervisors as permanent employees, but he was one of a majority on his crew employed casually on a flat hourly rate with no sick or annual leave and no job security.

The class action covered union members who had been employed by WorkPac as a casual in the mining industry since 2013, with a long-term advance roster on a flat hourly rate. It was launched in 2019 following the 2018 Federal Court judgment in WorkPac v Skene, which found that casual coal miners in regular on-going employment with advance fixed rosters were not legally casual workers and were entitled to paid leave.

After the Skene and subsequent Rossato Federal Court decisions sent employers into a frenzy, the Morrison Government – with the crucial vote of One Nation Senators Pauline Hanson and Malcolm Roberts – changed the law. The pared back IR Omnibus Bill introduced a new definition of casual based on the terms in the contract, not the reality of the work arrangements. The High Court judgment of 4 August confirmed this view.

General President Tony Maher said casual coal miners had hoped the class action would deliver justice, compensation and an end to the toxic 'permanent casual' employment model in the coal industry.



"We are extremely disappointed to discontinue this landmark class action on behalf of casual miners performing jobs that were permanent in nature, but without the security and entitlements of permanency," he said.

"Casualisation is out of control in the coal industry and everyone knows it is simply a way for the big mining companies to cut costs and shift risk on to workers.

"Casual miners are rightfully angry that as soon as we had some legal wins exposing and clamping down on the 'permanent casual' rort, employers and the Morrison Government teamed up to retrospectively change the law.

GOULDY FOR THE ARCHIBALD?

LONG-TERM ACTIVIST NIGEL GOULD IS HOPING TO BE THE FIRST MEMBER OF OUR UNION TO FEATURE IN THE PRESTIGIOUS ARCHIBALD PORTRAIT PRIZE.



He's had his first sitting with Victorian artist Kaye Levannais for a portrait intended to capture his character, his mining experience and his commitment to making the world a better place.

Nigel's mining career has taken him around the country from far north Queensland to western New South Wales to remote Northern-Western Australia.

While he is paid to operate giant high-tech machines, his real vocation is building and supporting the communities around him – whether through charity fundraising, political activism or standing up for the rights and conditions of his workmates. A long-time Mining and Energy Union member, Nigel comes from the tradition of union activists who have fought to make sure that the communities that host mining operations aren't left behind.

His first job in the mining industry was in Weipa on Queensland's Cape York Peninsula where Rio Tinto (then CRA) runs a large operation mining bauxite, a key ingredient in aluminium.

Two of the five children he has with wife Christine were born in the tropical mining town and his family saw firsthand how important it was for the remote community to have access to medical facilities.

In two separate medical emergencies, his wife Christine and baby daughter Melanie each needed to be transported to Cairns for treatment by the Royal Flying Doctor Service aircraft.

Out of gratitude – and noticing the RFDS aircraft could do with an upgrade – Nigel with a group of mates established a fundraising tradition that would win them international acclaim.

Nigel and his group of mates established Weipa's 'Running of the Bulls' – a nude 2km charity fun run in the dead of night – which started small in 1993 and turned into a world-renowned event over eight years, raising thousands in donations each year. The Running of the Bulls committee earned recognition in Australia Day Awards, being recognised as the best charity organisation for the community.

It saw Nigel and others take to the water in a flotilla of tiny boats to stop the passage of giant ships carrying the valuable loads of bauxite.

The victory of unionists at Weipa to establish the principle of equal pay for equal work and outlaw discrimination against union member is recognised to this day as a game-changer for working people's right to organise.

Since then, there haven't been many dull moments in Nigel's life! He has run for Federal parliament twice winning a 10% swing against the incumbent, fought and won an important test case over superannuation while working for a building contractor and has been nominated to represent employees on the Rio Tinto Superannuation Fund Trustee Board.

He famously earned his nickname, 'Honest' Nigel Gould, over events that hit the front pages in 2004. While at work at a waste transfer station in Brisbane, he found a leather bag discarded in the garbage. It was stuffed with bills – at least \$20,000.

When the distraught owners came looking for it, he handed back the bag with its contents completely intact. The newspapers branded him 'honest' Nigel and the nickname has stuck.



Having lived and worked around the country, Nigel has settled in Melbourne with Christine, travelling to and from Rio Tinto's Yandicoogina iron ore mine near Newman in the Pilbara as a FIFO (Fly In Fly Out) miner.

His role is to travel around the pit overseeing the running of giant autonomous trucks.

He is also a 'peer support' officer to help workers struggling with mental health issues, which are rife in an industry which sees workers away from home living in camp accommodation for weeks on end. His experience in the FIFO industry, including its disturbing suicide rate, has driven his great passion for supporting Movember for men's health.

Nigel will use his portrait to drive fundraising for the two causes closest to his heart, Movember and the Royal Flying Doctor Service.



MAKE A DONATION

Movember

<https://movember.com/m/nigelgould27>

Royal Flying Doctor Service

<https://www.flyingdoctor.org.au/donation/>

Drivers' deal off the rails again

DANIELLE RAFFAELE

The Fair Work Commission has scrapped a controversial deal for Roy Hill train drivers at its Pilbara mine network after revelations the employer used "corporate manipulation" to avoid bargaining with workers and the mining union.



Roy Hill labour hire deal quashed

A labour hire deal covering train drivers at Gina Rinehart's Roy Hill iron ore mine in the Pilbara has been quashed after a successful challenge by our union.

Western Australian Secretary Greg Busson said the District would now seek to negotiate a fair deal for the drivers who work at the operations of the richest woman in Australia in the midst of an iron ore price boom.

The Fair Work Commission full bench decision in granting CFMEU Mining and Energy's appeal against Karijini Rail's enterprise agreement was the second time the union has had the agreement revoked because it had not been fairly negotiated or adequately explained and included below-Award conditions.

The non-union deal was originally submitted to the FWC for approval in 2018 after being voted up by just two drivers. To secure the Roy Hill contract, labour hire group Railtrain set up Karijini Rail as a subsidiary and employed two drivers, who were on probation and still in training when they were asked to vote for a new enterprise agreement with worse pay and conditions than existing Railtrain drivers operating in the Pilbara received.

The rest of the Railtrain drivers at Roy Hill were subsequently moved across to the Karijini Rail Agreement.

The Commission found the agreement 'lacked moral authority' because

- Railtrain engaged in 'corporate manipulation' to avoid bargaining with rail drivers and their union representatives
- Karijini Rail did not tell the two workers who voted up the agreement that they were covered by the Mining Industry Award, meaning they were not informed about industry entitlements due to them
- The two workers were misled about the likely disadvantages of the new agreement to the existing workforce.

The Commission was particularly concerned that the two drivers were not told how much their breaks would be reduced under the new agreement.

Greg Busson said the Karijini Rail EA was one of the worst examples of sham bargaining in the mining industry.

"Across the industry, we see big mining operations like Roy Hill drive down workers' pay and conditions through forcing labour hire companies to compete on supplying workers at the lowest possible rate.

"This has been a disgraceful attempt to avoid bargaining with workers avoid paying industry rates and conditions in order to win a contract from Gina Rinehart. We are pleased the Fair Work Commission agrees it is unlawful.

"Every train load of iron ore these drivers transport is worth millions of dollars.

"We are ready to start bargaining for a better, fairer deal for these train drivers. They are highly skilled workers in short supply who play an essential role moving iron ore from pit to port.

"Everyone knows Gina Rinehart doesn't like parting with her money, but the workers engaged at her operations deserve a fair go for the massive profits they generate."



**WA District Secretary
Greg Busson**

96% 'NO' vote sends clear message to BHP

Coal miners across BHP's Bowen Basin coal mines have comprehensively rejected the company's attempt to roll over the existing BMA Central Agreement without improving job security provisions.

The BMA Central Agreement covers direct BHP employees at Saraji, Blackwater, Goonyella Riverside and Peak Downs coal mines and is the biggest in the Queensland coal industry.

A ballot of workers between August 10 and 16 saw 1430 vote no to BHP's proposed rollover and just 64 vote yes, delivering a strong 96% no vote.

Queensland President Stephen Smyth said workers had sent a clear message that they want genuine bargaining with improved job security the top priority.

The combined unions' bargaining team, which includes representatives from each site, has proposed measures including:

- permanent job numbers for the duration of the EA to stem the decline of permanent jobs
- stronger redundancy protections
- clarity on current job security protections.

With growing threats to job security including increased automation and the growth of Operations Services, new measures in the Enterprise Agreement are proposed to strengthen job security of current employees and provide more pathways to permanency for labour hire workers.

Bargaining is also underway for new Operations Services Enterprise agreements and OS workers can get an update at ThinkFairBHP.org.au.

You can listen to part 2 of the extraordinary history of this Agreement in our latest podcast:



GO TO <https://commoncause.cfmeu.org.au/podcast/>

Scholarship winner leads nuclear medicine team



Cassandra Mulcahy was delighted to receive a Mineworkers Trust scholarship in 2011 when she was studying for a degree in Medical Radiation Science at Newcastle Uni. Ten years later, she is leading a team as a Senior Nuclear Medicine Technologist at Royal Perth Hospital.

Cassandra said that receiving the scholarship made a big difference to supporting her studies, especially as it involved undertaking internships in different locations including Brisbane and even London so she could access the technology she needed to learn.

Cassandra was born and bred in Maitland in the NSW Lower Hunter and her father Patrick Mulcahy is a life member of the Northern Mining and NSW Energy District after working in the coal industry from 1971 until retiring in 2012.

Patrick started his working life on the railways, working on Australia's last steam train line hauling coal from the coalfields

to Newcastle. He then worked in a number of underground and open cut coal mines in the region including Aberdare, Wallarah, Mount Thorley and Bulga.

Cassandra lived at home in Maitland while studying her degree before getting her first job at Sir Charles Gardiner Hospital in Perth then moving to the United Kingdom in 2017 and working at Royal London Hospital. She was there during the height of the pandemic, having to embrace extensive PPE and undertake lung scans of COVID patients, before moving back to Perth and her new role at the end of 2020.

Her job involves using radioactive pharmaceuticals for diagnostic imaging like x-rays and CT scans, putting her in contact with a wide range of patients including people with cancer and heart problems.

Her favourite part of the job is working with patients to make sure they understand exactly what is happening with their tests and treatment – as well as keeping up with the technology which is always developing.

As her career moves ahead in leaps and bounds, Cassandra is still grateful for the support she got from her Mineworkers Trust scholarship all those years ago.

"It really helped me, especially with my placements where there were costs for interstate and international travel. I absolutely encourage everyone who is eligible to apply."

Cut and run or manage to closure? The BHP and Glencore models compared



By Peter Colley, National Research Director

With the announcement of BHP's annual results on 17 August we witnessed BHP not only confirming it was getting out of thermal coal production but also oil and gas – what used to be one of “four pillars” of the company (along with iron ore, copper and coal). BHP appears to be cutting and running from fossil fuels.

In contrast Glencore, the world's largest thermal coal producer in the international trade, says it will manage its coal mines to closure, within an overall goal of having net zero emissions in its operations – AND those of its customers – by 2050.

Today we are seeing thermal coal prices that, at US\$170 per tonne out of Newcastle, are literally more than triple the prices of a year ago. Normally that would be called a boom, but there is no normal in coal mining any more. There is no rush to new thermal coal production, nor coking coal for that matter.

Despite the boom time coal prices, BHP downgraded the value of its large Mt Arthur thermal coal mine in the Hunter Valley even further. In the half yearly accounts earlier this year, BHP wrote down the value of Mt Arthur Coal from US\$841m to US\$288m. But in the results just announced, that value has been further downgraded to below zero – to a negative value of -US\$289m.

If BHP managed to give away the mine for nothing, it would now book a \$289m one-off “profit”! Some say this is BHP deciding that the rehabilitation/closure costs of the Mt Arthur site are bigger than previously acknowledged, and/or that it reflects the offers that have been received for the asset.

BHP is clearly seeking to offload Mt Arthur Coal as quickly as possible, and the current high thermal coal price is being regarded as a temporary phenomenon that does not affect the need to appease investors who are demanding that the company demonstrate its pathway to net zero emissions.

This has also included offloading its one third stake in the El Cerrejon mine in Colombia to fellow JV partner Glencore, in a complex deal already done but yet to complete.

So what of Glencore, headquartered in Switzerland but with its primary stockmarket listing in the UK?

Glencore produced almost 49 million tonnes of coal in the first half of 2021, mostly thermal coal and mostly for international markets. This is a huge volume, but significantly down on the 58mt produced in the first half of 2020. Australian thermal coal exports were cut from 29.4mt to 25mt. Glencore is seeking to maintain good prices by curtailing production. It's a big enough player to do that. (Though most of the current coal price hike is due to international markets expensively re-arranging themselves to accommodate China's blanket ban on Australian coal.)

Glencore said earlier this year that it would reduce emissions – its own AND those of its customers – by 40% by 2035 and 100% by 2050. Which leaves very little room for coal in coal-fired power stations!

It says coal is a declining part of its portfolio but “we will continue to operate our mines until they reach the end of their lives”. So BHP will be out of thermal coal probably this year, while Glencore will be substantially out by 2035 and probably entirely out by 2050.

But if BHP is divesting from fossil fuels, why is it remaining as the world's largest producer of coking coal in the international market? BHP just says that coking coal remains a core asset. Glibly it might be said that coking coal is not a fossil fuel as it plays a chemical role in the making of iron and steel. But BHP faces the problem that investors are requiring companies to state what carbon risk exposures they have, and how they will manage them in a world seeking to achieve net zero emissions by 2050. This exposure goes beyond the emissions from direct operations including energy use; it extends to the emissions of its customers. And because BHP is one of the world's largest iron ore producers as well as the largest exporter of coking coal, it has explain the emissions from the making of iron and steel whether it divests its coking coal assets or not.

So BHP is going to be looking for ways to reduce emissions from making iron and steel. It is already in three pilot projects with major steel producers. Are these projects just “being seen to be doing something” or is BHP really looking for way to reduce the use of coking coal in steelmaking?

FIFO sexual harassment exposed

A survey of FIFO mineworkers in Western Australia's Pilbara region reveals a disturbing rate of workplace sexual harassment. The Western Mineworkers Alliance (WMWA) – our joint venture with the Australian Workers Union to cover iron ore miners in the Pilbara region – has called for a range of measures to ensure safer FIFO workplaces and camps including an independent body to assess harassment and abuse claims.

The WMWA made a submission to the Western Australian Parliament's recently-established Inquiry into sexual harassment in the FIFO mining industry.

A survey conducted for the submission found that while women and men experienced sexual harassment, the rates for women were significantly higher.

Of respondents to the survey:

- One in five women have been offered improved conditions of employment or career advancement dependent on sexual favours, either explicitly or implicitly
- One in five women had experienced physical acts of sexual assault
- Two thirds had experienced verbal harassment of a sexual nature, including jokes referring to sexual acts or sexual orientation
- A third had experienced unwanted touching or physical contact
- Over half had experienced inappropriate staring or leering that made them feel intimidated

Despite these experiences, the majority of women and men are not confident managers understand the prevalence of sexual harassment on site and in camp. In addition to the industry-funded independent body to assess claims, the WMWA recommended measures including:

- Better security at FIFO workplaces and camps
- Better mental health support and assessment
- Mining employers to adopt the principles and publish progress on Respect@Work report
- Relationships between workers and supervisors to be declared to prevent exploitation
- Curb excessive use of alcohol through responsible service principles, not a blanket daily limit
- Statewide standards for camp accommodation.

WA Secretary Greg Busson said it was time for mining employers to invest in improving security and facilities and hold managers to account for stamping out abuse.

"It's great to see more women entering the mining industry, however mining companies have not backed them up by investing in practical support on the ground to protect safety and well-being.

"We will do everything we can to improve conditions for women and men in the mining industry and hold mining companies to account for delivering better and safer work environments."

READ OUR SUBMISSION AT:

<https://me.cfmeu.org.au/policy-and-research>

Covid Vaccination in Mining and Energy Workplaces

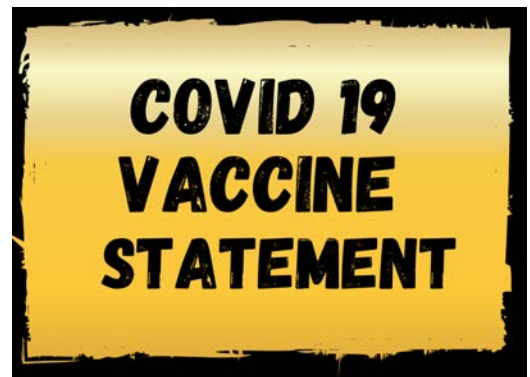
A high rate of vaccination is critical for Australia's recovery from the COVID-19 pandemic. The Mining and Energy Union encourages members to get vaccinated when they are able, subject to medical advice from their doctor.

We do not support mandatory vaccination in mining and energy workplaces; nor is it reasonably practicable to expect these workers, not on the front line of fighting COVID to be compulsorily required to be fully vaccinated.

Decisions about mandatory vaccination for any group of workers are made by health authorities and not by individual employers or employer associations.

The Federal Government's vaccine rollout has been poorly handled. People have been subjected to mixed messages and misinformation about vaccines, access and supply have been patchy and the legal rights and responsibilities of employers and employees have not been made clear. This has created unnecessary anxiety among some workers.

Our Members are entitled to a safe workplace. Consistent with their legal obligations, employers in our industries must implement a range of controls to ensure that our Members are not exposed to COVID-19 at work.



Mining and energy employers should continue to:

- Consult with workers through their Unions and safety representatives regarding COVID controls including vaccinations.
- Provide education and paid leave to support and encourage employees to get vaccinated, including implementing employer sponsored incentive schemes.
- Recognise that some workers are unable to get vaccinated for medical reasons.
- Encourage and support vaccination programs in the communities that host their operations.