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Mining & Energy Union



Same Job Same Pay becomes law

What a way to end 2023! We answer your questions about labour hire measures in the Closing Loopholes Bill.

What happened?

On 7 December 2023, the *Fair Work Legislation Amendment (Closing Loopholes) Bill 2023* passed through the Senate, containing provisions that prevent companies from undercutting Enterprise Agreements to pay labour hire workers less.

How did the Bill pass?

The legislation passed after the Closing Loopholes Bill was split into two parts, with Same Job Same Pay passing this year in the first part, alongside other important measures like the criminalisation of wage theft and industrial manslaughter, and stronger rights for workplace delegates.

The legislation passed after the Albanese Government secured the support of the Jacqui Lambie Network, David Pocock, the Greens and Lydia Thorpe to pass large parts of the Closing Loopholes Bill.

As recently as this month, Hunter coal mineworkers Clare, Ben and Adam travelled to Parliament House to share their stories with crossbench Senators on how closing the labour loopholes affects them and their workmates in the Hunter Valley. We are grateful that the Senators listened to their stories and chose to back ordinary Aussie workers against billion-dollar multinationals.

The Coalition and One Nation did not support the Bill, with the Coalition declaring they are on the side of employers and One Nation arguing that there is no labour hire loophole to close.

How will the laws deliver fairer wages?

At a worksite where an Enterprise Agreement is in place covering direct employees, the new laws would allow for applications to be made to the Fair Work Commission (FWC) for an order that labour hire employees must be paid at least what they would receive under a host's EA.

There are exemptions for registered trainees and apprentices, short-term placements, small businesses and genuine service contractors.

The Fair Work Commission will then make an assessment that a Same Job Same Pay order would be fair and reasonable – including whether labour hire workers are performing the same work as EA employees – and can make an order setting a 'Protected Rate of Pay'.

The 'Protected Rate of Pay', which sets minimum pay rates in line with the relevant Enterprise Agreement on site, is how Same Job Same Pay would be delivered at a worksite.

Additionally, we are optimistic that once the financial incentive for outsourcing jobs is removed through ensuring equal wages, then mine operators will employ more workers directly.



How do we apply for a 'Protected Rate of Pay' aka Same Job Same Pay?

The MEU will apply to the Fair Work Commission for Same Job Same Pay on behalf of members.

We will make applications at eligible workplaces based on circumstances at the site and in consultation with MEU labour hire members. We will begin making applications as soon as possible in 2024.

Same Job Same Pay orders issued by the Fair Work Commission will commence operation from November 2024.

What is the difference between labour hire and service contractors?

Under the Closing Loopholes Bill, the Fair Work Commission will apply a test to determine whether workers are considered labour hire or 'service contractors'. In general, labour hire means workers supplied by a labour hire company to perform labour in roles which are supervised or managed by the host. In contrast, the Commission will assess whether a company is a service contractor based on a number of facts, including whether a company is supplying their own supervisors and equipment for use by the workforce, and whether they perform specialist work on a site.

We expect employers to misrepresent the nature of their engagement of workers in opposing our applications, however the Fair Work Commission will ultimately determine whether a Regulated Labour Hire Order is applicable in any circumstance. We are confident that many workers in the mining industry can be classified as 'labour hire' and we will be encouraging labour hire workers to join the union to strengthen our applications.

What else is in the Closing Loopholes Bill?

The Bill establishes stronger rights for union Delegates. Importantly, the Bill provides for specific rights for Delegates to represent the industrial interests of union members and potential members, including in disputes. This provides for a more active and recognised role for Delegates to be a representative, not just a support person or a shoulder to cry on.

The Bill also provides for reasonable access to paid training for Delegates. This will be helpful for Delegates who won't have to take their own leave to undertake training.

Additionally, Delegates will have more reasonable access to communicate with members and potential members about workplace matters.

The Bill also criminalises wage theft. Closing Loopholes Part 2 will address a range of other matters including stronger rights for casuals and gig workers and will come before the Parliament in early 2024.

What next?

There has never been a better time to be involved and be talking to your workmates about joining to put your worksite in the best position to be prioritised for an application made by the MEU.

Thank you to everyone who has contributed or supported the campaign over the years. This law is an extraordinary accomplishment and a fantastic Christmas present for Australian workers.

We will keep members up to date with next steps as we make fairer wages a reality.



Meet our new Queensland District President

Mining and Energy Union Queensland Senior Vice-President Mitch Hughes has been elected to the role of District President.

This follows a vacancy after former Queensland District President Stephen Smyth took on a new role in the National Office on 1 September 2023.

Mitch said he looks forward to taking a holistic approach to his role, through supporting members both in and around the workplace.

“I’m keen to perform the role in a way that considers all aspects of our members’ lives.

“I believe that the Union’s work doesn’t stop at the gate of the worksite, but it extends to the communities where our members live and work.

“Terms and conditions of employment and health and safety at work will always be number one, but I also want to tackle some issues like making sure we have decent infrastructure in our regional areas such as our roads, and that our FIFO or DIDO members have an adequate home away from home and ensuring that we’re always putting safety in all aspects front and centre.”

Another key focus will be Same Job Same Pay.

In his former role as Queensland District Vice-President, Mitch led the Queensland District’s industrial and organising efforts since 2012 to increase representation amongst labour hire contractor workers, as well as campaigning for Same Job Same Pay.

“With the Bill passing the Senate, I know that our members are stoked, and they’ve told me it’s about time.

“We’ve been campaigning on this for over a decade, and now that the Bill has passed and this is a reality, it’s a great first step.

“Now we need to get on the job of delivering Same Job Same Pay and I know that members can’t wait to see it enforced and take effect.”

Before becoming an MEU elected official, Mitch started in the mining industry as a permanent diesel fitter worker for BMA in 2007 after being employed by a local contractor for a short time, and an apprentice at BMA Saraji mine prior to that.

Outside of work, Mitch is a keen AFL player. Mitch also serves as the President of the local AFL Club, Ferny Grove Falcons. He lives with his wife and two children in Brisbane.



WA Premier misses opportunity to secure Collie's future



An historic coal mining community in Western Australia faces an uncertain future, as the state government announced no long-term plans to manage critical energy assets in Collie. This will have dire consequences for jobs and energy security in the region, calling into question the prospects of a just transition for Collie's mineworkers.

As the primary coal producing region in Western Australia, Collie has long been expected to bear the brunt of the state's renewable energy transition. The situation became more complex as Griffin Coal, one of only two mines supplying coal for WA's power generation, entered receivership in September 2022.

Just 10 kilometres east of Collie, Griffin Coal produces fuel for the nearby Bluewaters Power Station, which in turn supplies 15% of the South West Interconnected System. Additionally, the mining, manufacturing, and energy industries account for over 50% of the town's workforce, meaning that the collapse of Griffin would have catastrophic effects for Collie as well as the WA energy reserve.

In November, the MEU and AMWU presented a proposal to the Western Australian government detailing a transition trust that could take ownership over Griffin and Bluewaters. This trust would manage the asset with community and worker-focused objectives, ensuring that Collie continues to attract investment and maintains its position as an energy hub as the economy transitions to renewable energy.

The trust would have also instituted stricter governance over the operations of Griffin and Bluewaters. This would have guaranteed transparent and sustainable conduct in protecting the economic stability of the region while also supporting affected workers in the transition to renewable energy.

The Western Australian government has instead elected to bail out Griffin Coal to the tune of \$220 million. This ensures the mine will continue to supply coal to Bluewaters until June 2026.

Mining and Energy Union Western Australian District Secretary Greg Busson said the "short-sighted announcement is likely to trigger rapid decline in the community."

"This funding arrangement rubber stamps the closure of Griffin, along with Bluewaters power station which it supplies, when funding runs out in 2026.

"Griffin Coal has been a mess and workers have borne the brunt of that, with pay cuts and years of uncertainty and mismanagement. With no new jobs in Collie for workers to go to, how does the Government think that Collie's Just Transition is going to work from here?"

It is apparent that the WA Government has taken the cheapest and easiest solution to the problems plaguing Griffin, but their choice simply delays the issue for a short three years. In doing so, the state has missed an opportunity to fund the long-term future of the region and protect the jobs and entitlements of mining and energy workers. This decision undermines the extensive work that has gone into Collie's Just Transition Plan and the programs in place for workers at Collie's publicly-owned power stations.

The government's commitment to bankroll Griffin Coal until 2026 does nothing to protect the conditions of the workers engaged at Griffin and Bluewaters. Workers at these sites have already felt the sting of the owners' financial chaos, and the WA government's band-aid solution does nothing to alleviate the downward pressure or secure their economic futures.

Of particular concern is the fate of the workers' accrued entitlements when the funding dries up and the insolvent operations inevitably collapse. Significant forethought and planning is required to avoid this outcome, and the state's response frankly does not measure up to the challenge.

"Meanwhile, we'll be fighting for the best possible employment deal for the workers at Griffin Coal. They must not be left to pay the price for the mess these private operators have created" Busson said.

BHP forced to pay over unlawful sacking of labour hire workers

Mining giant BHP has been ordered to pay fines and compensation over unlawful treatment of two labour hire workers forced off its mine sites after raising safety concerns.

The Federal Court has in separate judgments ordered BHP to pay a total of \$120,000 in penalties for contravening s340 of the Fair Work Act, which prevents adverse action being taken against employees exercising workplace rights.

The BHP Mitsubishi Alliance, which operates Queensland coal mines, was further ordered to compensate workers Kim Star and Daryl Meikle, whose cases were run by the Mining and Energy Union (MEU).

Ms Star was employed as a coal mineworker by Workpac at BHP's Goonyella Riverside Mine and Mr Meikle was employed as a coal mineworker by Workpac at BHP's Daunia Mine. In matters run by the MEU, both were found to have been unlawfully excluded from BHP sites after raising concerns

about mine safety in 2017 and 2019 respectively.

Ms Star will receive \$15,000 general damages compensation while Mr Meikle will receive \$5,000 as general damages and the equivalent of six months' pay.

MEU Queensland District President Mitch Hughes welcomed the orders and the resolution of the two long-running matters.

"These members have waited many years for justice and for BHP to be held to account. While the monetary amounts are small change for BHP, the legal black mark against them is an important victory for workers.

"The courts have found beyond doubt that BHP unlawfully excluded labour hire workers from their mine sites for exercising their rights.

"We often say that insecure work is bad for safety and here we have it in black and white. I thank Daryl Meikle and Kim Star for having the fortitude to stand up to the biggest player in the Queensland coal industry to defend the rights of labour hire workers.

"We believe these findings and fines against BHP will be a deterrent to treating labour hire workers as disposable. With Same Job Same Pay passing Federal Parliament last week, we can end the year knowing the tide is finally turning in favour of labour hire rights."

Queensland celebrates 115 years

Few organisations can claim to have been around for 115 years. Even fewer have stuck to their founding principles for the entirety of their existence.

The MEU Queensland District is one of those rare organisations. Born in 1908 under the harsh conditions of the Ipswich coalfields, the District has been the strongest advocate for the safety and

conditions of Queensland coal mineworkers since inception.

To mark the anniversary, the Queensland District held a gala Awards Night in Brisbane, with members and officials from across the state coming together to celebrate the rich history of our Union.



The night saw speeches from Queensland District leaders including long-time District President Andrew Vickers, General Vice President Stephen Smyth, and newly-elected District President Mitch Hughes. Underpinning the event was a spirit of thanks for comrades past and present, and great hope in the new generation of emerging unionists.

Congratulations on the anniversary, Queensland. You're sure to have many more to come.



Fair Work rules camp residents have rights

The Mining and Energy Union has secured a big win for BHP workers in camp accommodation in QLD this week, as the full bench of the Fair Work Commission has upheld that BHP were not permitted to remove workers' rights in Single Person Villages under Queensland law.

The dispute originated in 2021 when BHP notified that they would cease the deduction of a weekly payment of \$60 from workers' salaries and then terminated the rooming accommodation agreements for their Moranbah Single Person Village accommodation. This agreement provided residents in the village accommodation key rights such as notice for conducting inspections, cleaning, and performing maintenance as well as other accommodation rights.

They told residents that this was not an eviction, but the MEU asserted in the Commission that BHP did not have the right to cease the deduction of \$60 per week and that by cancelling these agreements BHP was attempting to overturn the accommodation rights of workers under the Moranbah Accommodation Agreement.

The Moranbah Accommodation Agreement was won by the Mining and Energy Union in 2012 and has since been incorporated into subsequent BMA enterprise agreements. The agreement requires that BHP deduct a subsidised rate of \$60 a week from the employee's salary in exchange for accommodation. This fee guaranteed the employee

numerous rights under Queensland's Residential Tenancies and Rooming Accommodation Act.

BHP attempted to argue that the fee was solely for their own benefit, and they had the discretion to cease collecting it whenever they saw fit.

However, in a strongly worded judgment, the Commission found that it was "reasonably apparent" that they sought "to escape the burden of the obligations upon BHP as the provider of accommodation, and the rights of employees living in the SPV as residents of such accommodation."

"In essence, BHP has transformed an arrangement by which employees paid for the accommodation they were provided, and held legal rights pertaining to that accommodation as a result, to a 'grace and favour' arrangement pursuant to which BHP may dictate the terms on which the accommodation is provided."

"The key point is that BHP's purpose was to ensure that employees living in the SPV did not in future have rooming accommodation rights under the RTRA Act."

In securing this win, the MEU has ensured that BHP employees in Moranbah will maintain their rights under legislation if residing in company accommodation. This protects workers by guaranteeing minimum standards and rights whilst in camp accommodation.

General President, Tony Maher



Leader Message: New Year, New Union

With 2024 around the corner, it is a good chance to reflect on the milestones of 2023.

This year, we gained our independence as our own Mining and Energy Union.

The decision to pursue withdrawal from the CFMMEU was first proposed at our 2021 National Convention, where it garnered unanimous support from delegates. An all-member ballot followed in June, which returned 98% in favour of independence.

On 1 December, the Mining and Energy Union was registered with the Fair Work Commission as a standalone union, formalising our withdrawal from the CFMMEU.

An independent Mining and Energy Union builds on our proud tradition and track record, with a clear focus on meeting the current and future challenges facing workers in mines, ports, and power stations.

We thank everyone who has contributed to this outcome.

Another important development this year was the formation of the Federal Government's Net Zero Economy Agency. While the shape of the statutory authority is still being developed, this is a critical step towards ensuring the interests of workers and communities are protected as coal-fired power stations move towards closure.

We have long been working towards the establishment of a federal body to support workers in emissions-intensive sectors to access new employment, skills and other support as needed; and support the necessary investment for energy regions to diversify. Workers should not have to bear the brunt of the nation's decarbonisation efforts.

2023 has finished on a high with the passage of the Closing Loopholes amendment to the Fair Work Act. This amendment includes the Same Job Same Pay

provision that we have fought so long for.

Same Job Same Pay ensures that mine operators are unable to undercut the wages bargained for with our union by outsourcing the work to labour hire firms offering lower pay.

The recognition that labour hire should not be used to undercut bargained wages is an important win and testament to the advocacy and hard slog in the courts, the workplace and public debate over many years by our Union.

But the work of ensuring the new laws deliver for our members now begins. Big mining has exploited labour hire for years to drive down wages and conditions in our industry. Our message in 2024 is that the more mining and energy workers – labour hire and permanent – join the MEU, the more successful we can be in lifting wages and conditions.

2023 has been a deeply consequential year of our Union. We are a new Union, but with a long and proud history, maintaining the deep traditions and solidarity that has bound us together for over a century.

The MEU will stand up and continue our proud tradition of representing mining and energy workers and communities across Australia.

May you all have a Merry Christmas, and a safe and happy 2024.

