

December 2020

# Common Cause.



**FAREWELL TO A  
TOUGH YEAR**





# 5 ways new IR laws screw you over

**The Federal Government has proposed new IR laws that would severely weaken protections for mining and energy workers.**

The so-called IR Omnibus Bill attempts to overturn our Union's important WorkPac Federal Court wins and stop us challenging dodgy non-union enterprise agreements, like the BHP Operations Services EAs we recently defeated.

Labor and the union movement have committed to fight the IR changes – branding them the worst attack on workers' rights since WorkChoices.

The Fair Work Amendment (Supporting Australia's Economic Recovery) Bill 2020, introduced to Federal Parliament by Attorney-General Christian Porter last week.

Here are key measures affecting mining and energy workers:

## CASUALS

### **1. Locks in employers' definition – you are casual if the boss calls you one**

The proposed definition of casual goes against the Skene and Rossato judgments, where the Federal Court ruled that casual work was characterised by being intermittent and with no firm advance commitment.

Porter has adopted employers' preferred definition, which is that if we call you a casual when we hire you, you are a casual:

***"A person is a casual employee where an offer of employment made by the employer to the person is made on the basis that the employer makes no firm advance commitment to continuing and indefinite work according to an agreed pattern of work for the person."***

It's pretty confusing but it means that if you sign a contract saying you're a casual then you're a casual – regardless of whether your work hours and commitments end up being permanent in nature. It's just that they didn't promise it would be continuing.

### **2. Right to 'request' permanency – but the boss can say no**

The new legislation says an employer must make a written offer of conversion after 12 months if for the last six months there has been a regular pattern of work.

Except that an employer does not have to make the offer if there are 'reasonable' business grounds not to. There is no provision to take disputes over casual conversion to an independent umpire for arbitration. It's just lip service.

### **3. No compensation if you've been illegally ripped off**

The new definition of casual as well as 'set-off' provisions, meaning any casual loading paid is set off against legal leave entitlements (contrary to Federal Court judgements), would be retrospective. This attempts to quash legal claims for backpaid compensation stemming from the WorkPac decisions our Union fought and won. We will do everything we can to continue our class action against WorkPac.

## ENTERPRISE AGREEMENTS

### **4. Allows workers to be worse off**

In a move that was never discussed in the Government's IR working groups with unions and employers, it is proposed to allow a two-year window to approve Enterprise Agreements that do not pass the 'Better off overall test' (BOOT) compared with the Award. The Government is using COVID as an excuse for employers to downgrade workers' conditions.

### **5. Restricts our ability to challenge dodgy agreements**

Our Union has a strong track record of proactively challenging non-union Enterprise Agreements in our industries, to protect conditions and stamp out the worst agreements. We use a number of legal provisions to do this, including the 'BOOT' and requirements to notify workers and explain agreements. We recently challenged and defeated BHP's two Operations services agreements using these provisions.

The new IR Bill prevents unions which are not bargaining representatives for an Enterprise Agreement from making submissions to the Fair Work Commission. It also removes mandatory pre-approval steps like requiring employees to be provided with agreements, have the contents explained and be notified about voting requirements. Dodgy boss heaven.

The legislation is expected to come back before Federal Parliament in March after going through a Senate committee process – our Union will join the campaign to stop the laws being passed in their current form.



## BALMAIN EXPLOSION BRAVERY AWARD: 90 YEARS LATER

In one of the surprises that are often uncovered by family historians, Steve Kerr discovered that there had once been a coal mine in the inner Sydney suburb of Balmain – and that his grandfather had died in an explosion there in 1933.

Like many Sydneysiders he was unaware of this slice of Sydney's industrial working history. As a life-long unionist and workplace delegate for the ASU he was keen to get some recognition, not only for his granddad but for all those who had lived, worked and died in the mine.

Back in 2014, with the support of our Union, he successfully lobbied Leichhardt Council for a memorial plaque to be erected in Water Street, Birchgrove. But he did not stop there.

After reading descriptions of the explosion, which caused horrific and ultimately fatal burns to two men, including his grandfather, David Kerr, Steve decided to nominate him for a Governor-General's Bravery Award.

David Kerr was invested with a Commendation for Brave Conduct in September this year, 90 years after his death.

Mr Kerr had found work at the Balmain Colliery after leaving his home in Corrimal. It was the middle of the Great Depression and he had been unemployed for two years. He had not been working there for long when he was caught in the fire that was caused by a spark that ignited gas in the shaft.

Engulfed in flames, he crawled to the communications telephone to alert the surface, and then crawled back to see what he could do for his mate. They both died two days later.

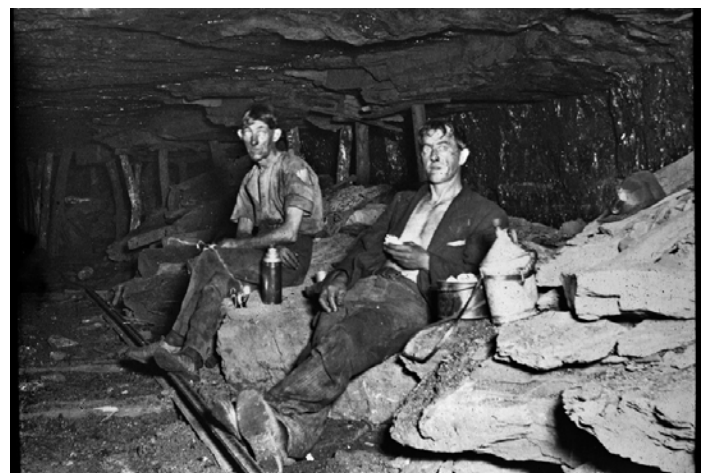
David Kerr left behind six children. Steve's father was the eldest and at age 16 he took on the responsibility of providing for his large family.

An inquiry that followed found that there had been no inspection for gas in nine months. Our Union condemned the Coal Mines Department, who had transferred jurisdiction for the mine to the Metalliferous Mines Department.

Steve believes that his grandfather's death is still relevant today. "His death is poignant even today because everybody needs and deserves a safe workplace, and the proper training to carry out their work. My Granddad did the work allocated to him, as anyone would to maintain their employment. But if he had refused, I might have met him."

The mine at Balmain had a troubled history. It opened in 1897. Working conditions were poor, with dangerous gas and dust levels and an unstable roof and floor. It was the deepest coal mine in Australia, and was very costly to develop; so much so that the coal won was never particularly profitable.

There was a string of disasters – in 1900, 1933 and 1945 before the mine closed forever in 1950.



# Are you or a family member studying next year? Apply for a Mineworkers Trust Scholarship



## APPLICATIONS FOR 2021 SCHOLARSHIPS NOW OPEN



Every year, the Mineworkers Trust awards 20 scholarships each worth \$6250 to our Members and their families. If you or your family member or dependent are undertaking or applying to undertake a course at Diploma Level or higher at TAFE or a public university in 2021 then you are eligible to apply.

**Applications for 2021 are now open and must be received no later than Friday 5th February 2021.**

Halle Brown, whose Dad Dave Brown works at Mt Arthur mine in our Northern District, was one of last year's recipients. She recently contacted Common Cause to tell us how she is getting on at Uni.



Halle is undertaking a Bachelor of Laws (Honours) and Bachelor of Social Science (Criminology) at Newcastle University. She gained seven Distinctions over the year, and a High Distinction in Criminal Justice in Practice. Congratulations Halle!

Halle says that the scholarship has made a big difference to her study, allowing her to relocate closer to uni and cut down commuting time. "Without the support of the CFMEU and the scholarship assistance these results would not have been possible."

The Mineworkers Trust disburses millions of dollars to support vital services and organisations in mining communities. The annual scholarship program has helped put hundreds of students from mining and energy families through universities and other higher education institutions.

The form is available as a fillable PDF. After you have opened the form in your web browser you must download it to your computer to make it fillable.

TO DOWNLOAD THE APPLICATION FORM GO TO <https://tinyurl.com/y7qxo62n>

Halle and her Dad, Dave Brown



In December's podcast, listen to the story of the 'Battle for Boggabri' and how the workers stuck together and won a tough industrial fight. [commoncause.cfmeu.org.au/podcast](http://commoncause.cfmeu.org.au/podcast) Or search 'CFMEU Mining and Energy' on Spotify or Apple podcasts.

# Operations Services: finally at the bargaining table, now have your say

Union representatives have met with BHP for the first time to negotiate new agreements for Operations Services maintenance and production workers.

The meetings were short, but it is a big achievement to get BHP to the bargaining table after our long legal challenge to knock off the original, substandard EAs.

BHP has since circulated 'safety net' agreements to employees for feedback. These agreements reflect the conditions in the EAs ruled invalid by the Fair Work Commission and would lock in substandard conditions. If BHP rushes to a vote on these agreements the Union will campaign strongly for a 'No' vote.

The Union's focus will now be on developing logs of claims for the OS Maintenance and Production agreements. All OS employees are urged to fill out our Bargaining Survey:

<https://www.thinkfairbhp.com.au/survey>

This lets you nominate your priorities for inclusion in a new agreement.

Initial results show that wages more closely aligned with other BHP agreements, guaranteed annual wage increases and public holiday clause recognising Christmas and Boxing Day as non-working days are top priorities for workers.

Further bargaining meetings will be held with OS in January.

Despite BHP spin about how happy the workforce is, our previous survey of OS workers found just 4% are satisfied that their wages and conditions stack up with Queensland coal industry standards.

Of 492 Queensland-based OS workers who completed our previous survey, 92% said their wages and conditions were not competitive and need improvement, another 4% were unsure.

"Concerns included pay, unpaid overtime and not getting crib breaks in the specified period.

Concerningly, one in three respondents (32%) to the survey reported that they were not confident about raising safety issues without fear of being targeted.

Queensland District Senior Vice President Mitch Hughes said OS workers had a legal right to genuine bargaining and despite pressure from BHP to accept lowest-common-denominator conditions, there was no threat to their jobs or livelihoods from bargaining for a better deal.

"BHP have made it clear they won't willingly hand over the pay and conditions OS workers deserve. But that's to be expected. Everything workers win from big mining companies is achieved through collective action – we have the experience and determination to stand with workers and get a better deal."

## What OS workers say:

*"I am a fitter but in OS I'm also a travel agent, training coordinator etc, never had that before in FIFO. I have to pay for my own tools even though it was made clear in the interview and frequently asked questions that all tooling was to be provided."*

*"10 months into job, no one can tell us how exactly how much bonus we get. Should not be the case when it is put into your package."*

*"FIFO employees from Townsville catch a Qantas charter flight. BMA and other labour hire employees pay \$120 return. OS employees pay \$385 and have to take annual leave to get on the flight that leaves after Wednesday day shift."*

*"Our contract sucks – being paid 30k less than BMA workers doing the same job on the same site. Having to pay for your own flights, when supers have them paid."*

*"It says in our contracts all tooling is supplied. It has not been supplied and needs to be supplied or a tool allowance needs to be implemented into salary."*

*"Employees are forced to use buses instead of driving to and from site but are not compensated for the extra hour a day we are waiting or on buses."*

*"Christmas and Boxing Day (we are) expected to work while all other workers on site at BMA including labour hire and contractors have the right to take the time off or be paid penalty rates for working."*

*"People are way too scared to speak up. It's push, push, push, production, production, production all the time."*





## Stick together: How Boggabri miners took on the boss and won

Mineworkers at Boggabri Coal in NSW's Gunnedah Basin are enjoying a second pre-Christmas pay rise after a tough but successful industrial battle last year. Our latest podcast looks back at the 'Battle of Boggabri' and how the workers won.

In the winter of 2019, our members at Boggabri Coal were facing the fact that negotiations for a new Enterprise Agreement had stalled and they took the gutsy decision to embark on a campaign of industrial action.

Boggabri Lodge Secretary Dave Boxsell says the campaign of rolling stoppages was a difficult time as workers came under pressure from mine operator Idemitsu, but: "we just knew what we had to do and we did it."

Northern Mining and NSW Energy Vice President Jeff Drayton says the situation for workers at Boggabri Coal started to deteriorate in late 2017, when owner Idemitsu decided to end its contract with Downer who had managed the site for years with reasonable, union-negotiated agreements.

They moved on to a couple of different contractors, first BGC then One Key, both offering substandard agreements challenged by the Union. Idemitsu then decided it would be easier to hire production workers directly, which meant negotiating a new enterprise agreement.

Negotiations became difficult when the company kept changing its bargaining team, sending discussions back to square one

"It started to become quite messy," says Jeff Drayton. "They'd just had enough. The Lodge, which has some 350 members, made a decision that we had to do something different as we were just going around in circles."

The Union applied for protected action ballot, run by the Australian Electoral Commission, which is required by taking any industrial action under the Fair Work Act. The vast majority voted yes: "Over 99% of people were prepared to take action," says Jeff.

Workers then began a campaign of rolling stoppages: they would give the required two days' notice for work stoppages and then decide on the day whether or not to take action.

From August to November, stoppages ranged from two to 48 hours, with mass meetings held in nearby Gunnedah.

The company put two enterprise agreements to workers, which were voted down. "It was pretty clear members weren't prepared to accept what they had to offer," said Jeff Drayton.

Finally, Idemitsu succumbed to the pressure of the rolling industrial action, which was affecting production, brought their most senior Australian representative to the negotiating table and terms for a new deal were agreed.

Improvements to the agreement included a 12% pay rise over four years – kicking in just before Christmas each year; a guaranteed bonus scheme; a \$4,000 sign-on bonus and arbitration to resolve disputes.

Member Lisa Richardson said the new conditions that meant most to her were having all forms of leave paid as at work as well as a training clause included in the EA, meaning more opportunities for new skills.

"I was really excited to see that we got our leave paid as if worked," she says. "With our pay when we were sick and took sick leave, our penalties weren't paid so there were times when you would lose a couple thousand dollars in one pay just because you had a couple of sick days.

"With the training it's super exciting because you're not just stuck on one piece of machinery. You have the ability to put your hand up and say – can I hop out of this truck and operate another piece of machinery.

Lodge Secretary Dave Boxsell said there are lessons for all workers from the 'Battle of Boggabri'.

"The lesson you can learn is that nothing will come easy. You're going to have to fight for it. We're in a situation where companies take money wherever they can and the first place they look is towards us, with wages and the rights of the worker.

"You've really got to stick together, look out for each other, listen to your Lodge officials ... follow their lead and stick with it, don't back down."

**LISTEN TO THE FULL STORY ON OUR PODCAST.**  
[commoncause.cfmeu.org.au/podcast/](http://commoncause.cfmeu.org.au/podcast/)

## TITLE FOR FIGHTING COAL MINER OF NARRABRI

Our Member Wade Ryan showed the grit and determination he is known for when he recently won a boxing championship at East Cessnock Bowling Club in front of an appreciative crowd. His effort was rewarded: he won both the Australian and International Super Welterweight titles.

The Gunnedah local, who works at Narrabri Underground, has been boxing since his teenage years. Now 30, he has picked up State titles along the way but this was his first National title. He claimed the vacant IBO title at the same time.

His preparation for this fight was extraordinary. While maintaining a demanding 12 hour roster at Narrabri he would make the seven hour journey to Sydney for 'quality sparring', while maintaining his condition and weight.

Wade won in a bruising encounter with reigning champion Troy O'Meley, who came into the fight with a run of 19 professional victories. According to his trainer, David 'Spike' Syphers, who has been coaching him since his teenage years, he has always wanted to be a champion and he will go further. There could be a world championship to contend in the future.



Organiser Ross Whitaker has known the boy from Gunnedah since those early days and speaks highly of his commitment and hard work. He says "it has been a long, hard journey for him and his discipline is incredible. Not only that, but he is a true gentleman and shows grace in his defeats as well as his victories."

Congratulations Wade on this super victory. We are keenly waiting for your next championship.





# Farewell (and good riddance) to 2020

Well thank goodness 2020 is nearly over. It feels like at least 15 years ago that the reality of the COVID pandemic started to set in, but it was only March.

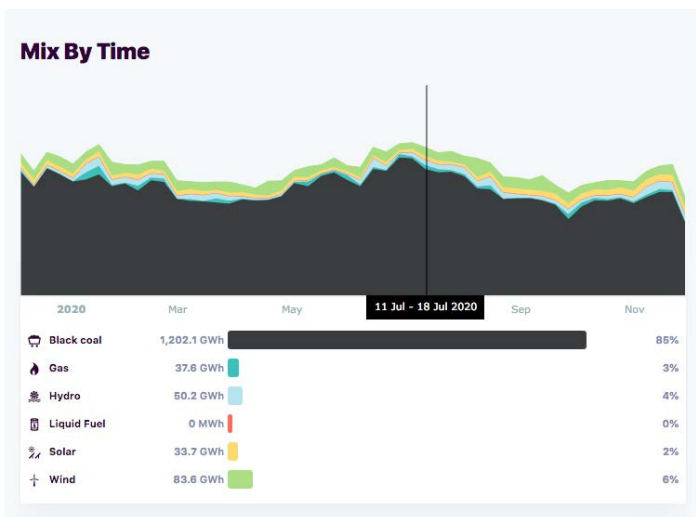
Like everywhere around the world, the Australian economy has taken a massive hit with many industries shut down or their operations severely curtailed due to lockdowns, border restrictions and social distancing.

**Throughout it all, mining and energy workers have continued to work, with our industries essential to keeping Australia going, functionally and economically.**

Mining and energy workers have made an incredible contribution this year. Our power stations have kept the lights on and our industries and cities running.

A quick look at the Australian Energy Market Operator (AEMO) fuel mix dashboard shows that black and brown still fuel dominate energy supply.

In Queensland and NSW over the past 12 months, over 80% of energy supply has come from black coal – at many points in time it has been up over 90%.



And our coal and iron ore mines have remained fully operational, due to the flexibility and commitment of workers in adapting to new ways of working.

Mining has remained a major regional employer and has continued to pump royalties and taxes into government coffers while cementing its place as by far Australia's biggest export earner – with education and tourism severely hit.

As Labor's NSW resources spokesman Paul Scully said in a [message for our members](#), we really do all have mineworkers to thank for our shared prosperity.

I know that the continued operation of the mining and energy industries has come at a personal cost to many of you. Throughout the year, you have all faced risk, uncertainty and constantly changing work arrangements. I'm proud of the way our Union responded to the COVID challenge at the National, District and Lodge level, working constructively to keep Members safe and informed while also keeping mines and power stations operational.

But it has been tough. Some of you have been isolated from your families due to border restrictions. Many of you have had family members lose their jobs, been isolated from elderly relatives and seen your kids struggle with the disruption of remote learning.

The global economic disruption from COVID will continue to affect our industries for some time.

I want to acknowledge all of our Members for their perseverance throughout 2020. I hope that you can spend time with friends and loved ones during the festive season and find some time to recharge.

As you know from recent correspondence, 2021 will bring its own challenges and we have some decisions to make about the future of our Mining and Energy Union.

But first, let's take a moment to reflect on getting through a tough year. Well done everyone. Have a safe and happy Christmas and New Year.

# Common Cause.

**Thanks for reading and sharing  
Common Cause this year. Send us  
your story ideas for 2021 at  
[commoncause@cfmeu.com.au](mailto:commoncause@cfmeu.com.au)**