

November 2020

Common Cause.



#PutYourLampsOut - Moranbah Memorial Ceremony

OS WORKERS CELEBRATE VICTORY OVER BHP



Authorised by T.Maher CFMEU Mining and Energy Sydney



'ABSOLUTELY STOKED'

OS workers celebrate victory over BHP

In a fantastic victory against BHP, the full bench of the Fair Work Commission has finally ruled that two Enterprise Agreements covering the Operations Services workforce are not legally valid. Now, OS workers are looking forward to their chance to negotiate a better deal.

Brodie Allen, an OS worker at Blackwater mine, said he and his workmates were elated at the news.

"The reaction from all the boys and girls that I'm working with they are absolutely stoked. They're actually stoked that they've got an opportunity to negotiate now for something a lot better."

CFMEU member Brodie is determined to fight for the conditions received by BHP employees on site EAs – like accident pay built into the EA, guaranteed bonus and pay rises.

"We also want security around the site location that we actually work at. We don't want to have to work on the other side of the country further away from our families.

"Christmas and Boxing Day is a big one, we want those days off so we can spend it with our friends and family. We want protection on the rosters, the hours of work and redundancies actually built into the EA and we want defined pay increases because at the moment there are none scheduled for us."

Queensland District Senior Vice-President Mitch Hughes says BHP should do the right thing now their dodgy OS agreements have been binned – by apologising to workers and hiring them on existing site agreements.

"In reality I don't think BHP are going to do either of those things. So what we need to do is get them to the table and negotiate a fairer set of terms and conditions. We've got a clean slate, those agreements are dead. So let's start from the start and negotiate something decent.

"That process of negotiations and the agreement that comes out of it needs to address all the issues that the OS workers are facing right now everything from their flights right through to issues such as changing shifts and rosters."

And for OS workers like Brodie Allen - those negotiations have to include site specific grievances as well – like travel arrangements that leave workers exhausted, without food or an opportunity to shower.

Mitch Hughes says that negotiating a better deal for OS workers can only happen if workers get involved in the campaign.

"We've been out on site doing right of entries every week so we're on site in the crib rooms visiting and talking to those OS workers. They need to listen, they need to get involved and when the time comes they need to back us."

A great result, but now the hard work begins of working together to achieve a better deal for OS workers.



Brodie Allen
OS Worker
Blackwater Mine

Keep up to date with issues affecting OS workers at thinkfairbhp.com.au



FIFO workers hope for family Christmas after months away

Many FIFO mineworkers in Western Australia are looking forward to seeing their families at Christmas for the first time in months - but they're also worried about getting caught up in sudden border closures if COVID clusters emerge.

Interstate Fly In Fly Out work arrangements are widespread in WA's iron ore mines. The state's hard border closure means that some workers have not been home to see their families on the east coast since March.

On 14 November, WA's border restrictions changed to allow unrestricted travel to and from Queensland, the Northern Territory and Tasmania. South Australia was also in that group, until last week's outbreak prompted a sudden reintroduction of border restrictions. All mineworkers returning from NSW and Victoria must isolate for 14 days on their return.

Rio Tinto iron ore train driver Paul Bloxsom has been home to Mackay in Queensland just once since March, for his daughter's wedding in August. He had to spend two weeks in isolation in Perth on his return, where his only company was the police officers coming to check he was complying with the rules. "I asked them if they wanted to stay for a cup of tea, they were the only contact I'd had," he says.



Paul didn't return home at the end of his latest two-week swing in case he got caught up in any sudden border changes and because Rio Tinto is requiring interstate workers to commit to blocks of at least three months in WA. He hopes to be home for Christmas and a return to normal fortnightly travel next year.

As a 'Peer Supporter' based at Tom Price, Paul is available to talk to his workmates – many of whom are having a hard time with long spells away from home. Many FIFO workers are staying home and using up accumulated long service and other leave.

"A lot of guys are really struggling with it," he says. "Quite a few have had to up and go home because they weren't coping.

"The Premier wants us to relocate to Western Australia, but that's not possible for most of us because our homes and families are established interstate. We are just hoping things return to normal next year."

WA District Secretary Greg Busson said an increase in disciplinary matters suggested the pressure of border restrictions was taking a toll. He is meeting with mining and rail companies urging them to take a more proactive approach to mental health checks for workers and to be more mindful of the pressure they are under.

"The employers should be reaching out to workers for a chat, not waiting for workers to self-identify that they are struggling."

Rio Tinto iron ore train driver Paul Bloxsom hopes to be home for Christmas

WorkSafe's failure to prosecute over power station death undermines confidence in safety



WorkSafe Victoria's decision not to prosecute over the death of Graeme Edwards at EnergyAustralia's Yallourn power station two years ago is a denial of justice for Graeme and a blow to workers' confidence in the safety laws meant to protect them.

Graeme was killed on 12 November 2018, when an arc flash occurred while he was installing a high voltage circuit breaker. This should have been a routine maintenance task.

Under Victoria's OHS Act, WorkSafe can initiate a prosecution up to two years from the date of an incident, or at any time at the direction of the Director of Public Prosecutions. WorkSafe has told the CFMEU and Graeme's family they do not intend to pursue a prosecution over Graeme's death.

WorkSafe publicly claim – "It's every employer's responsibility to make sure their employees stay safe at work and return home safe every day. If you fail to do your job, we'll do ours and make sure you face the law."

EnergyAustralia Yallourn has admitted its failure to provide a safe workplace and the question then arises as to why WorkSafe has made the decision not to prosecute, said Victorian District Secretary Geoff Dyke.

"This neglect of duty by WorkSafe provides no justice for Graeme Edwards or his family and undermines confidence of workers in the OHS Act and the ability for workers to return home safely to their families."

CFMEU Mining and Energy calls upon the Victorian Minister for Workplace Safety and the Director of Public Prosecution to review the case and direct WorkSafe Victoria to pursue a prosecution.

Graeme's family has made the following statement:

We, the family of Graeme Edwards, are outraged and astonished by the decision of WorkSafe not to pursue a prosecution in relation to a very easily avoidable workplace incident at Energy Australia's Yallourn Power Station that was directly responsible for his death.

Energy Australia representatives have both publicly and privately, stated that the protection provided to the operations team at Yallourn Power Station, was insufficient. Specifically, protection to ensure that the 6.6kV conductors on the cabinet where Graeme was performing his routine task, were safely barricaded. They have also confirmed that Graeme performed his task exactly in the way he was trained. As such, this demonstrates a clear failing under the OHS Act of the employer to provide a safe working environment to the employee.

The explanation from WorkSafe to us as to why they will not be pressing any charges in relation to Graeme's death is, in our opinion, outrageous and entirely unacceptable. We view this as a failing on WorkSafe's part to perform the role that they are obligated to for all Victorians. This decision shows that WorkSafe will not defend the right of all Victorian workers to return home safely from their jobs each day. We sincerely hope that the Minister for Workplace Safety, Ms Ingrid Stitt, will make serious enquiries as to why this is the case.

It is our understanding that this matter has now been referred to the Director of Public Prosecutions, Kerri Judd QC, for review and, we hope, to thoroughly investigate why WorkSafe have failed to prosecute. We expect that this independent review will lead to a satisfactory outcome of full accountability and justice for Graeme.

We would now ask that our privacy is respected whilst the legal process continues.

Moranbah puts lamps out for lost miners in moving memorial service



This year's Memorial Service in Moranbah was as moving as ever, but with a difference due to COVID restrictions.

Residents of the Bowen Basin coal mining hub were urged to 'put your lamps out' and gather in their driveways at dusk on 6 November to commemorate mining lives lost in their coalfields. The whole community got behind the effort, with kids and Moranbah Public School putting a big effort into making lanterns.

A smaller event was held at the town's new memorial, which opened just last year, with community representatives and grieving families.

Speakers talked about the importance of the memorial to the town, providing a peaceful place for families to gather at the heart of the community.

Isaac Mayor Anne Baker said that the annual service provides time for reflection about why safety must always come first, providing a brief and moving history of mine regulation and the not-so-distant history of children working in mines. Even as recently as the 1950s boys as young as 14 were working in Qld mines.

Federal Labor Senator Murray Watt paid tribute to the Mines Rescue Teams, Emergency Services and health workers and called for more permanent employment in the mining industry. He said the explosion of labour hire and casualisation has a direct effect on safety in mines. "If people are in fear of losing their jobs, they won't speak up on safety issues.

Making sure that people have secure work is critical for making sure that people have safe work."

OUR QUEENSLAND DISTRICT PRESIDENT STEPHEN SMYTH REPRESENTED THE UNION AND THE MINeworkERS TRUST – EXPLAINING WHY WE WILL ALWAYS REMEMBER LIVES LOST IN MINING AND FIGHT TO PREVENT MORE NAMES BEING ADDED TO MEMORIALS. HERE IS AN EXCERPT OF HIS SPEECH:

"It breaks my heart that since we gathered last year, another name has been added to this memorial.

I pay my respects to the family of Brad Duxbury, tragically killed in an underground mining accident at Carborough Down last November just weeks after this memorial was unveiled.

Brad was a much-loved family man and valued Member of our Union's Carborough Downs Lodge and I know that Brad's loss continues to be felt very deeply.

On behalf of the Queensland District and our national union – the Mining and Energy Division of the CFMEU - I pass on our collective thoughts, prayers and respect to all family members grieving the loss of a loved one who never returned home following their shift."



**Isaac Mayor
Anne Baker**

Breaking - High Court will hear challenge against our casual wins

The High Court of Australia has granted special leave to WorkPac to appeal the Federal Court's WorkPac v Rossato decision which confirmed full-time mineworkers on long-term advance rosters are not genuine casuals.

The High Court appeal will delay justice for affected casuals including the resolution of our class action for members unlawfully employed as casual mineworkers by WorkPac.

WorkPac v Rossato followed and reinforced the earlier landmark WorkPac v Skene decision – with both finding that labour hire coal miners were not genuine casuals and were therefore owed leave entitlements.

The Federal Government supported WorkPac's appeal application on the grounds that compensating unlawfully employed casuals would be an unfair burden on business. General President Tony Maher said the appeal would further unfairly delay justice for mineworkers twice found by the Federal Court to have been employed unlawfully as casuals.

"The Federal Court has twice confirmed that the widespread 'permanent casual' rort in mining is not only unfair, it is also unlawful," he said.

Employers have put forward hysterical claims about the cost to business. But by making claims of casual workers 'double dipping' on casual loading and leave entitlements, they are trying to deflect attention from the unfair and illegal employment model they have embraced.

"We all know that casuals in mining get paid substantially less than permanents. Employers wanting the benefits of a full-time, permanent workforce without paying full-time permanent entitlements.

"They have been ripping workers off for years and now that the law has finally caught up with them – through our landmark wins – they are trying to claim that casual workers are the greedy ones."

The widespread use of casual labour hire comes at a staggering cost to workers, families and communities. An analysis by the McKell Institute released earlier this year found that about \$1 billion in economic activity is lost to coal mining regions each year due to the replacement of permanent mining jobs with casual labour hire mining jobs, like those supplied by WorkPac.

CFMEU Mining and Energy will intervene in the proceedings to defend the findings of the Rossato and Skene Federal Court judgments.

"We know that WorkPac has the full force of the business lobby behind them to overturn our important wins for casual mineworkers," said Tony Maher.

"But our Union is committed to keeping up the fight until we have defeated this toxic work model."

All members involved in our WorkPac class action will be kept informed about how the High Court Appeal affects progress of that matter.



NEW PODCAST OUT NOW!

The November edition of the CFMEU Mining and Energy podcast is out now.

In this episode we hear about the big win for OS workers against BHP. Brodie Allen, who is an OS worker at Blackwater, tells us why he and his workmates are so happy about the win, and about his hopes for negotiating a better EA.

Go to:

commoncause.cfmeu.org.au/podcast



PEABODY IN TROUBLE AGAIN - WHAT DOES IT MEAN FOR AUSTRALIAN OPERATIONS?

BY PETER COLLEY
NATIONAL RESEARCH DIRECTOR

Peabody Energy was for a very long time the largest publicly-listed coal mining company in the world, and traces its history back to 1883. It was largest in terms of market valuation rather than annual production (where the award would go to the state-owned Coal India). But in late November the market value of the US-based company was just US\$134 million, and the company has given formal notice that it may have to enter bankruptcy-protection (Chapter 11 proceedings under US law).

So what went wrong and what does it mean for the company's substantial Australian operations?

On 9 November Peabody announced its third quarter results, showing a loss of US\$1.6 billion for the nine months to end-September on revenue of US\$2.15 billion. (Much but not all of the loss is due to the one-off impact associated with the North Goonyella mine fire in Australia.) It stated that it would be likely to be unable to meet the terms of its borrowings and so could be forced into bankruptcy unless it can reach new deals with its lenders.

This would be the second time in just five years that Peabody has entered bankruptcy proceedings. And in the USA it is far from alone in going bankrupt or near-bankrupt. Many big names in US coal have followed a similar path in the last several years – Arch, Murray, Alpha, Walter Energy, Patriot Coal, Westmoreland and many more.

What is going on is that the US coal industry is in major decline. Production peaked in 2011 at almost 1.1 billion tonnes. By 2019 the figure was 706 million tonnes, a level last seen in about 1978. Employment is also in major decline – from almost 90,000 in 2011 to just over 50,000 in 2019.

The principal cause has been cheap gas (from fracking) replacing coal in power generation, with coal's share of power supply dropping from over 50% in 2005 to 20% in early 2020.



Early 2020 also saw the share of renewable energy surpass coal-fired electricity. As renewables continue to fall in price, more coal power and coal supply will be forced out.

This occurred before Donald Trump became President and barely halted on his watch despite his claims to back coal. Coal plant retirements fell to under 10 Gigawatts per year in 2016 and 2017, but rose again to around 15GW in 2018 and 2019. 2020 will be even worse for coal and while there may be a small post-pandemic boost in 2021, there is no one who does not see US coal in permanent decline.

The situation in Australia is different – most coal production is exported rather than used domestically, so the already-evident decline in coal power generation has had less impact due to continuing growth in Asian markets.

Back in 2016 when Peabody had its first bankruptcy proceedings, the Australian operations were largely sheltered from it. At that time, Australian coal was actually recovering from price declines since the end of the Resources Boom in 2012 and commencing a mini-boom that was to last until mid-2019.

This time it's different, as the end-2019 decline continues into 2020 and has been exacerbated (though not greatly) by the pandemic. The job losses during the pandemic so far have been modest, but Peabody mines such as Coppabella, Wambo and Metropolitan have been prominent.

It seems the Wilpinjong mine is the most profitable of Peabody's operations, and corporate restructuring is occurring so that some debt can be secured against just that mine. The history in Australia with respect to coal companies going broke is that some other investor tends to buy them and, with a lower capital cost, they are profitable again.

But that does depend on where investors think international coal markets are heading (too big story for this article) and, for smaller investors, their capacity to raise finance for coal mining. Not only are many financial institutions becoming reluctant to finance coal mining, but providers of essential business insurance are also becoming more hesitant.

Overall Peabody's Australian mines remain in a better situation than the US mines, but it remains to be seen what consequences Peabody's troubles in its home base will cause.





What is the future of the Mining and Energy Division?

Our Central Council recently made some important decisions about the future direction of the Mining and Energy Division within the CFMMEU. Here are answers to questions Members may have.

What did we decide?

Our Central Council endorsed these key decisions

- My resignation as National President of the CFMMEU and Grahame Kelly's resignation as National Vice-President of the CFMMEU. We remain fully committed to our roles as General President and General Secretary of the Mining and Energy Division.
- Mining and Energy Division representatives will not participate in forums of the CFMMEU like the National Executive and our Division will operate as an autonomous Union.
- Our National Convention in March 2021 will further discuss and determine the future direction of our Division within the CFMMEU.

Our Central Council is the highest decision-making body of our union, made up of elected officials and rank and file mining and energy workers from every District. These decisions were endorsed unanimously by Central Council.

Why?

Since the amalgamations that formed the CFMEU in 1993, it's fair to say we have had our ups and downs. In the early days of amalgamation, divisions effectively continued to operate as independent unions without much cohesion or clout. Since Michael O'Connor was elected as National Secretary in 2011, he worked hard to build the CFMEU into a strong, campaigning, national union.

The Mining and Energy Division has always been absolutely willing to stand by the other Divisions of the CFMMEU through thick and thin.

But there are core principles we believe are essential to the functional operation of the amalgamated Union – these are **divisional autonomy** and **consensus-building and power-sharing**.

Our experience engaging within the CFMMEU at a national level over the last 18 months to two years is that these principles have been severely undermined.

- We have seen blatant poaching of Manufacturing Division members by the Construction Division, driven by a personal vendetta. This behaviour is unconscionable; and the full Federal Court has ruled it is unlawful.
- We have seen Michael O'Connor's strong and effective leadership torn down as part of the same vendetta, leaving a damaging leadership vacuum.
- And we have seen a dramatic change in the conduct of CFMMEU national executive meetings where healthy, respectful debate has been replaced by our biggest Division – Construction – simply using its numbers to force decisions in its favour. This leaves our Mining and Energy Members with no voice in the national union over critical matters like policy, campaigning and political activity.

I have not seen the union in worse shape since amalgamation in 1993. My view, shared by leaders from all Districts, is that our Division is not well-served by participating in the national structures of the CFMMEU in these circumstances.

What do these decisions mean for Mining & Energy Members

For the day to day work of the Mining and Energy Division, it is business as usual. Our District and National offices are well-resourced and staff and officials are here to support you. Districts will continue to determine their engagement with state branches of other CFMMEU divisions.

We are committed to looking at options for the future course of our Division, which will be presented for debate and decision at our National Convention in March 2021. We will be guided by our commitment to giving mining and energy workers the strongest voice and representation. No decisions will be made without thorough debate and endorsement by members.

We know that you will see media coverage about conflict within the CFMMEU, because we operate in a political sphere. Rest assured, there is no threat to our continuing effective operation. Our Division has a strong history as a Mining and Energy Union and we will have a strong future as a Mining and Energy Union. We encourage you to reach out if you have concerns or questions and we will keep you up to date with all developments.