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9th of September 2022

Via email: eec.sen@aph.gov.au

Submission: Fair Work Amendment (Equal Pay for Equal Work) Bill 2022

To: Chair, Senate Education and Employment Committee

I would like to thank Senator Roberts for his invitation to make this submission with respect to my direct experience and knowledge of labour hire contracts in the Black Coal Mining Industry.

While I have made this submission in fine detail in order to illustrate the lengths that a labour hire firm will go to in order to avoid paying the minimum entitlements as provided by the Award, I acknowledge that the committee does not have the ability to advise on, advocate for, or take action on individual cases.

As a beginning note it is an important feature that in The Black Coal Mining Industry Award Production and Engineering employees, which are classified as mineworkers, can only be employed as Full Time or Part Time and that casual roles are limited to Staff employees only. ⁽¹⁾

In September 2014 I, along with hundreds of other mineworkers, signed employment contract documents titled "Employment Application: Industrial" to work at NSW's largest Black Coal mine.

The accompanying letter of offer titled "To whom it may concern" and dated the 1st of September 2014 and offered a flat rate of pay of \$40.00 per hour and assigned me as a "casual". This letter bore the company name and ABN of Chandler Macleod.

The following advice can be found on the Fair Work Ombudsman's web page:

Can a contract provide for less than the legal minimums?

An employment contract cannot provide for less than the legal minimum set out in:

- the National Employment Standards (NES)
- awards, enterprise agreements or other registered agreements that may apply.

All employees are covered by the NES, regardless of whether they've signed a contract.

A contract can't make employees worse off than their minimum legal entitlements.

I have added emphasis to the last line for obvious reasons.

Source: <https://www.fairwork.gov.au/employment-conditions/contracts>

Previously I had been engaged at the same mine, operating the same equipment over the same four panel rotating 7 day/night roster with shift lengths of around 12.5 hours on a base rate of pay of \$46.50 per hour.

Now I will outline some of the deliberately convoluted contractual arrangements put in place and the raft of issues that arise as a result.

Despite the fact that the company name Ready Workforce in combination with the ABN 54 088 288 037 appearing in the employment contract four times the company that actually employed me was Chandler Macleod, ABN 33 090 555 052.

To cast doubt on the alleged contract period, in a letter dated the 18th of July 2018 to the former lead claimant of the Class Actions (*Combined matters ACD46/2018 and ACD47/2018*) the Fair Work Ombudsman writes:

"Based on the information provided to the FWO, the Review finds that the Award applied from the commencement of your employment on 28 September 2014..."

I quote the above as the Chandler Macleod company name and ABN appears on the following list of documents that are generated and issued in my name:

- Pay slips
- PAYG summary (Original)
- Income Tax Return
- The letter of offer itself as dated 1st September 2014
- Coal LSL Registration
- Coal LSL Levy advice forms

The same company name without an ABN accompanying appears on the following records:

- Employee time sheets
- Site generated log on receipts
- Log on records
- Superannuation fund service history information
- Company issued shirts

I am most confident in my assertion that Chandler Macleod was my true employer as Judge Altobelli reached the very same conclusion in his judgment, SYG 2513 of 2015 as made on the 18th of July 2017 regarding the matter: Construction, Forestry, Mining and Energy Union V Hunter Valley Energy Coal Pty Ltd [2017] FCCA 1559. ⁽²⁾

Applicant: Construction, Forestry, Mining and Energy Union

Respondent: Hunter Valley Energy Coal

From this judgement I quote the following:

2. The worker performed work at the Mt Arthur coal mine located in the Hunter Valley, New South Wales (the mine), during the period from 5 January 2015 to 8 February 2015. At all relevant times, the Respondent was the Mine Holder and had appointed Mt Arthur Coal Pty Ltd to operate the Mine.

3. In relation to some of the labour requirements at the mine, the Respondent had, pursuant to a contract for services, acquired the provision of labour hire services from Chandler Macleod Group Ltd (CMG). Pursuant to that contract, CMG sourced and provided to the Respondent for its use at the mine certain qualified labour.

45. ... There is no dispute on the facts that the worker in fact worked on the Respondent's mine-site. There is nothing on the evidence to suggest that this actuality was facilitated by Ready Workforce. Indeed there is no evidence to suggest that there is or at any relevant time was a contractual relationship between Ready Workforce and the Respondent.

49. "A close examination of the contract between CMG and the Respondent demonstrates that her employment by CMG is entirely consistent with that contract. The conduct of the parties after the contract is also consistent with the actual contract being between the worker and CMG. Pay-slips, letterheads, PAYG summaries were all in the name of CMG."

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50. “..., *the proper characterisation of the relationship between the worker, the Respondent, CMG and Ready Workforce is that she was employed by CMG. This is the only way to make sense of the relationships the parties have actually created.*”

(Emphasis added)

To summarise: The following factual circumstances in this matter were the same as those applying to myself and others from September 2014 and at all relevant times afterwards:

- The BHP Mt Arthur Coal mine contract was with Chandler Macleod
- Ready Workforce had no contract with the mine or Chandler Macleod
- Same mine – Mt Arthur Coal Mine
- Same PCBU – Hunter Valley Energy Coal
- Same employment circumstances (Roster, duties, and shifts)
- Same employment contract between employee and labour hire provider
- Judge Altobelli states that there was no contract between Ready Workforce & HVEC
- I was an employee of the contract holder, and that employer is Chandler Macleod
- At no time was I paid by Ready Workforce, ABN 54 088 288 037
- At all relevant times I was an employee of Chandler Macleod, ABN 33 090 555 052.

How can I have an employment contract with an employer who has never had a contract with that mine site's PCBU to perform work at that mine site?

On the 19th of July 2022 Chandler Macleod provided me with a reissued PAYG summary from 2015 via email.

In this PAYG summary all the financial details are the same as in the original from June 2015, but the document now bears the company name and ABN of Ready Workforce [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Finally, I wish to quote the following amount owed to the former lead claimant during the “Award Period”, which is nominally September 2014 to June 2015, from the Statement of Claim ⁽³⁾ as filed on the 27/06/2018 for the matter ACD/47/2018:

Total entitlements owing – Award

11. In the premises of the matters pleaded and particularised in paragraphs 1 to 10 (Schedule B) above, the Applicant's unpaid entitlements during the Award Period (exclusive of accrued annual leave and sick leave entitlements was \$42,406.21.

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In addition, the following amount is quoted as owed for the “Agreement Period”, which is nominally from June 2015 to December 2015:

33. In the premises of the matters pleaded and particularised in paragraphs 1 to 28 (Schedule B), above, the Applicant’s unpaid entitlements during the Agreement Period were \$91,449.24.

It is abundantly clear that signing a contract of employment that removed the statutory minimum protections of the Black Coal Mining Industry Award and the NES, with an entity that was not my true employer at any material time, did not provide for a rate of pay that was superior to that found in the Award, for if it did so then the amounts quoted above could not have arisen.

I have also had experience with other labour hire contracts between the years 2013 to 2018 and instead of adding further volume to this submission I would ask the committee that I attend in person to give further details directly and answer any questions the Committee may have.

Yours sincerely

Sam Stephens

9th of September 2022

Notes:

- (1) [Casuals in the Black Coal Award - Fair Work Ombudsman](#)

Note: When following the following advice's sub hyperlink go to 'Reasons for Judgement, Background – paragraphs 1 to 7 of Secretary, Attorney-General's Department v Warren [2022] FCAFC 118.

"We are currently reviewing this article following a [decision](#) by the full Federal Court."

Additionally note the decision date and the date of judgement as being the 12/07/2022.

- (2) <https://www.jade.world/cases/2017FCCA1559>

- (3) https://www.comcourts.gov.au/open_document/FEDERAL/P/ACD47/2018?bob=1200082